INDIANA STATE BOARD OF EDUCATION

SPECIAL EDUCATION RULES
TITLE 511 ARTICLE 7
RULES 32 - 47

Effective February 1, 2010

Indiana Department of Education
Center for Exceptional Learners
Office of Special Education
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This document is an agency version of Indiana's special education rules promulgated in the Indiana Administrative Code at 511 IAC 7-32 through 7-47. A table of contents and an index has been added for reader reference. The official version of the rules may be found in the *Indiana Register*.

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TABLE OF CONTENTS

RULE 32 **DEFINITIONS** 1

RULE 33 **GENERAL PROVISIONS**
Scope 23
Public schools' special education programs; organizational and administrative structures 24
Other public agencies' special education programs; state level interagency agreements 24
Use of public and private insurance proceeds 25

RULE 34 **NONPUBLIC SCHOOLS OR FACILITIES**
Special education and related services for parentally-placed students in nonpublic schools or facilities 27
Child find 27
Educational evaluations for parentally-placed nonpublic school students attending nonpublic schools outside the school corporation of legal settlement 27
Consultation with nonpublic school representatives and representatives of parents 28
Decisions regarding services provided by the public agency and service plan 30
Due process hearings and complaints 31
Requirements pertaining to Part B funds 31
Requirements pertaining to services, location of services, and transportation 33
Property, equipment, and supplies for the benefit of nonpublic school students 33
Reimbursement for parent's unilateral enrollment of a student in a nonpublic school or facility when the public agency's provision of a free appropriate public education is in dispute 34

RULE 35 **PROGRAM PLANNING AND EVALUATION**
Program monitoring 35
Supports for public agency personnel 35

RULE 36 **GENERAL ADMINISTRATIONS OF PROGRAMS**
Parent and community participation 36
Special education program personnel 36
Highly qualified teachers 37
Elementary and secondary instructional day; school calendar; extended school year services 39
Early childhood 40
Facilities 40
Instructional curricula, materials, equipment, and assistive technology devices and services 41
Transportation 42
Medication administration 43
State and local assessments 43

RULE 37 **PROCEDURAL SAFEGUARDS**
Notice of procedural safeguards 44
Notice by electronic mail 46

RULE 38 CONFIDENTIALITY OF INFORMATION
Access to and disclosure of educational records 46
Procedures for amending educational records 51
Confidentiality safeguards in the collection, maintenance, and destruction of educational records 52

RULE 39 EDUCATIONAL SURROGATE PARENTS
Method for determining whether a student needs an educational surrogate parent 53
Method for assigning an educational surrogate parent 54

RULE 40 IDENTIFICATION AND EVALUATION
Child find 55
Comprehensive and coordinated early intervening services 55
Educational evaluations; in general 56
Initial educational evaluation; public agency written notice and parental consent 58
Conducting an initial educational evaluation 60
Determination of eligibility 63
Independent educational evaluation 63
Reevaluation 64

RULE 41 ELIGIBILITY CRITERIA
Autism spectrum disorder 66
Blind or low vision 67
Cognitive disability 68
Deaf or hard of hearing 69
Deaf-blind 70
Developmental delay (early childhood) 71
Emotional disability 72
Language or speech impairment 72
Multiple disabilities 74
Other health impairment 74
Orthopedic impairment 75
Specific learning disability 76
Traumatic brain injury 78

RULE 42 DETERMINATION OF SPECIAL EDUCATION SERVICES
Local procedures and training 79
Notice of case conference committee meetings 79
Case conference committee participants 80
Written notice before initial case conference committee meetings 82
Case conference committee meetings 82
Developing an individualized education program; components and parent copy 83
Written notice by the public agency and parental consent 85
Individualized education programs; implementation 87
Review and revision of the individualized education program 88
Least restrictive environment and delivery of special education and related services 90
Instruction for student at student's home or alternative setting 91
Instruction for students with injuries and temporary or chronic illnesses 92
Nonpublic school or facility placements by public agencies 92

Transportation of students in public or
private residential placements 93
Revocation of consent for special education and related services 94

RULE 43 RELATED SERVICES; TRANSITIONS; TRANSFER OF RIGHTS
Related services 95
Transition from early intervention services (Part C)
to early childhood special education (Part B) 100
Review of transition age students 101
Transition individualized education program 101
Transfer of rights to student 104
Appointment of an educational representative 104
Summary of performance 105

RULE 44 DISCIPLINE PROCEDURES
Removals in general 106
Disciplinary change of placement 106
Removals of more than 10 cumulative days that
do not result in a change of placement 107
Removals of more than 10 consecutive days or 10
cumulative days that result in a change of placement 107
Manifestation determinations 108
Interim alternative educational setting;
weapons, drugs, and serious bodily injury 109
Substantial likelihood of injury to student or others 109
Placement of the student during due process
hearings or appeals of disciplinary action 110
Protections for students not yet eligible for special
education and related services 110
Referral to law enforcement and judicial authorities 111

RULE 45 COMPLAINTS, MEDIATION, AND DUE PROCESS PROCEDURES
Complaints 111
Mediation 114
Due process hearing requests 115
Sufficiency of the request for a due process hearing 116
Responding to the request for a due process hearing 117
Resolution meeting 117
Conducting the hearing 119
Independent hearing officer qualifications 122
Due process hearing appeals 122
Expedited due process hearings and appeals 125
Attorney's fees 126

RULE 46 CHILD COUNT AND DATA COLLECTION
Federal child count procedures 127
State child count procedures 128
State preschool child count procedures 129
Data collection 129

RULE 47 STATE FUNDING OF EXCESS COSTS
Application from school corporation of legal settlement
or charter school 130
Appeal from denial of application 131

INDIANA STATE BOARD OF EDUCATION
TITLE 511 ARTICLE 7 – SPECIAL EDUCATION

RULE 32 DEFINITIONS

511 IAC 7-32-1 Applicability

Sec. 1. The definitions in this rule apply throughout this article.

511 IAC 7-32-2 "Academic achievement" defined

Sec. 2. "Academic achievement" means a student's performance in relation to the continuum of the Indiana academic standards, including the foundations to the standards. This may include performance on norm-referenced, criterion-referenced, and other achievement measures.

511 IAC 7-32-3 "Adaptive behavior" defined

Sec. 3. "Adaptive behavior" means the effectiveness of or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's chronological age and cultural group.

511 IAC 7-32-4 "Adequate notice" defined

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

511 IAC 7-32-5 "Adversely affects educational performance" defined

Sec. 5. "Adversely affects educational performance" means that a student's disability has a consistent and significant negative impact on:
(1) the student's:
(A) academic achievement; or
(B) functional performance; or
(2) both the student’s academic achievement and functional performance.

511 IAC 7-32-6 "Assessment" defined

Sec. 6. (a) "Assessment" refers to the process of gathering and interpreting information regarding some aspect of a student's:
(1) cognitive;
(2) academic;
(3) social;
(4) emotional;
(5) behavioral; or
(6) functional;
performance.

(b) Norm-referenced assessments are standardized on a clearly defined group and scaled so that the score reflects the student's performance when compared to the normative group.
(c) Criterion-referenced assessments are:
(1) designed to determine whether a student has reached a pre-established level or standard of performance; and
(2) generally developed with a hierarchy of skills.

(d) Other assessment procedures include, but are not limited to, the following:
(1) Samples of academic skills
(2) Behavioral charts.
(3) Informal tests.
(4) Interviews.
(5) Observations.

511 IAC 7-32-7 "Assistive technology device" defined

Sec. 7. "Assistive technology device" means any:
(1) item;
(2) piece of equipment; or
(3) product system;
whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

511 IAC 7-32-8 "Assistive technology service" defined

Sec. 8. "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes, but is not limited to, the following:
(1) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities.
(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
(5) Training or technical assistance for the following:
(A) A student with a disability or, if appropriate, the student's family.
(B) Professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

511 IAC 7-32-9 "At no cost" defined

Sec. 9. "At no cost" means that all specially designed instruction is provided without charge to the parent, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program. Such fees may include, but are not limited to, fees for the following:
(1) Textbook rental.
(2) Consumable materials.
(3) Any fees permitted by state statute or rule.

511 IAC 7-32-10 "Behavioral intervention plan" defined

Sec. 10. (a) "Behavioral intervention plan" means a plan agreed upon by the CCC and incorporated into a student's IEP that describes the following:

(1) The pattern of behavior that impedes the student's learning or the learning of others.

(2) The purpose or function of the behavior as identified in a functional behavioral assessment.

(3) The positive interventions and supports, and other strategies, to:

(A) address the behavior; and

(B) maximize consistency of implementation across people and settings in which the student is involved.

(4) If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student. The behavioral intervention plan seeks to maximize consistency of implementation across people and settings in which the student is involved.

(b) The IEP can serve as the behavioral intervention plan as long as the documentation the parent receives meets all the requirements in this section.

511 IAC 7-32-11 "Benchmarks" defined

Sec. 11. "Benchmarks" means major milestones a student is expected to achieve. Benchmarks establish expected performance levels for students assessed against alternate achievement standards that allow for regular checks of progress that coincide with the reporting periods for informing parents of the student's progress toward achieving the annual goals delineated in a student's IEP.

511 IAC 7-32-12 "Case conference committee" or "CCC" defined

Sec. 12. "Case conference committee" or "CCC" means the group of persons described in 511 IAC 7-42-3, including parents and public agency personnel, who are responsible for the following:

(1) Reviewing the educational evaluation report and determining a student's eligibility for special education and related services.

(2) Developing, reviewing, and revising a student's IEP or transition IEP.

(3) Determining the following:

(A) The appropriate special education, related services, and placement for a student and the setting or settings in which those services will be provided.

(B) Other matters, including the provision of a free appropriate public education, that are assigned to an IEP team by federal law or to a CCC by state law or any rule of the Indiana state board of education, including this article.

511 IAC 7-32-13 "Caseload" defined

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

(1) The nature and severity of the students' disabilities.

(2) The type and intensity of services needed as specified in the IEP.

(3) The chronological ages of the students.

(4) The total number of students with and without disabilities for whom the teacher has instructional responsibility.

511 IAC 7-32-14 "Change of educational placement" defined

Sec. 14. (a) "Change of educational placement" means that a student's placement has changed on the continuum of placement options set forth in 511 IAC 7-42-10(b)(4) and 511 IAC 7-42-10(b)(5).

(b) If a public agency proposes to change a student's educational placement, the public agency must provide the student's parent with written notice that meets the requirements of 511 IAC 7-42-7.

(c) A change of educational placement:
(1) occurs when a student:
(A) is declassified as eligible for special education and related services; or
(B) graduates with a high school diploma as defined in 511 IAC 6-7.1-1(e);
(2) does not occur because a student's IEP will be implemented in a different location; and
(3) is different from a disciplinary change of placement described in 511 IAC 7-44-2.

511 IAC 7-32-15 "Charter school" defined

Sec. 15. "Charter school":
(1) means a public elementary school or secondary school established under IC 20-24-1-4; and
(2) has the meaning given the term in 20 U.S.C. 7221i of the Elementary and Secondary Education Action of 1965, as amended, 20 U.S.C. 6301 et seq.

511 IAC 7-32-16 "Complaint" defined

Sec. 16. "Complaint" means a written, signed allegation of a procedural violation of federal or state statutes, regulations, rules, or constructions governing special education that is submitted to the division of special education for investigation in accordance with 511 IAC 7-45-1.

511 IAC 7-32-17 "Consent" defined

Sec. 17. "Consent" means the following:
(1) The parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which consent is sought.
(2) The parent understands and agrees in writing to the activity for which consent has been sought, and the consent:
(A) describes that activity; and
(B) lists the records, if any, that will be released and to whom.
(3) The parent understands that:
(A) granting consent is voluntary on the part of the parent; and
(B) the consent may be revoked at any time.
If the parent revokes consent, the revocation is not retroactive, that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked.

511 IAC 7-32-18 "Consultation" defined

Sec. 18. "Consultation" means services provided to students enrolled in public schools that include, but are not limited to, the following:
(1) Working with general and special education teachers in matters relating to the following:
(A) Development and implementation of IEPs.
(B) Curriculum development.
(C) Instructional or behavioral management techniques.
(D) Identification, adaptation, and utilization of the following:
(i) Materials.
(ii) Equipment.
(iii) Instructional aids.
(2) Serving as a communication link between and among the following:
(A) Public agency personnel.
(B) Parents.
(C) Other agencies.
(3) Conducting individual assessments or observations of a student.

(4) Counseling or crisis intervention.
(5) Providing the following:
(A) Direct services to a student or group of students.
(B) Parent counseling and training.

511 IAC 7-32-19 "Consultation and collaboration" defined

Sec. 19. "Consultation and collaboration" means services provided to parentally-placed students in nonpublic schools who are eligible for special education and related services. These services include, but are not limited to, the following:
(1) Development of a service plan as specified in 511 IAC 7-34-5(e).
(2) Periodic communication between the teacher of record and the nonpublic school regarding the goals contained in the student's service plan. Periodic communication must occur at least as often as, and in conjunction with, the periodic reports required in subdivision (3).
(3) Periodic reports from the teacher of record to the student's parent specifying how the student is progressing toward the goals contained in the student's service plan. The reports must occur on the same schedule as the nonpublic school's report cards are sent to parents.
(4) Collaboration, which may include opportunities for professional development on topics such as the following:
(A) Accommodations.
(B) Differentiated instruction.
(C) Universal design.
(D) Instructional or behavioral management techniques.
(E) Identification, adaptation, and utilization of the following:
(i) Materials.
(ii) Equipment.
(iii) Instructional aids.
(F) Response to scientific, research based interventions.
(G) Other topics addressing the needs of the student.

511 IAC 7-32-20 "Controlled substance" defined

Sec. 20. "Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in subsection 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) or IC 35-48-2.

511 IAC 7-32-21 "Core academic subjects" defined

Sec. 21. "Core academic subjects" means the following:
(1) English.
(2) Reading or language arts.
(3) Mathematics.
(4) Science.
(5) Foreign languages.
(6) Civics and government.
(7) Economics.
(8) Arts.
(9) History.
(10) Geography.

511 IAC 7-32-22 "Day" defined

Sec. 22. (a) "Day" means a calendar day unless otherwise indicated as a business day or instructional day.

(b) "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business days as in 511 IAC 7-34-10(g)(1)(B).

(c) "Instructional day" means any day or part of a day that students are expected to be in attendance.

511 IAC 7-32-23 "Destruction of information" defined

Sec. 23. "Destruction of information" means physical destruction or removal of personal identifiers from information contained in an educational record so that the information is no longer personally identifiable.

511 IAC 7-32-24 "Directory information" defined

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

(1) name;
(2) address;
(3) telephone listing;
(4) electronic mail address;
(5) photograph;
(6) date and place of birth;
(7) grade level;
(8) major field of study;
(9) participation in officially recognized activities and sports and the weight and height of members of athletic teams.
(10) dates of attendance;
(11) degrees, honors, and awards received; and
(12) most recent previous educational agency or institution attended.

511 IAC 7-32-25 "Disciplinary action or proceeding" defined

Sec. 25. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by a public agency with respect to an infraction or violation of the internal rules of conduct applicable to students of the public agency.

511 IAC 7-32-26 "Disclosure" defined

Sec. 26. "Disclosure" means:

(1) to permit access to; or
(2) the release, transfer, or other communication of;
personally identifiable information contained in educational records to any party by any means including oral, written, or electronic means.

511 IAC 7-32-27 "Due process hearing" defined

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

(1) The identification or eligibility of a student for services under this article.
(2) The appropriateness of the:
    (A) educational evaluation; or
    (B) student's proposed or current level of services or placement.
(3) Any other dispute affecting the provision of a free appropriate public education to the student.

511 IAC 7-32-28 "Duration of services" defined

Sec. 28. "Duration of services" means the projected month, day, and year when special education services will end.

511 IAC 7-32-29 "Early intervening services" defined

Sec. 29. "Early intervening services" means services provided to students in grades kindergarten through 12, with a particular emphasis on students in grades kindergarten through 3, who are not currently eligible for special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

511 IAC 7-32-30 "Educational evaluation" defined

Sec. 30. (a) "Educational evaluation" means procedures used in accordance with 511 IAC 7-40 and 511 IAC 7-41 to provide information about a student's disability or suspected disability for the student's CCC to determine the following:

(1) Whether a student is eligible for special education and related services.
(2) If eligible, the nature and extent of the special education and related services that the student needs.

(b) Based on the suspected disability or disabilities, the educational evaluation may address the following:

(1) Development.
(2) Cognition.
(3) Academic achievement.
(4) Functional performance or adaptive behavior.
(5) Communication skills.
(6) Motor skills and sensory responses.
(7) Available medical and mental health information that is educationally relevant.
(8) Social and developmental history.
(9) Analysis of other factors.
(10) Other assessments or information necessary to determine eligibility and inform the student's CCC.

511 IAC 7-32-31 "Educational records" defined

Sec. 31. (a) "Educational records" means records directly related to a student and maintained by a public agency or by a party acting for the public agency. The term includes the following:

(1) Test protocols that contain personally identifiable information regarding the student and IEPs.
(2) Video clips.
(3) Audio clips.
(4) Scanned images.
(5) Other electronically recorded or produced items.

(b) The term does not include the records of instructional, supervisory, administrative, or ancillary personnel that:

(1) remain in the sole possession of the maker of the record;
(2) are used only as a personal memory aid; and
(3) are not accessible to or revealed to any other person except a temporary substitute for the maker of the record.

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

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.

511 IAC 7-32-33 "Elementary school" defined

Sec. 33. (a) "Elementary school" means a school that provides any combination of kindergarten and grades 1 through 8.

(b) Nothing in this article is intended to prevent an early childhood program under 511 IAC 7-36-5 from being located in an elementary school.

511 IAC 7-32-34 "Eligibility" defined

Sec. 34. "Eligibility", for special education and related services, means that a:
(1) student's CCC has determined, in accordance with this article, that a student's disability or impairment adversely affects the student's educational performance and, by reason thereof, the student needs special education or related services; or
(2) child's CCC has determined, in accordance with this article, that a child has a developmental delay as described in 511 IAC 7-41-6 and, by reason thereof, the student needs special education or related services.

511 IAC 7-32-35 "Equipment" defined

Sec. 35. "Equipment" means the following:
(1) Machinery.
(2) Utilities.
(3) Built-in equipment.
(4) Any necessary enclosures or structures to house the machinery, utilities, or equipment.
(5) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as the following:
(A) Instructional equipment and necessary furniture.
(B) Printed, published, and audio-visual instructional materials.
(C) Telecommunications, sensory, and other technological aids and devices.
(D) Books, periodicals, documents, and other related materials.

511 IAC 7-32-36 "Essential components of reading instruction" defined

Sec. 36. "Essential components of reading instruction" means explicit and systematic instruction in the following:
(1) Phonemic awareness.
(2) Phonics.
(3) Vocabulary development.
(4) Reading fluency, including oral reading skills.
(5) Reading comprehension strategies.

511 IAC 7-32-37 "Expedited due process hearing" defined

Sec. 37. "Expedited due process hearing" means a hearing that is conducted by an independent hearing officer, in accordance with 511 IAC 7-45-10, and may be requested in any of the following situations:
(1) The parent disagrees with:
(A) a determination regarding disciplinary change of placement under 511 IAC 7-44-2;
(B) a determination that the student's behavior was not a manifestation of the student's disability under 511 IAC 7-44-5; or

(C) the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-44-6.

(2) The public agency, under 511 IAC 7-44-7, believes that maintaining a student in 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, is substantially likely to result in injury to the student or others.

511 IAC 7-32-38 "Expedited evaluation" defined

Sec. 38. "Expedited evaluation" means an initial evaluation that is conducted during the pendency of disciplinary action of a student who has not been determined eligible for special education. The timelines for conducting an expedited evaluation and convening the CCC are shorter than for an initial evaluation under 511 IAC 7-44-9.

511 IAC 7-32-39 "Extended school year services" defined

Sec. 39. "Extended school year services" means special education and related services that:

(1) are provided to a student with a disability:

(A) beyond the normal school year or instructional day of the public agency;

(B) in accordance with the student's IEP; and

(C) at no cost to the parent or the student; and

(2) meet the standards of the department of education.

511 IAC 7-32-40 "Free appropriate public education" defined

Sec. 40. "Free appropriate public education" means special education and related services that:

(1) are provided at public expense, under public supervision and direction, and at no cost to the parent;

(2) meet the standards of the state educational agency, including the requirements of this article;

(3) include 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.

511 IAC 7-32-41 "Functional behavioral assessment" defined

Sec. 41. “Functional behavioral assessment” means a process that uses data to identify patterns in the student's behavior and the purpose or function of the behavior for the student. A functional behavioral assessment may require written parental consent if it is an educational evaluation as defined in section 30 of this rule. Written parental consent is not required when a functional behavioral assessment reviews existing data regarding a student, as specified in 511 IAC 7-40-3(b)(3).

511 IAC 7-32-42 "Functional performance" defined

Sec. 42. "Functional performance" means a measure of skills, behaviors, and knowledge necessary to achieve self-sufficiency in areas that support those defined by academic achievement. This may include the following:

(1) Physical skills, such as sensory responses, fine and gross motor skills.

(2) Personal care skills, such as the following:

(A) Eating.

(B) Dressing.

(C) Maintaining hygiene.

(3) Social emotional adjustment, such as the following:

(A) Interpersonal skills.
(B) Intrapersonal regulation.
(C) Habits of learning.
(4) Independent living skills, such as the following:
(A) Maintaining a household.
(B) Managing health needs.
(C) Using tools.
(D) Shopping.
(E) Budgeting.
(F) Practicing safety.
(G) Accessing transportation.
(H) Recreation.
(I) Accessing community resources.
(J) Employment.

511 IAC 7-32-43 "General education" defined

Sec. 43. "General education" means those programs provided or available to all students, including, but not limited to, the following:
(1) Sequential grade advancement.
(2) Elective courses.
(3) Extracurricular activities.
(4) The general curriculum.

511 IAC 7-32-44 "Highly qualified" defined

Sec. 44. (a) For any public elementary or secondary school special education teacher teaching core academic subjects, "highly qualified" has the meaning in subsection (b), with additional requirements in 511 IAC 7-36-3.

(b) The term has the meaning given in 20 U.S.C. 7801(23) of the Elementary and Secondary Education Act of 1965, as applied by 20 U.S.C. 6311 et seq., and 34 CFR 200.56. The term means the following:
(1) When used with respect to any public elementary school or secondary school teacher teaching in the state, the term means that the teacher has:
(A) obtained full state licensure as a teacher, including licensure obtained through alternative routes, or passed the state teacher licensing examinations, and holds a license to teach in the state; and
(B) not had licensure requirements waived.
(2) When used with respect to:
(A) a new elementary school teacher, the term means that the teacher:
(i) holds at least a bachelor's degree; and
(ii) has demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in:
(AA) reading;
(BB) writing;
(CC) mathematics; and
(DD) other areas of the basic elementary school curriculum;
which may consist of passing a state-required licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum; or
(B) a new middle or secondary school teacher, the term means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by:
(i) passing a rigorous state academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a state-required licensing test or tests in each of the academic subjects in which the teacher teaches); or
(ii) successful completion, in each of the academic subjects in which the teacher teaches, of:
(AA) an academic major;

(BB) a graduate degree;
(CC) course work equivalent to an undergraduate academic major; or
(DD) advanced credentialing.

(3) When used with respect to a veteran elementary, middle, or secondary school teacher, the term means that the teacher holds at least a bachelor's degree and:

(A) has met the applicable standard in subdivision (2)(A) or (2)(B), which includes an option for a test; or

(B) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform state standard of evaluation that:

(i) is set by the state for both grade appropriate academic subject matter knowledge and teaching skills;

(ii) is:

(AA) aligned with challenging state academic content and student academic achievement standards; and

(BB) developed in consultation with core content specialists, teachers, principals, and school administrators;

(iii) provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(iv) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the state;

(v) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

(vi) is made available to the public upon request; and

(vii) may involve multiple, objective measures of teacher competency.

511 IAC 7-32-45 "Homebound instruction" defined

Sec. 45. "Homebound instruction" means instruction provided by a licensed teacher to students, in accordance with 511 IAC 7-42-11 and 511 IAC 7-42-12, including students without disabilities, who are unable to attend school. Homebound instruction may be provided:

(1) at:

(A) a student's home;

(B) a hospital; or

(C) another site; and

(2) in person or by any other technology systems.

511 IAC 7-32-46 "Homeless students" defined

Sec. 46. "Homeless students" has the meaning given the term "homeless children and youths" in the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. The term means individuals who lack a fixed, regular, and adequate nighttime residence, and includes the following:

(1) Children and youths who are:

(A) sharing the housing of other persons due to:

(i) loss of housing;

(ii) economic hardship; or

(iii) a similar reason;

(B) living in:

(i) motels;

(ii) hotels;

(iii) trailer parks; or

(iv) camping grounds;

due to the lack of alternative adequate accommodations;

(C) living in emergency or transitional shelters;

(D) abandoned in hospitals; or

(E) awaiting foster care placement.

(2) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. 11302(a)(2)(C)).
(3) Children and youths who are living in:
(A) cars;
(B) parks;
(C) public spaces;
(D) abandoned buildings;
(E) substandard housing;
(F) bus or train stations; or
(G) similar settings.
(4) Migratory children, as such term is defined in the Elementary and Secondary Education Act of 1965, who qualify as homeless because the children are living in circumstances described in subdivisions (1) through (3).

511 IAC 7-32-47 "Illegal drug" defined

Sec. 47. "Illegal drug" means a controlled substance, but does not include a substance that is legally possessed or used under:
(1) the supervision of a licensed health care professional; or
(2) any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provision of federal law.

511 IAC 7-32-48 "Individualized education program" or “IEP” defined

Sec. 48. (a) "Individualized education program" or “IEP” means a written document, developed, reviewed, and revised by the CCC in accordance with 511 IAC 7-42, that describes the following:
(1) How a student will access the general education curriculum, if appropriate.
(2) The special education and related services needed to participate in the educational environment. The required components of an IEP are contained in 511 IAC 7-42-6.

(b) A transition IEP is an IEP that is:
(1) developed in accordance with 511 IAC 7-43-4; and
(2) in effect when the student:
(A) enters into grade 9; or
(B) becomes fourteen (14) years of age;
whichever occurs first, or earlier if determined appropriate by the CCC.

511 IAC 7-32-49 "Individualized family service plan" or “IFSP” defined

Sec. 49. "Individualized family service plan" or “IFSP” means the written plan for providing first steps early intervention services to an eligible child and family, from the child's birth up to three (3) years of age, under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1436. The IFSP is a process and document that lists a family's:
(1) priorities;
(2) concerns; and
(3) resources;
in regard to their infant or toddler with a disability.

511 IAC 7-32-50 "Infant or toddler with a disability" defined

Sec. 50. “Infant or toddler with a disability" means an individual under three (3) years of age who needs early intervention services under 470 IAC 3.1-4, because the individual:
(1) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one (1) or more of the areas of:

(A) cognitive development;
(B) physical development;
(C) communication development;
(D) social or emotional development; and
(E) adaptive development; or
(2) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

511 IAC 7-32-51 "Initiation of services and program modifications" defined

Sec. 51. "Initiation of services and program modifications" means the projected month, day, and year when special education services and program modifications begin.

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

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. 1021 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.

511 IAC 7-32-53 "Interim alternative educational setting" defined

Sec. 53. “Interim alternative educational setting" means a student's placement when the public agency removes a student from the student's current placement as a result of any of the following:
(1) Under 511 IAC 7-44-3, 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. The public agency may decide to provide services during the removal in an interim alternative educational setting.
(2) Under 511 IAC 7-44-5, when a CCC determines that a student's conduct is not a manifestation of the student's disability. The CCC may determine that during any period of removal a student will receive services in an interim alternative educational setting.
(3) Under 511 IAC 7-44-6, when a student is removed by the public agency for not more than forty-five (45) instructional days for weapons, drugs, or serious bodily injury. The student's CCC must determine the appropriate interim alternative educational setting for the period of removal.
(4) Under 511 IAC 7-44-7, when an independent hearing officer may order a change of placement to an appropriate interim alternative educational setting for not more than forty-five (45) instructional days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
(5) A court may determine an interim alternative educational setting for a student while administrative remedies are exhausted.

511 IAC 7-32-54 "Intervener" defined

Sec. 54. "Intervener" means an individual with knowledge and skill in the mode of communication of a student who is deaf-blind who can communicate to the student what is occurring in the educational setting.

511 IAC 7-32-55 "Job coach" defined

Sec. 55. "Job coach" means an individual who works with and on behalf of a student with a disability who participates in supported employment. A job coach:
(1) provides support and training to the student and the employer, including, but not limited to, organizing the tasks necessary to do the job into sequential steps; and

(2) teaches the student by working alongside the student while the tasks and job are being learned.

511 IAC 7-32-56 "Legal settlement" defined

Sec. 56. "Legal settlement", of a student, means the student's status with respect to the school corporation that:

(1) has the responsibility to permit the student to attend its local public schools without the payment of tuition; or

(2) is financially responsible should the student attend school in another situation permitted by law.

511 IAC 7-32-57 "Length and frequency of services" defined

Sec. 57. "Length and frequency of services" means for what amount of time and how often special education and related services are to be provided.

511 IAC 7-32-58 "Licensed personnel" defined

Sec. 58. "Licensed personnel" means persons licensed by the department of education and 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**.**

511 IAC 7-32-59 "Limited English proficient" defined

Sec. 59. "Limited English proficient" means an individual:

(1) who is three (3) years of age through twenty-one (21) years of age;
(2) who is enrolled or preparing to enroll in an elementary school or secondary school;
(3) who:
    (A) was not born in the United States or whose native language is a language other than English;
    (B) is:
        (i) a Native American or Alaska native, or a native resident of the outlying areas; and
        (ii) from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
    (C) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
(4) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
    (A) the ability to meet Indiana’s proficient level of achievement on state assessments;
    (B) the ability to successfully achieve in classrooms where the language of instruction is English; or
    (C) the opportunity to participate fully in society.

511 IAC 7-32-60 "Local educational agency" defined

Sec. 60. "Local educational agency" means a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, publicly funded schools as such schools are established under the laws of Indiana. The term includes school corporations, charter schools not part of school corporations, and state-operated schools.

511 IAC 7-32-61 "Manifestation determination" defined

Sec. 61. "Manifestation determination" means an evaluative process conducted by the student's CCC, in accordance with 511 IAC 7-44-5, to determine whether the conduct in question was:
(1) caused by or had a direct and substantial relationship to the student's disability; or
(2) the direct result of the public agency's failure to implement the student's IEP.

511 IAC 7-32-62 "Mediation" defined

Sec. 62. "Mediation" means a voluntary process, described in 511 IAC 7-45-2, in which the parent and public agency attempt, with the assistance of a trained impartial mediator, to resolve a:
(1) complaint under 511 IAC 7-45-1; or
(2) dispute that has arisen in the CCC regarding:
(A) the identification or eligibility of a student for services under this article;
(B) the appropriateness of the:
(i) educational evaluation; or
(ii) student's proposed or current level of services or placement; or
(C) any other dispute affecting the provision of a free appropriate public education to the student.

511 IAC 7-32-63 "Medical services" defined

Sec. 63. "Medical services" means a related service provided at no cost to the parent under circumstances described in 511 IAC 7-43-1(j).

511 IAC 7-32-64 "Mode of communication" defined

Sec. 64. "Mode of communication" means the method used by the parent or student to communicate, if the parent or student is deaf, hearing impaired, visually impaired, nonverbal, has no written language, or is a nonreader. Methods used may include, but are not limited to, the following:
(1) Sign language.
(2) Braille.
(3) Oral communication.
(4) Other augmentative devices.

511 IAC 7-32-65 "Multidisciplinary team" defined

Sec. 65. "Multidisciplinary team" means the 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 is blind or has low vision, is deaf or hard of hearing, or 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.

511 IAC 7-32-66 "Native language" defined

Sec. 66. "Native language", for use in all contact with students and parents, means the following:
(1) For a parent or student of limited English proficiency, the language normally used by that individual in the home.
(2) For a parent or student who:
(A) is deaf or hard of hearing;
(B) is blind or has low vision; or
(C) has no written language;
the mode of communication that is normally used by the student, such as sign language, braille, or oral communication.

511 IAC 7-32-67 "New teacher" defined

Sec. 67. "New teacher" means a teacher who holds a valid teaching license, but has less than one (1) year of teaching experience.

511 IAC 7-32-68 "Orientation and mobility" defined

Sec. 68. "Orientation and mobility" means services described in 511 IAC 7-43-1(l) provided by qualified personnel to students who are blind or have low vision.

511 IAC 7-32-69 "Paraprofessional" defined

Sec. 69. "Paraprofessional" means an individual who works under the supervision and direction of licensed teachers or related services personnel to assist in areas that relate to personal, social, and instructional needs. The term includes, but is not limited to, the following:
(1) Instructional or program assistants.
(2) School bus monitors.
(3) Interpreters.
(4) Note takers.
(5) Job coaches.

511 IAC 7-32-70 "Parent" defined

Sec. 70. (a)"Parent" means one (1) of the following:
(1) Any biological or adoptive parent whose parental rights have not been terminated or restricted in accordance with law.
(2) A guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, including a court-appointed temporary guardian.
(3) A foster parent.
(4) An individual with legal custody or an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, or other adult who accepts full legal responsibility for the student and with whom the student lives.
(5) An educational surrogate parent appointed in accordance with 511 IAC 7-39.
(6) Any student of legal age, which is defined in section 91 of this rule to mean a student who:
(A) is eighteen (18) years of age; and
(B) has not had a guardian appointed by a court under IC 29-3.
(7) An educational representative appointed under 511 IAC 7-43-6.

(b) Except as provided in subsection (c), the biological or adoptive parent, when:
(1) attempting to act as the parent under this article; and
(2) more than one (1) party is qualified under subsection (a) to act as a parent;
must be presumed to be the parent for purposes of this article unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

(c) If a judicial decree or order identifies a specific person or persons under subsection (a)(1) through (a)(5) to:
(1) act as the parent of a student; or
(2) make educational decisions on behalf of a student;
then such person or persons shall be determined to be the parent for purposes of this article.

511 IAC 7-32-71 "Parentally-placed nonpublic school students with disabilities" defined

Sec. 71. "Parentally-placed nonpublic school students with disabilities" means students with disabilities who are enrolled by their parents in nonpublic schools, home schools, or facilities, including religious schools or facilities, that are day schools or residential schools providing elementary or secondary education as determined under Indiana law. For students three (3) years of age through five (5) years of age, nonpublic schools are schools that meet the definition of an elementary school in section 33 of this rule.

511 IAC 7-32-72 "Parent training and information center" defined

Sec. 72. "Parent training and information center" means a center assisted under 20 U.S.C. 1471 or 20 U.S.C. 1472 of the Individuals with Disabilities Education Act.

511 IAC 7-32-73 "Personally identifiable information" defined

Sec. 73. "Personally identifiable information" means information by which it is possible to identify a student with reasonable certainty, including, but not limited to, the following:
(1) The name of a student, a student's parent or parents, or other family member or members.
(2) The address of a student.
(3) A personal identifier, such as a student's Social Security number or student test number.
(4) A list of personal characteristics or other information that would make the student's identity easily traceable, including disability designation.

511 IAC 7-32-74 "Physical education" defined

Sec. 74. (a) “Physical education" means the development of the following:
(1) Physical and motor fitness.
(2) Fundamental motor skills and patterns.
(3) Skills in the following:
(A) Aquatics.
(B) Dance.
(C) Individual and group games and sports (including intramural and lifetime sports).

(b) The term includes the following:
(1) Special physical education.
(2) Adapted physical education.
(3) Movement education.
(4) Motor development.

511 IAC 7-32-75 "Print instructional materials" defined

Sec. 75. "Print instructional materials" means printed textbooks and related core materials that are:

(1) written and published primarily for use in elementary school and secondary school instruction; and
(2) required by the department of education or a public agency for use by students in the classroom.

511 IAC 7-32-76 "Progress monitoring" defined
Sec. 76. "Progress monitoring" means a systematic procedure for the frequent and repeated collection and analysis of student performance data. Academic or functional performance, or both academic and functional performance, is monitored over time to evaluate the effectiveness of instruction and intervention.

511 IAC 7-32-77 "Public agency" defined

Sec. 77. "Public agency" means any public entity that is responsible for providing special education and related services, including the following:
(1) Public school corporations operating programs individually or cooperatively.
(2) Charter schools that are not part of a public school corporation.
(3) Programs operated by the state department of health.
(4) The Indiana School for the Blind and Visually Impaired.
(5) The Indiana School for the Deaf.
(6) Programs operated by the department of correction**.**

511 IAC 7-32-78 "Qualified professional" defined

Sec. 78. "Qualified professional" means one who has met state certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services.
511 IAC 7-32-79 "Related services" defined

Sec. 79. (a) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. Examples of related services are described in 511 IAC 7-43-1.

(b) The term does not include:
(1) a medical device that is surgically implanted;
(2) the optimization of that device's functioning (such as mapping of a cochlear implant);
(3) maintenance of that device; or
(4) the replacement of that device.

511 IAC 7-32-80 "Resolution meeting" defined

Sec. 80. "Resolution meeting" means a meeting that is convened by the public agency when a parent requests a due process hearing. The purpose of the meeting is for the parent to discuss the due process hearing request and the facts that form the basis of the request so that the public agency has the opportunity to resolve the dispute. Resolution meetings must be conducted according to 511 IAC 7-45-6.

511 IAC 7-32-81 "Scientifically based research" defined

Sec. 81. "Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:
(1) employs systematic, empirical methods that draw on observation or experiment;
(2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
(4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
(5) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
(6) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

511 IAC 7-32-82 "Secondary school" defined

Sec. 82. "Secondary school" means a high school, which is any combination of grades 9, 10, 11, or 12.

511 IAC 7-32-83 "Serious bodily injury" defined

Sec. 83. "Serious bodily injury" has the meaning given the term "serious bodily injury" under 18 U.S.C. 1365(h)(3). The term means bodily injury that involves:
(1) a substantial risk of death;
(2) extreme physical pain;
(3) protracted and obvious disfigurement; or
(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

511 IAC 7-32-84 "Service plan" defined

Sec. 84. "Service plan" means the written document that describes the specific special education and related services the public agency will provide to a parentally-placed nonpublic school student with a disability. The plan must:
(1) be developed and implemented in accordance with 511 IAC 7-34; and
(2) include the location of the services and any transportation that is necessary for the student to receive services.

511 IAC 7-32-85 "Social interaction skills" defined

Sec. 85. "Social interaction skills" means a student's personal interactions across social situations and environments.

511 IAC 7-32-86 "Special education" defined

Sec. 86. "Special education" means specially designed instruction, at no cost to the parent, designed to meet the unique needs of a student eligible for special education and related services under this article. The term may include, but is not limited to, the following:
(1) Instruction conducted in:
    (A) the classroom;
    (B) the home;
    (C) hospitals and institutions; and
    (D) other settings.
(2) Instruction in physical education.
(3) Travel training.
(4) Transition services.

(5) Vocational education.
(6) Speech-language pathology services.

511 IAC 7-32-87 "Special education planning district" defined

Sec. 87. "Special education planning district" means the public school administrative unit responsible for the provision of special education and related services in a specified geographic area. A planning district may be:
(1) an individual public school corporation; or
(2) two (2) or more public school corporations that operate under a written agreement.

511 IAC 7-32-88 "Specially designed instruction" defined

Sec. 88. "Specially designed instruction" means adapting, as appropriate to the needs of a student who is eligible for special education and related services, the content, methodology, or delivery of instruction to:
(1) address the unique needs of the student that result from the student's disability; and
(2) ensure the student's access to the general curriculum so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

511 IAC 7-32-89 "State educational agency" defined

Sec. 89. "State educational agency" means the department of education.

511 IAC 7-32-90 "Student" defined

Sec. 90. "Student" means any person three (3) years of age through the school year in which the person becomes twenty-two (22) years of age, unless a CCC determines that a student will leave school earlier, who has been:
(1) formally referred for an educational evaluation to determine the nature and extent of a suspected disability, but not yet determined eligible for special education and related services; or
(2) determined eligible for special education and related services under this article.

511 IAC 7-32-91 "Student of legal age" defined

Sec. 91. "Student of legal age" means a student who has:
(1) reached eighteen (18) years of age; and
(2) not had a guardian appointed by a court under IC 29-3.

511 IAC 7-32-92 "Student with a disability" defined

Sec. 92. (a) "Student with a disability" means a student who has been evaluated in accordance with this article and determined eligible for special education and related services by a CCC.

(b) If, after an appropriate educational evaluation, it is determined that a student has one (1) of the disabilities identified in 511 IAC 7-41, and the CCC determines that the student needs a related service, but not special education, the student is not a student with a disability.

(c) If a parent revokes consent for special education and related services in accordance with 511 IAC 7-42-15, the student is no longer a student with a disability.

511 IAC 7-32-93 "Student with a print disability" defined

Sec. 93. "Student with a print disability" means a student served under this article who may qualify to receive print instructional materials, as defined in section 75 of this rule, in accessible formats in accordance with the act entitled "An act to provide books for adult blind", 2 U.S.C. 135a.

511 IAC 7-32-94 "Summary of performance" defined

Sec. 94. "Summary of performance" refers to the written plan required under 511 IAC 7-43-7 and 511 IAC 7-40-3(h). The plan:

(1) provides a student with a summary of the student's academic achievement and functional performance; and

(2) includes recommendations on how to assist the student in meeting the student's postsecondary goals.

511 IAC 7-32-95 "Supplementary aids and services" defined

Sec. 95. "Supplementary aids and services" means aids, services, and other supports that are provided in:

(1) general education classes;

(2) other education-related settings; and

(3) extracurricular and nonacademic settings;

to enable students with disabilities to be educated with nondisabled peers to the maximum extent appropriate in accordance with 511 IAC 7-42-10.

511 IAC 7-32-96 "Systematic observation" defined

Sec. 96. "Systematic observation" means an observation that is conducted to measure specific, well-defined behaviors using structured recording procedures.

511 IAC 7-32-97 "Teacher of record" defined

Sec. 97. "Teacher of record" refers to the single special education teacher to whom a student with a disability is assigned. Each student with a disability must have a teacher of record identified. The teacher of record may be the teacher of service and must be appropriately licensed to work with the student or, where appropriate state licensure is not available, appropriately trained. The teacher of record shall do the following:

(1) Provide direct or indirect services to the student according to the student's IEP.

(2) Participate in the CCC meeting as the student's teacher to assist in developing measurable goals, benchmarks, and objectives to meet the student's needs.

(3) Regularly monitor the implementation of the student's IEP and provide progress reports to the student's parent.

(4) Ensure the student's IEP is accessible to each of the:

(A) student's teachers;

(B) related services providers; and

(C) other services providers;

who are responsible for implementation of the IEP.

(5) Inform each teacher and provider of his or her specific responsibilities related to implementing the student's IEP.

(6) Ensure that:

(A) supplementary aids and services;

(B) program modifications; and

(C) supports for school personnel;

are provided in accordance with each student's IEP.

(7) Serve as a consultant and resource person to all other personnel providing services to the student.

(8) Ensure any accommodations on statewide or district assessments are implemented according to the student's IEP.
(9) Participate in reevaluations of the student.
(10) Ensure that the CCC is informed of any modifications made to the student's IEP in accordance with 511 IAC 7-42-9(e)(2) and 511 IAC 7-42-9(g).

511 IAC 7-32-98 "Teacher of service" defined

Sec. 98. "Teacher of service" means any teacher providing services to a student with a disability.

511 IAC 7-32-99 "Transition planning" defined

Sec. 99. "Transition planning" means the process of transitioning a child from Part C (early intervention) to Part B (early childhood) that occurs prior to the child's third birthday to enable the child to experience a smooth and effective transition. The transition planning process is initiated by the Part C service coordinator, bringing together public agencies and the family to plan a process that maximizes continuity and minimizes disruptions in services.

511 IAC 7-32-100 "Transition services" defined

Sec. 100. (a) "Transition services" means a coordinated set of activities for a student with a disability that:
(1) are designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability;
(2) are incorporated into the student's transition IEP in accordance with 511 IAC 7-43-4; and
(3) facilitate movement from school to postschool activities, including, but not limited to:
(A) postsecondary education;
(B) vocational education or training, or both;
(C) integrated employment, including supported employment;
(D) continuing and adult education;
(E) adult services;
(F) independent living; or
(G) community participation.

(b) The coordinated set of activities described in subsection (a) must be based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and include the following:
(1) Instruction.
(2) Related services.
(3) Community experiences.
(4) The development of employment and other postschool adult living objectives.
(5) If appropriate:
(A) acquisition of daily living skills; and
(B) provision of a functional vocational evaluation.

(c) Transition services for students with disabilities may be:
(1) special education, if provided as specially designed instruction; or
(2) a related service, if required to assist a student with a disability to benefit from special education.

511 IAC 7-32-101 "Travel training" defined

Sec. 101. "Travel training" means providing instruction, as appropriate, to a student with a significant cognitive disability, and any other student with disability who requires the instruction, to enable the student to do the following:
(1) Develop an awareness of the environment in which the student lives.
(2) Learn the skills necessary to move effectively and safely from place to place within that environment. including, but not limited to, the following:
(A) In school.
(B) In the home.

(C) At work.
(D) In the community.

511 IAC 7-32-102 "Universal design" defined

Sec. 102. "Universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are:
(1) directly accessible, without requiring assistive technologies; and
(2) interoperable with assistive technologies.

511 IAC 7-32-103 "Veteran teacher" defined

Sec. 103. "Veteran teacher" means a teacher who has earned at least one (1) year of teaching experience while holding a valid teaching license.

511 IAC 7-32-104 "Vocational education" defined

Sec. 104. "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a bachelor's or advanced degree.

511 IAC 7-32-105 "Ward of the state" defined

Sec. 105. "Ward of the state" refers to the student who has been removed from the student's home for suspected or actual neglect or abuse, and the court has issued an order restricting or terminating the rights of the student's parent.

511 IAC 7-32-106 "Weapon" defined

Sec. 106. "Weapon" has the meaning given:
(1) "dangerous weapon" under 18 U.S.C. 930(g)(2), which means:
(A) a weapon;
(B) a device;
(C) an instrument;
(D) a material; or
(E) a substance;
animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that the term does not include a pocketknife with a blade of less than two and one-half (2 1/2) inches in length;
(2) "deadly weapon" under IC 35-41-1-8; and
(3) "firearm" under IC 35-47-1-5.

RULE 33. GENERAL PROVISIONS

511 IAC 7-33-1 Scope

Sec. 1. (a) This article applies to all special education programs provided for students at least three (3) years of age through the school year in which students become twenty-two (22) years of age, unless a CCC determines that a student will leave school earlier.

(b) The department of education, division of special education is the state educational agency responsible for the general supervision of all special education programs, as specified in IC 20-18-2-9 and IC 20-35.

(c) This article applies to all programs and services subject to the supervision of the state educational agency, including those programs conducted by or through the following:
(1) Public school corporations.
(2) Charter schools.
(3) Special education planning districts.
(4) State agencies.
(5) Other public agencies.

511 IAC 7-33-2 Public schools' special education programs; organizational and administrative structures

Sec. 2. (a) Public school corporations, charter schools, and other public agencies shall provide a free appropriate public education to students who:
(1) are at least three (3) years of age through the school year in which students become twenty-two (22) years of age, unless a CCC determines that a student will leave school earlier;
(2) are identified as disabled under this article, including students who:
(A) are advancing from grade to grade; or
(B) have been suspended or expelled from school to the extent required by 511 IAC 7-44-1 and 511 IAC 7-44-2;
(3) have not completed high school graduation requirements and received a high school diploma as defined in 511 IAC 6-7.1-1(e); and
(4) are not parentally-placed in a nonpublic school.

(b) Unless a student graduates with a high school diploma, the right to a free appropriate public education ends at the conclusion of the school year in which the student becomes twenty-two (22) years of age. However, the CCC may determine that the student will leave school earlier.

(c) Special education programs shall include the following:
(1) Elementary school programs.
(2) Secondary school programs.
(3) Early childhood programs for students who are at least three (3) years of age, but who are not enrolled in kindergarten.

(d) Public school corporations and charter schools may provide special education programs through a variety of arrangements, including, but not limited to, the following:
(1) An individual school corporation or charter school that is a special education planning district.
(2) Two (2) or more school corporations or charter schools that, together, are a special education planning district authorized by any of the following:
(A) The Joint Service and Supply Act, IC 20-26-10.
(B) The Special Education Cooperatives Act, IC 20-35-5.
(C) The Interlocal Cooperation Act, IC 36-1-7.
(D) Any other cooperative arrangement permitted by law.
(3) A transfer tuition agreement.
(4) A contract for certain:
(A) related services; or
(B) educational services or related services, or both, for early childhood programs.

511 IAC 7-33-3 Other public agencies' special education programs; state level interagency agreements

Sec. 3. (a) The provisions of this article pertaining to student identification, eligibility, evaluation, and placement procedures as well as the provision of a free appropriate public education, including all due process and procedural safeguards, apply to special education programs conducted by, or under the jurisdiction of, the following:
(1) The Indiana state department of health.
(2) The family and social services administration, including, but not limited to, the following:
(A) The division of disability and rehabilitative services.

(B) The division of mental health and addiction.
(3) The department of child services.
(4) The department of correction.
(5) The Indiana School for the Blind and Visually Impaired.
(6) The Indiana School for the Deaf.
(7) Any public or private agency providing special education programs for students referred by:
(A) a public school corporation;
(B) a charter school;
(C) the division of special education; or
(D) any other public agency.
(8) Any other public agency that contracts with any of the agencies in subdivisions (1) through (6) to provide special education.

(b) The division of special education must, in conjunction with each public agency in subsection (a), develop an interagency agreement or other mechanism for interagency coordination. Interagency agreements or other coordination mechanisms may address educational programs or noneducational programs that provide or pay for services that are considered special education, or both. Interagency agreements or other coordination mechanisms shall include the following as appropriate:
(1) Compliance with state and federal special education laws and regulations, including the following:
(A) Data collection and submission.
(B) Program monitoring.
(C) State complaint investigation procedures.
(D) Due process hearings and appeals.
(2) Methods of ensuring services, including the following:
(A) Agency financial responsibility, including the responsibility of noneducational divisions and public insurers to provide or pay for services that are also considered special education or related services.
(B) Conditions and terms of reimbursement.
(C) Resolution of interagency disputes, including the provision of services pending resolution of disputes.
(D) Coordination of service procedures.

(c) If a noneducational agency or a public agency other than the local educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy pursuant to an interagency agreement or other coordination mechanism to provide or pay for any services that are also considered special education or related services, such as, but not limited to:
(1) assistive technology services;
(2) assistive technology devices;
(3) related services;
(4) supplementary aids and services; and
(5) transition services;
that are necessary for ensuring a free appropriate public education to students with disabilities within the state, the noneducational agency or the public agency must fulfill that obligation or responsibility either directly, through contract, or through other arrangement.

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

(e) If a public agency described in subsection (c) fails to provide or pay for the special education and related services necessary for the provision of a free appropriate public education to a student, the local educational agency must provide or pay for these services in a timely manner. The:
(1) local educational agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for these services; and
(2) public agency must reimburse the local educational agency in accordance with the terms of the interagency agreement or other coordination mechanism described in subsection (b).

511 IAC 7-33-4 Use of public and private insurance proceeds

Sec. 4. (a) A public agency may use Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article, as permitted under the public benefits or insurance program. With regard to services required to provide a free appropriate public education to a student with a disability under this article, the public agency:

(1) may not:

(A) require a parent to:

(i) sign up for or enroll in public benefits or insurance programs in order for the student to receive a free appropriate public education; or

(ii) incur an out-of-pocket expense, such as the payment of a deductible or copay amount incurred in filing a claim for services provided, but may pay the cost that the parent otherwise would be required to pay; or

(B) use a student's benefits under a public benefits or insurance program if that use would:

(i) decrease available lifetime coverage or any other insured benefit;

(ii) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(iii) increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures; and

(2) must do the following:

(A) Obtain informed parental consent as defined by 511 IAC 7-32-17 each time that access to public benefits or insurance is sought, for the specific services, and duration of services identified in a student's IEP. If the:

(i) IEP is revised or extended to require additional services; or

(ii) public agency charges different amounts for such services;

the public agency must again obtain informed parental consent as defined in 511 IAC 7-32-17.

(B) Notify the parent that refusal to allow access to the public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parent.

(b) With regard to services required to provide a free appropriate public education to a student with a disability under this article, the public agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined by 511 IAC 7-32-17. Each time the public agency proposes to access the parent's private insurance proceeds, it must do the following:

(1) Obtain informed parental consent as defined by 511 IAC 7-32-17.

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

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

(d) Proceeds from public benefits or insurance or private insurance shall not be considered program income for purposes of 34 CFR 80.25 with respect to the administration of federal grants and cooperative agreements.

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

(f) Nothing in this article shall be construed to alter the requirements imposed on the state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public benefits or insurance program.

RULE 34. NONPUBLIC SCHOOLS OR FACILITIES

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

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 students with disabilities who have been unilaterally enrolled by the parent in a nonpublic school or facility in the state, including students who reside outside of the state.

(c) This section and sections 2 through 9 of this rule do not apply to the following:
(1) Students three (3) years of age through five (5) years of age, unless the student has been unilaterally enrolled by his or her parent in a nonpublic school that meets the definition of an elementary school in 511 IAC 7-32-33.
(2) Students with disabilities who have been placed in or referred to a nonpublic school or facility by a public agency.

(d) Each public agency shall, with regard to any nonpublic school or facility, including any religious school or home school, within its boundaries:
(1) locate, identify, and evaluate all students with disabilities as specified in 511 IAC 7-40;
(2) consult, in accordance with section 3 of this rule, with nonpublic school representatives and representatives of parents of nonpublic school students with disabilities;
(3) provide information, as specified in section 2(c) of this rule, to the division of special education related to parentally-placed nonpublic school students covered under this rule; and
(4) make available special education and related services to all students with disabilities.

511 IAC 7-34-2 Child find

Sec. 2. (a) The activities undertaken to carry out child find responsibilities for nonpublic school students with disabilities must be as follows:
(1) Comparable to activities undertaken for students with disabilities in public schools.
(2) Completed in a time period comparable to that for students attending public schools in the public agency. Public agencies may not delay conducting child find activities, including individual evaluations and reevaluations, until after child find activities for public school students are conducted.

(b) The cost of child find activities, including the cost of individual evaluations and reevaluations, must not be considered in determining whether a public agency has met its proportionate share requirement in section 7 of this rule.

(c) Each public agency must maintain in its records, and provide to the division of special education, the following information related to parentally-placed nonpublic school students with disabilities:
(1) The number of students evaluated.
(2) The number of students determined to be students with disabilities.
(3) The number of students served.

(d) The number of students served in subsection (c)(3) must be used to calculate a public agency's proportionate share requirement as specified in section 7 of this rule.

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

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.

(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

(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.

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

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

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

(b) The consultation described in subsection (a) must be timely, which means that it occurs during the design and development of special education and related services for students with disabilities in nonpublic schools or facilities. Consultation must also be meaningful, which requires the public agency to:
(1) afford all parties a genuine opportunity to express their views and have those views considered by the public agency; and
(2) discuss the subjects set forth in subsection (c).

(c) The following subjects must be discussed during a consultation:
(1) The child find process, including the following:
(A) How nonpublic school students suspected of having a disability will be:
(i) located;
(ii) identified; and
(iii) evaluated.
(B) How:
(i) parents;
(ii) teachers; and
(iii) nonpublic school officials;
will be informed of the child find process.
(2) The determination of the proportionate amount of federal funds, as specified in section 7 of this rule, available to serve nonpublic school students, including how the proportionate amount of those funds was calculated.
(3) An explanation of how the consultation process between the:
(A) public agency;
(B) nonpublic school representatives; and
(C) parent representatives of nonpublic school students;
will operate throughout the school year to ensure that nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services.
(4) How, where, and by whom, in accordance with sections 8 and 9 of this rule, special education and related services will be provided for nonpublic school students with disabilities, including a discussion of the following:
(A) The types of services, which may include direct services and alternate service delivery mechanisms.
(B) How special education and related services will be offered to all nonpublic school students with disabilities if the proportionate amount of Part B funds, as specified in section 7 of this rule, is insufficient to serve all nonpublic school students with disabilities.
(C) How and when those decisions will be made.
(5) If the public agency disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the public agency must explain how it will provide to the nonpublic school officials a written explanation of the reasons why the public agency chose not to accept the views of the nonpublic school officials.

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

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

(f) A nonpublic school official has the right to submit a complaint to the division of special education alleging that the public agency did not:
(1) engage in consultation that was timely and meaningful as required in subsections (b) and (c); or

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

(g) Complaints submitted under subsection (f) must:
(1) be filed with the division of special education according to the complaint procedures set forth in 511 IAC 7-45-1;
(2) specify how the public agency failed to comply with the consultation requirements set forth in subsections (b) and (c); and
(3) contain appropriate documentation related to the complaint.

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

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

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

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

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

(d) When conducting a CCC meeting to develop, review, and revise a service plan, the public agency must comply with the following:
(1) 511 IAC 7-42-2 regarding notice of CCC meetings.
(2) 511 IAC 7-42-3 regarding CCC participants, which requires the public agency to ensure that a representative of the nonpublic school or facility attend the CCC meeting. If the representative cannot attend, the public agency must use other methods to ensure participation of the representative, such as individual or conference telephone calls.

(e) Parentally-placed nonpublic school students with disabilities may receive a different amount of services under a service plan than public school students receive under an IEP. However, a service plan must include the following:
(1) A statement of the student's present levels of educational performance.
(2) A statement of measurable annual goals related to the services that will be provided, describing what the student can be expected to accomplish within a twelve (12) month period.
(3) A statement of the special education and related services and supplementary aids and services to be provided to the student or, on behalf of the student, by the public agency, or supports for school personnel that will be provided.
(4) If applicable, a statement regarding the student's participation in statewide or district assessments, including documentation of any appropriate testing accommodations that will be utilized by the student, according to the requirements in 511 IAC 7-36-10.
(5) The projected dates for initiation of services by the public agency and the anticipated length, frequency, location, and duration of services.
(6) A statement of the student's progress toward annual goals including how the parents will be informed of the progress.

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

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

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

Sec. 6. (a) The procedures for mediation in 511 IAC 7-45-2 and the procedures for due process hearings and appeals in 511 IAC 7-45-3 through 511 IAC 7-45-11 are not available to resolve disputes regarding the requirements set forth in this rule, unless the dispute concerns one (1) of the following issues:
(1) Child find.
(2) The appropriateness of an evaluation or reevaluation.
(3) The determination of eligibility for special education and related services.

(b) A request for a due process hearing regarding the issues set forth in subsection (a) must be sent simultaneously to the superintendent of public instruction and the public agency in which the nonpublic school or facility is located, unless the:
(1) request for due process concerns the appropriateness of an initial evaluation or the determination of eligibility for special education and related services, or both; and
(2) initial evaluation and determination of eligibility were conducted by the school district of legal settlement.

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

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

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

Sec. 7. (a) A public agency must do the following:
(1) Offer services to each student who is:
(A) eligible to receive special education and related services; and
(B) parentally-placed by his or her parent in a nonpublic school within the boundaries of the public agency. Public agencies may use state funds and Part B funds to provide services under this rule.
(2) Control and administer Part B funds that are used to provide special education and related services under this rule.
(3) Determine the number of parentally-placed nonpublic school students with disabilities attending nonpublic schools located in the public agency. The count:
(A) must be conducted annually on December 1; and
(B) is used to determine the amount of Part B funds that the public agency must spend on providing special education and related services to parentally-placed nonpublic school students with disabilities in the next subsequent school year.
(4) Spend a proportionate share of its Part B funds to serve parentally-placed nonpublic school students with disabilities. The proportionate amount of Part B funds must be calculated according the specifications set forth in subsections (b) through (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Meet the needs of the nonpublic school or facility.

(3) Meet the general needs of the students enrolled in the nonpublic school or facility.

(4) Fund classes that are organized separately on the basis of school enrollment or religion of the students if the classes:
(A) are at the same site; and
(B) include students enrolled in public schools and students enrolled in nonpublic schools.

(k) The public agency may use Part B funds for the following:
(1) To make public school personnel available in places other than public facilities:
(A) to the extent necessary to provide special education and related services to students with disabilities in nonpublic schools or facilities; and
(B) if those services are not normally provided by the nonpublic school or facility.
(2) To pay for the services of an employee of the nonpublic school or facility to provide special education and related services if the employee performs the services:
(A) outside of the employee's regular hours of duty; and
(B) under public supervision and control.

511 IAC 7-34-8 Requirements pertaining to services, location of services, and transportation

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

(b) Special education and related services delivered under this rule must be provided:
(1) by employees of a public agency; or
(2) through a contract by the public agency with an:
(A) individual;
(B) association;
(C) agency;
(D) organization; or
(E) other entity.

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

(d) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the:
(1) nonpublic school or the student's home to a site other than the nonpublic school or facility; and
(2) service site to the nonpublic school or the student's home, depending on the timing of the services.

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

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

511 IAC 7-34-9 Property, equipment, and supplies for the benefit of nonpublic school students

Sec. 9. (a) The public agency must hold title to and exercise continuing administrative control of all:
(1) property;
(2) equipment; and
(3) supplies;
the public agency acquires with Part B funds for the benefit of nonpublic school students with disabilities.

(b) The public agency may place equipment and supplies in a nonpublic school for the period of time needed to provide special education and related services. The public agency must ensure that the equipment and supplies:
(1) are used only for the provision of special education and related services; and
(2) can be removed from the nonpublic school without remodeling the nonpublic school facility.

(c) The public agency must remove equipment and supplies from a nonpublic school if:
(1) the equipment and supplies are no longer needed for the provision of special education and related services; or
(2) removal is necessary to avoid unauthorized use of the equipment and supplies for other than the provision of special education and related services.

(d) No Part B funds may be used for:
(1) repairs;
(2) minor remodeling; or
(3) construction;
of nonpublic school facilities.

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

Sec. 10. (a) This section does not require the public agency to pay the cost of education, including special education and related services, of a student with a disability at a nonpublic school or facility if the:
(1) public agency made a free appropriate public education available to the student; and
(2) parent elected to place the student in a nonpublic school or facility.
However, the public agency must include the student in the population whose needs are addressed in sections 1 through 9 of this rule.

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

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

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

(e) The independent hearing officer or the court may require the public agency to reimburse the parent for the cost of the nonpublic school enrollment if the hearing officer or court finds both of the following:
(1) The public agency did not make a free appropriate public education available to the student in a timely manner prior to enrollment in the nonpublic school or facility.
(2) The nonpublic placement is appropriate.

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

(g) The hearing officer or the court may reduce or deny reimbursement to the parents in the following instances:
(1) If:
(A) at the most recent CCC meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the CCC that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to the student,

including stating their concerns and their intent to enroll the student in a nonpublic school at public expense; or
(B) at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public agency, the parents did not give written notice to the public agency of the information described in clause (A).
(2) If, prior to the parent's removal of the student from the public agency, the public agency informed the parent, through the notice requirements of 511 IAC 7-40-4(e), of its intent to evaluate the student, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the student available for evaluation.

(h) The hearing officer or the court must not reduce or deny the reimbursement if the parent failed to provide the written notice described in subsection (g)(1), if the hearing officer or the court finds any of the following:
(1) Compliance with subsection (g)(1) would likely result in physical harm to the student.
(2) The public agency prevented the parent from providing the notice described in subsection (g)(1).
(3) The parent had not received notice of procedural safeguards, under 511 IAC 7-37-1, containing the notice requirement of subsection (g)(1).

(i) The hearing officer or the court, in its discretion, may decide not to reduce or deny reimbursement if the parent failed to provide the written notice described in subsection (g)(1) if:
(1) the parents are not literate or cannot write in English; or
(2) compliance with subsection (g)(1) would likely result in serious emotional harm to the student.

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

RULE 35. PROGRAM PLANNING AND EVALUATION

511 IAC 7-35-1 Program monitoring

Sec. 1. (a) The division of special education shall monitor all public agencies that receive federal or state monies for special education to ensure compliance with and implementation of the requirements of federal and state laws, rules, regulations, and policies regarding the provision of:
(1) programs;
(2) services;
(3) protections; and
(4) a free appropriate public education;
to all students with disabilities in Indiana.

(b) The monitoring activities may include, but are not limited to, the following:
(1) Complaint investigations.
(2) Data collection and analysis.
(3) State or federal fiscal audits.
(4) On-site reviews of the following:
(A) The total special education program on a cyclical or other basis.
(B) Portions of programs to examine one (1) or more issues.
(5) Accreditation information.
(6) Due process hearing decisions.
(7) Performance indicators measured by:
(A) the state performance plan;
(B) the annual performance report; or
(C) other federal or state measures of performance or accountability;
including facilitation of parent involvement by schools.

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

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.

RULE 36. GENERAL ADMINISTRATION OF PROGRAMS

511 IAC 7-36-1 Parent and community participation

Sec. 1. A public agency is encouraged to establish, or support the establishment of, a parent advisory council, committee, task force, or group. The public agency's goals for a parent group may include, but are not limited to, the following:
(1) Supporting student and family membership in the school community.
(2) Inviting parents of students with disabilities to participate on school decision making committees.
(3) Fostering effective communication with families focused on student learning and developing.

511 IAC 7-36-2 Special education program personnel

Sec. 2. (a) All personnel employed or contracted by a public agency to provide special education or related services must be appropriately licensed or certified and must have the content knowledge and skills necessary to provide the services for which the individual is employed or contracted in accordance with standards established by the department of education's division of professional standards or other applicable licensing and certification bodies. The person designated as a student's teacher of record shall:
(1) for kindergarten through grade 12, be appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained; and
(2) for early childhood, hold an appropriate license to teach early childhood special education.

(b) Special education teachers who teach in public elementary and secondary schools must:
(1) meet the requirements of subsection (a); and
(2) with the exception of early childhood special education teachers, be highly qualified according to section 3 of this rule.

(c) Related services personnel who deliver services in their discipline:
(1) must meet the requirements of subsection (a); and
(2) may not have certification or licensure requirements waived on:
(A) an emergency;
(B) a temporary; or
(C) a provisional;
basis.

(d) Personnel working with deaf or hard of hearing students who provide sign language transliteration and interpreting services must:
(1) meet the requirements of subsections (a) and (c); and
(2) be certified to interpret in an educational setting.

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

(2) highly qualified teachers; or
(3) related services personnel;
to assist students in areas that relate to personal, social, and educational needs.

(f) The public agency shall do the following:
(1) Provide preservice and in-service training to paraprofessionals in the following areas:
(A) The role of the paraprofessional related to the role of the professional person providing supervision and direction.
(B) The specific skills and content knowledge necessary to carry out the assigned responsibilities.
(C) Information on the following:
(i) The specific special needs and characteristics of the students with whom the paraprofessional will be working.
(ii) Special education procedures, including the confidentiality of personally identifiable information.
(2) Document, in writing, the training provided to paraprofessionals.

(g) In addition to the requirements listed in subsections (e) and (f), paraprofessionals who provide instructional support in a program supported by funds from Title I, Part A of the Elementary and Secondary Education Act must have the following:
(1) A high school diploma as defined in 511 IAC 6-7.1-1(e) or its recognized equivalent.
(2) Paraprofessionals hired after January 8, 2002, must have achieved one (1) of the following:
(A) Completed two (2) years of study at an institution of higher education, as defined in 511 IAC 7-32-52.
(B) Obtained an associate's or higher degree.
(C) Met a rigorous standard of quality and be able to demonstrate, through a formal state academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness).

(h) A paraprofessional under subsection (g) does not have to meet the requirement in subsection (g)(2) if the paraprofessional is a person who:
(1) is proficient in English and a language other than English and acts solely as a translator to enhance the participation of limited English proficient students; or
(2) only conducts parental activities, such as a home school liaison.

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

(j) Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this article shall be construed to:
(1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to be highly qualified; or
(2) prevent a parent from filing a complaint about staff qualifications with the division of special education under 511 IAC 7-45-1.

511 IAC 7-36-3 Highly qualified teachers

Sec. 3. (a) A special education teacher who teaches in a public elementary, middle, junior high, or high school in the state must be highly qualified as a special education teacher by meeting the following requirements:
(1) The teacher has obtained full state licensure as a special education teacher, including licensure obtained through an alternative route, as described in subsection (b), or passed the state special education teacher licensing examinations and holds a license to teach in the state as a special education teacher.
(2) The teacher has not had special education licensure requirements waived.
(3) The teacher holds at least a bachelor's degree.

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

(1) teacher:

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

(i) sustained;

(ii) intensive; and

(iii) classroom-focused;

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

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

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

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

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

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

(1) is a co-teacher who:

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

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

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

(A) adapting curricula;

(B) using behavioral supports and interventions; and

(C) selecting appropriate accommodations;

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

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

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

(A) life skills;

(B) study skills; and

(C) community based instruction.

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

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

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

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

(A) design and delivery of instruction; and

(B) evaluation of student performance.

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

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

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

(f) Special education teachers who teach two (2) or more core academic subjects exclusively to students with disabilities (including students assessed against alternative achievement standards) must meet the requirements in subsection (a) and may either:
(1) meet the applicable requirements of 511 IAC 7-32-44(b)(2) or 511 IAC 7-32-44(b)(3);
(2) in the case of a veteran teacher, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for a veteran elementary, middle, junior high, or high school teacher under 511 IAC 7-32-44, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or
(3) in the case of a new special education teacher who:
(A) teaches multiple subjects; and
(B) is highly qualified in mathematics, language arts, or science;
demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, junior high, or high school teacher under 511 IAC 7-32-44, which may include a single HOUSSE covering multiple subjects.

(g) Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this section shall be construed to:
(1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to be highly qualified; or
(2) prevent a parent from filing a complaint under 511 IAC 7-45-1 about staff qualifications with the division of special education.

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

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

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

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

511 IAC 7-36-4 Elementary and secondary instructional day; school calendar; extended school year services

Sec. 4. (a) The length of the instructional day for elementary and secondary students with disabilities shall be the same as the instructional day for nondisabled elementary and secondary students, respectively, in the same school building, unless the CCC:
(1) determines the length of the student's instructional day should be different; and
(2) documents the justification in the written notice described in 511 IAC 7-42-7.

(b) The school calendar of the school corporation or charter school providing the special education program shall be followed when the calendars of the providing school corporation or charter school and the school corporation of legal settlement or charter school differ. Unless otherwise provided, the school corporation of legal settlement or charter school is responsible to provide for transportation necessary to

enable students to attend school on days when the providing school corporation or charter school is in attendance but the school corporation of legal settlement or charter school is not in attendance.

(c) Extended school year services are special education and related services that:
(1) are provided to a student with a disability:
(A) beyond the public agency's school calendar or instructional day;
(B) in accordance with the student's IEP; and
(C) at no cost to the parent of the student; and
(2) meet the standards of the department of education.

(d) Each public agency:
(1) must:
(A) ensure that extended school year services are available as necessary to provide free appropriate public education; and
(B) provide extended school year services only if a student's CCC determines, on an individual basis, in accordance with 511 IAC 7-42-6 or 511 IAC 7-42-9, that the services are necessary for the provision of free appropriate public education for the student; and
(2) may not:
(A) limit extended school year services to particular categories of disability; or
(B) unilaterally limit the:
(i) type;
(ii) amount; or
(iii) duration;
of those services.

511 IAC 7-36-5 Early childhood

Sec. 5. (a) The length and frequency of the instructional day for early childhood students with disabilities, who are three (3) years of age through five (5) years of age, but not eligible for kindergarten, shall be based on the developmental and educational needs as determined by the student's CCC. A public agency may not unilaterally limit the length and frequency of the instructional day based on categories of:
(1) disability;
(2) age of students; or
(3) administrative convenience.

(b) The number of students assigned to an early childhood teacher is subject to the requirements of 511 IAC 7-32-13.

511 IAC 7-36-6 Facilities

Sec. 6. (a) The public agency shall provide instructional space for students with disabilities that is:
(1) not less than the per student instructional space for general education students of the same chronological age in the same building;
(2) comparable to the general space and instructional environment of the general education students in the same building; and
(3) sufficient to accommodate a student's:
(A) special equipment;
(B) assistive devices; or
(C) curricular needs.

(b) Each public agency, when developing written emergency preparedness plans in accordance with 511 IAC 6.1-2-2.5, shall include provisions for warning and evacuating students whose disabilities require special warning or evacuation procedures. Special warning and evacuation provisions shall:
(1) address individual needs of students;
(2) be reviewed on an annual and as needed basis; and
(3) be implemented during tornado (shelter) preparedness drills, fire drills, and manmade occurrence disaster drills as required by IC 20-34-3-20.

511 IAC 7-36-7 Instructional curricula, materials, equipment, and assistive technology devices and services

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

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

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

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

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

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

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

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

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

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

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

(i) Nothing in this section relieves a public agency of its responsibility to ensure that the following students, who need print instructional materials in accessible formats, receive those materials in a timely manner:
(1) A student who is not a student with a print disability as defined in 511 IAC 7-32-93.
(2) A student who needs print instructional materials that cannot be produced from NIMAS files.

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

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

(l) Unless the student's CCC determines otherwise, the public agency is not responsible to provide basic equipment that may be required at home as well as in the educational setting, such as the following:
(1) Wheelchairs.
(2) Braces.
(3) Glasses.
(4) Hearing aids.

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

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

511 IAC 7-36-8 Transportation

Sec. 8. (a) When appropriate, students with disabilities shall be transported with nondisabled students.

(b) The public school corporation of legal settlement or charter school is ultimately responsible for transportation of students with disabilities. Under a comprehensive plan or joint services agreement, interlocal or cooperative arrangement, responsibility for transportation may be delegated. Transportation as a related service, under 511 IAC 7-43-1(u), may be necessary for a student to receive special education and related services as:
(1) determined by the student's CCC; and
(2) specified in the student's IEP.

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

(d) The parent of a student with a disability shall not be required to provide transportation. If the parent does transport the student, pursuant to a written agreement with the public agency, the public agency shall reimburse the parent at not less than the per mile rate at which employees of the public agency are reimbursed.

511 IAC 7-36-9 Medication administration

Sec. 9. (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 physician'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 physician'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.

511 IAC 7-36-10 State and local assessments

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

(b) The:
(1) department of education; or
(2) in the case of a district assessment, public agency;
must, to the extent possible, use universal design principles in developing and administering assessments under this section.

(c) Appropriate accommodations for the state assessment programs are:
(1) set forth in the program manual issued each year by the department of education; and
(2) accommodations that do not invalidate scores.

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

(e) The student's CCC must determine, in advance, whether the student will utilize any of the appropriate accommodations described in subsections (c) and (d) during state and district assessments and throughout the student's education program. If the student will utilize accommodations, the CCC must:
(1) select testing accommodations the student needs in order for the assessment to reflect the student's academic achievement;
(2) not select testing accommodations that will invalidate a student's score; and
(3) document the testing accommodations in the student's IEP.

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

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

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

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

RULE 37. PROCEDURAL SAFEGUARDS

511 IAC 7-37-1 Notice of procedural safeguards

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

(b) The written notice of procedural safeguards shall be:
(1) a standard notice;
(2) written in language understandable to the general public;
(3) provided in the:
(A) native language; or
(B) other mode of communication;
used by the parent unless it clearly is not feasible to do so; and
(4) printed in a format that is easy to read.

(c) When the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure the following:
(1) The procedural safeguards are translated orally or by other means to the parent in his or her native language or other mode of communication.
(2) The parent understands the content of the notice.
(3) There is written documentation that the requirements of this subsection are met.

(d) A copy of the notice of procedural safeguards shall be given to the parent of a student with a disability one (1) time a school year, except that a copy also must be given to the parent upon:
(1) initial referral or parental request for evaluation;
(2) receipt of the first filing of a complaint under 511 IAC 7-45-1 in a school year;
(3) receipt of the first due process hearing request under 511 IAC 7-45-3 in a school year;
(4) the date the public agency decides to make a removal that results in a disciplinary change of placement under 511 IAC 7-44-2, which includes removals to interim alternative education settings for:
(A) weapons;
(B) drugs; and
(C) serious bodily injury;

under 511 IAC 7-44-6; and
(5) request by a parent.

(e) A public agency may place a copy of the notice of procedural safeguards on its Internet website if a website exists. However, such posting does not satisfy the requirement of providing the notice of procedural safeguards to a parent.

(f) The written notice of procedural safeguards must include a full explanation of the following:
(1) The parent's right to receive written notice before the public agency proposes to initiate or change, or refuses to initiate or change, the:
(A) identification, evaluation, or educational placement of the student; or
(B) provision of a free appropriate public education to the student;
as required in 511 IAC 7-40-4, 511 IAC 7-40-8, 511 IAC 7-42-4, and 511 IAC 7-42-7.
(2) The prerequisite of written parental consent, as defined in 511 IAC 7-32-17, for the following:
(A) An initial evaluation, as required in 511 IAC 7-40-4(h).
(B) A reevaluation, as required in 511 IAC 7-40-8(i), unless the parent fails to respond to a public agency's reasonable efforts to obtain consent as described in 511 IAC 7-40-8(k).
(C) Initial special education services, as required in 511 IAC 7-42-7(f).
(D) A public agency's access to a student's public benefits or insurance programs or private insurance proceeds, as required in 511 IAC 7-33-4.
(E) The release of a student's educational records, in accordance with 511 IAC 7-38-1(q)(1), to officials of participating agencies providing or paying for transition services under and in accordance with 511 IAC 7-43-3.
(F) The exchange of educational records, in accordance with 511 IAC 7-38-1(q)(2), regarding a parentally-placed nonpublic school student, between officials of the public agency where the nonpublic school is located and the school district of legal settlement, as required in 511 IAC 7-34.
(G) The public agency inviting, under 511 IAC 7-42-3(d), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.
(H) An excusal, under 511 IAC 7-42-3(h), of a CCC member described in 511 IAC 7-42-3(b)(1) through 511 IAC 7-42-3(b)(4), from 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.
(3) The parent's right to the following:
(A) To participate as a member of the CCC and the requirements of 511 IAC 7-42-5 and 511 IAC 7-42-6.
(B) To request a CCC meeting, under 511 IAC 7-42-5(a)(3), if he or she believes that a required component of the IEP should be changed to ensure the provision of a free appropriate public education.
(C) To request one (1) or both of the following in accordance with 511 IAC 7-40-5(h):
(i) A copy of the initial educational evaluation report, at no cost to the parent, prior to the CCC meeting.
(ii) A meeting with an individual who can explain the results of the educational evaluation prior to the CCC meeting.
(D) To request a reevaluation as described in 511 IAC 7-40-8.
(E) To obtain an independent educational evaluation as described in 511 IAC 7-40-7, including the following:
(i) The right to have the results of the independent educational evaluation considered by the CCC or the independent hearing officer in a due process hearing.
(ii) The circumstances under which an independent educational evaluation may be obtained at public expense.
(iii) The criteria that must be met when an independent educational evaluation is conducted at public expense.
(4) The parent's rights with regard to the student's educational record as described in 511 IAC 7-38, including the following:
(A) Accessing the record.
(B) Inspecting and reviewing the record.
(C) Challenging information in the record.
(D) Amending information in the record.
(E) The consent required for disclosure, use, and destruction of records under 511 IAC 7-38-1.
(F) Any fees associated with copying the record.

(5) The transfer of rights to the student at eighteen (18) years of age under 511 IAC 7-43-5, unless a guardian or an educational representative has been appointed for the student.
(6) The availability of mediation and the mediation process under 511 IAC 7-45-2.
(7) The right of the parent, or any interested party, to file a complaint in accordance with 511 IAC 7-45-1.
(8) The parent's right to request a due process hearing, in accordance with 511 IAC 7-45-3, to challenge the public agency's proposed or refused action regarding a student with a disability.
(9) The difference between a complaint and due process hearing request, including the following:
(A) The jurisdiction of each procedure, including what issues may be raised under each procedure.
(B) The allowable time period in which to file a:
(i) complaint; or
(ii) due process hearing request.
(C) The opportunity for the public agency to resolve a:
(i) complaint; or
(ii) a parent's request for a due process hearing.
(D) The filing procedures for:
(i) complaints; and
(ii) requests for due process.
(E) The decisional timelines for:
(i) complaints; and
(ii) due process hearings.
(10) The student's placement during the pendency of any due process hearing in accordance with 511 IAC 7-44-8 and 511 IAC 7-45-7(u).
(11) Due process hearings, including requirements for disclosure of evaluation results and recommendations, as described in 511 IAC 7-45-7.
(12) Administrative appeal, as described in 511 IAC 7-45-9.
(13) Civil action, including the time period in which to file a civil action, as described in 511 IAC 7-45-9(n).
(14) Attorney’s fees, as described in 511 IAC 7-45-11.
(15) The requirements under 511 IAC 7-34-10 for a parent's unilateral placement of a student with a disability in a nonpublic school at public expense.
(16) The protections and procedures for students who are subject to the following:
(A) Disciplinary changes of placement under 511 IAC 7-44-2, which includes manifestation determinations under 511 IAC 7-44-5.
(B) Placement in an interim alternative educational setting as described in 511 IAC 7-44-6 and 511 IAC 7-44-7.
(17) The protections for students who have not been determined eligible for special education and related services under 511 IAC 7-44-9.
(18) Reporting of crimes allegedly committed by students to appropriate authorities as described in 511 IAC 7-38-1(o) and 511 IAC 7-44-10.
(19) The names and addresses of agencies and organizations, including the public agency, that provide assistance to parents in understanding this article.

511 IAC 7-37-2 Notice by electronic mail

Sec. 2. A parent may elect to receive the written notice of procedural safeguards by an electronic mail communication if the public agency makes that option available.

RULE 38. CONFIDENTIALITY OF INFORMATION

511 IAC 7-38-1 Access to and disclosure of educational records

Sec. 1. (a) The public agency must annually notify, in writing, parents of students currently in attendance, or students of legal age currently in attendance, of their rights regarding confidentiality of personally identifiable information. The notice must inform parents or students of legal age that they have the right to the following:
(1) Inspect and review the student's educational record with respect to the:

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

(b) The written notice must include the following:
(1) The procedures for the following:
(A) Exercising the right to inspect and review educational records.
(B) Requesting an amendment of educational records.
(2) The criteria for determining:
(A) who constitutes a public agency official; and
(B) what constitutes a legitimate educational interest, if the public agency has a policy of disclosing educational records to other public agency officials who have been determined to have a legitimate educational interest.

(c) The public agency:
(1) may provide the written notice by any means reasonably likely to inform the parents or students of legal age of their rights; and
(2) must effectively notify:
(A) parents of students with disabilities;
(B) students of legal age with disabilities; or
(C) parents who have a primary or home language other than English.

(d) The right to inspect and review educational records includes the right to:
(1) a response from the public agency to reasonable requests for explanations and interpretations of the educational record;
(2) have other arrangements made to inspect and review a requested educational record or to receive copies of the educational record from the public agency if the failure to provide those copies would prevent the parent or student of legal age from exercising the right to inspect and review the educational record;
(3) have a representative of the parent or student of legal age inspect and review the educational record; and
(4) receive a copy of the student's educational record from the public agency for use in a pending due process hearing.

(e) A public agency must permit the parent, or parent's representative, to inspect and review any educational record of the parent's children from birth to eighteen (18) years of age that are collected, maintained, or used by the public agency as described in this rule. All rights under this rule transfer from the parent to the student of legal age, as defined in 511 IAC 7-32-91, when the student has reached eighteen (18) years of age and not had a guardian appointed.

(f) The public agency must permit a custodial and noncustodial parent to inspect and review the student's educational record unless the public agency has received actual written notice that a court order has terminated or restricted the parent's authority to access the student's educational record under applicable state law governing matters, such as, but not limited to, the following:
(1) Guardianship.
(2) Separation.
(3) Divorce.
(4) Custody.

(g) The public agency must comply with a request from a parent or student of legal age to inspect and review the educational record:

(1) without unnecessary delay;
(2) before any meeting regarding:
(A) an IEP;
(B) an interim alternative educational setting; or
(C) a manifestation determination;
(3) prior to:
(A) a resolution session;
(B) a due process hearing; or
(C) an expedited due process hearing; and
(4) in no case more than forty-five (45) calendar days after the request is made.

(h) The public agency may charge a fee for copies of educational records, unless the requested record is a copy of a student's educational evaluation report or IEP, which must be provided at no cost to a parent or student of legal age, including a parent of a student or student of legal age who attends a nonpublic school. Fees for copies must not:
(1) exceed actual cost of duplication; or
(2) be charged if doing so effectively prevents the parent or student of legal age from exercising the right to inspect and review the educational record.
The public agency may not charge a fee to search for or to retrieve information under this rule.

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

(j) The public agency must maintain a record of each request for access to and disclosure of personally identifiable information from the educational record of each student, except when the disclosure has been by or to any of the following:
(1) A parent or student of legal age.
(2) A party with written consent from the parent or student of legal age.
(3) A party seeking directory information.
(4) An authorized public agency official.
(5) A party receiving the record pursuant to a lawfully issued subpoena or other court order specifically stating that the following will not be disclosed:
(A) The existence and contents of the subpoena or other court order.
(B) The information furnished in response to the subpoena or other court order.

(k) The record of access and disclosure must:
(1) be maintained with the educational record as long as the educational record is maintained; and
(2) include:
(A) the name of the person who has requested or received personally identifiable information from the educational record;
(B) the purpose of the party in requesting or obtaining the information; and
(C) the date of disclosure of the information.

(l) If the public agency discloses personally identifiable information with the understanding that the party receiving the information may make further disclosures on behalf of the public agency in which prior consent is not required, the record of disclosure must include the following:
(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the public agency.
(2) The purpose of each of the additional parties in requesting or obtaining the information.

(m) The public agency, upon request of a parent or student of legal age, must provide a list of the types and locations of educational record:
(1) collected;
(2) maintained; or
(3) used;
by the public agency.

(n) If a student transfers from one (1) school to another, the public agency's transmission of any of the student's educational record must include the following:
(1) The student's current IEP.
(2) Any disciplinary records relative to a suspension or an expulsion.

(o) When the public agency reports a crime committed by a student with a disability, the public agency must ensure that copies of the education and disciplinary record of the student are transmitted only to the extent the transmission is permitted by the Family Educational Rights and Privacy Act (which includes requiring the receiving authorities to certify in writing that the records will not be disclosed to any other parties) and as required by IC 20-33-7-3, without the prior written consent of the parent or the student of legal age for consideration by the appropriate authorities to whom it reports the crime.

(p) Except as specified in subsection (o), (q), or (r), written and dated consent of the parent or student of legal age must be obtained before personally identifiable information is disclosed to anyone other than the parent, student of legal age, or authorized public agency officials, or before the information is used for any purpose other than those specified in this rule. The consent must specify the following:
(1) The record that may be disclosed.
(2) The purpose of the disclosure.
(3) The person or class of persons to whom the record may be disclosed.

(q) Parental consent is not required before personally identifiable information is released to officials of other agencies or institutions for purposes of meeting a requirement of this article, except as follows:
(1) Parental consent, or the consent of a student of legal age, as defined in 511 IAC 7-32-17, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 511 IAC 7-43-3.
(2) If a student is enrolled or is going to enroll in a nonpublic school that is not located in the student's school district of legal settlement, parental consent must be obtained before any personally identifiable information about the student is released between officials from the:
(A) public agency where the nonpublic school is located; and
(B) school district of legal settlement.

(r) The public agency may allow access to, or disclose information from, an educational record without consent of the parent or student of legal age under any of the following conditions:
(1) The disclosure is to authorized public agency officials within the agency, including teachers, whom the agency has determined to have legitimate educational interests.
(2) The disclosure is to officials of another public agency or institution of postsecondary education where the student is enrolled, or intends to enroll, subject to the following:
(A) The public agency must make a reasonable attempt to notify the parent or student of legal age at the last known address of the parent or student of legal age, unless the:
(i) disclosure is initiated by the parent or student of legal age; or
(ii) annual notice in subsection (a) includes notice that the agency forwards educational records to another public agency or institution that has requested the records and in which the student intends to or has enrolled.
(B) The public agency must provide the following:
(i) Upon request of the parent or student of legal age, a copy of the disclosed record.
(ii) At the request of a parent or student of legal age, the opportunity for a hearing as described in section 2(c) of this rule.
(C) Notwithstanding clause (A), an Indiana public agency where the student was previously enrolled must take reasonable steps to promptly respond to a request from the student's new school, public or nonpublic, for the student's educational records.
(3) The disclosure is to authorized representatives of:
(A) the Comptroller General or Attorney General of the United States;
(B) the Secretary of the United States Department of Education; or
(C) state and local education authorities;
in connection with an audit, evaluation, or accreditation of federal or state supported education programs, or for the enforcement of, or compliance with, federal or state legal requirements related to those programs.
(4) The disclosure is in connection with financial aid for which the student applied or which the student has received, if the information is necessary for such purposes as:

(A) determining:
(i) eligibility for financial aid;
(ii) the amount of financial aid; or
(iii) the conditions for the financial aid; or
(B) enforcing the terms and conditions of the financial aid.
For purposes of this section “financial aid” means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual that is conditioned on the individual's attendance at an educational agency or institution.
(5) The disclosure is to a state or local juvenile justice agency for the purposes set forth in IC 20-33-7-3.
(6) The disclosure is to an organization, such as federal, state, or local agencies or independent organizations conducting a study for or on behalf of federal or state education agencies or institutions for any of the purposes listed in this subsection, providing the organization protects the confidentiality of the educational record and destroys all copies in its possession when the record is no longer needed for the purpose for which the study was conducted. Acceptable purposes of studies under this subsection are:
(A) developing, validating, or administering predictive tests;
(B) administering student aid programs; or
(C) improving instruction.
(7) The disclosure is necessary to comply with a judicial order or lawfully issued administrative or judicial subpoena, provided the public agency makes a reasonable effort to notify the parent or the student of legal age of the order or subpoena in advance of the disclosure, so that the parent or student of legal age may seek protective action, unless the disclosure is in compliance with:
(A) a federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
(B) any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
(8) The disclosure is to the court where the public agency has initiated legal action against the parent or student. The disclosure of a student's educational records relevant to the public agency's legal action may occur without a court order or subpoena, but the public agency must take steps to seal the record in the legal action.
(9) The disclosure is to the court when a parent or student of legal age initiates legal action against a public agency. Disclosure of a student's educational records relevant for the public agency to defend itself may occur without a court order or subpoena.
(10) The disclosure is to appropriate parties in a health or safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals. Nothing in this rule prevents a public agency from:
(A) including in the educational record of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of:
(i) that student;
(ii) other students; or
(iii) other members of the school community; or
(B) disclosing appropriate information maintained:
(i) in clause (A) to teachers and school officials within the public agency who the public agency has determined have legitimate educational interests in the behavior of the student; or
(ii) under clause (A) to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.
(11) The disclosure is information the public agency has designated as directory information if the public agency has given public notice to parents of students in attendance and students of legal age in attendance at the public agency:
(A) of the types of personally identifiable information that the agency has designated as directory information;
(B) that a parent or student of legal age has the right to refuse to let the public agency designate any or all of those types of information about the student as directory information; and
(C) of the period of time in which a parent or student of legal age has to notify the public agency in writing that he or she does not want any or all of those types of information about the student designated as directory information.

A public agency may disclose directory information about former students without meeting the conditions set forth in this subdivision.
(12) The disclosure is to any of the following:
(A) The parent of a dependent student as defined under Section 152 of the Internal Revenue Code of 1986.
(B) Accrediting organizations to carry out their accrediting functions.
(C) The parent of a student or to the student of legal age.

(s) The public agency must, upon request, provide the parent or student of legal age with a copy of the information that has been disclosed.

(t) The public agency may disclose personally identifiable information from an educational record only on the condition that the party to whom the information is disclosed will not redisclose the information to any other party without the prior consent of the parent or student of legal age, except for disclosures:
(1) of directory information;
(2) to the parent or student of legal age; or
(3) made pursuant to:
(A) court orders; or
(B) lawfully issued subpoenas.

(u) The public agency must not permit a third party access to personally identifiable information from an educational record for at least five (5) years, if the Family Policy Compliance Office, United States Department of Education determines that the third party improperly redisclosed personally identifiable information from educational record.

(v) In the event that a parent refuses to provide consent under this section, the public agency may initiate the due process procedures stated in 511 IAC 7-45.

511 IAC 7-38-2 Procedures for amending educational records

Sec. 2. (a) A parent or student of legal age who believes that information in an educational record collected, maintained, or used under this rule is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the record to amend the information. The request must:
(1) be in writing;
(2) be dated; and
(3) specify the information that the parent or student of legal age believes:
(A) is inaccurate;
(B) is misleading; or
(C) violates the student's privacy or other rights.

(b) If the public agency agrees to amend the information as requested, the public agency must do the following:
(1) Amend the information within ten (10) business days after the request is received.
(2) Notify the parent or student of legal age, in writing, that the change has been made, including the date the change was made.

(c) If the public agency refuses to amend the information as requested, the public agency must notify the parent or student of legal age of the refusal, in writing, within ten (10) business days after the request is received. The written notice must include a statement of the right of the parent or student of legal age to a hearing to challenge the information in the student's educational record and the procedures for the hearing, including the following:
(1) The parent or student of legal age must submit to the public agency a written request for a hearing, specifying the:
(A) information challenged; and
(B) reasons the parent or student of legal age believes the information to be:
(i) inaccurate;
(ii) misleading; or

(iii) in violation of the student's privacy or other rights.
(2) The public agency must do the following:
(A) Convene a hearing within fifteen (15) business days after the request for the hearing is received.
(B) Notify the parent or student of legal age, in writing, of the hearing:
(i) date;
(ii) time; and
(iii) location;
not less than five (5) business days in advance of the hearing.
(3) The hearing may be conducted by any person, including an official of the public agency, who does not have a direct interest in the outcome of the hearing.
(4) The parent or student of legal age:
(A) must be given a full and fair opportunity to present evidence relevant to the issues; and
(B) may, at their own expense, be assisted or represented by one (1) or more persons, including an attorney.
(5) The hearing officer must notify the parent or student of legal age of the hearing decision in writing within ten (10) business days after the hearing. The decision must:
(A) be based solely on evidence and testimony presented at the hearing; and
(B) include a summary of the evidence and the reasons for the decision.
(6) If the hearing officer determines the information in question is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency must:
(A) amend the information accordingly; and
(B) inform the parent or student of legal age in writing of the amendment.
(7) If the hearing officer determines the information in question is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency must inform the parent or student of legal age in writing of the right to place a statement in the student's record commenting on the contested information or stating the reasons for disagreeing with the decision, or both.
(8) A statement placed in the record by the parent or student of legal age under subdivision (7) must be maintained by the public agency in the student's record as long as the record or the contested portion of the record is maintained by the public agency. The public agency must disclose the statement whenever it discloses the record or the contested portion of the record to which the statement relates.

511 IAC 7-38-3 Confidentiality safeguards in the collection, maintenance, and destruction of educational records

Sec. 3. (a) The public agency must do the following:
(1) Establish, maintain, and implement procedures to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. These procedures must include, but are not limited to, those described in this rule and the following:
(A) The appointment of one (1) official in each building or administrative office to be responsible for ensuring compliance with the confidentiality provisions of this rule.
(B) The provision of training or instruction for all persons collecting or using personally identifiable information regarding the following:
(i) The student and parent procedural safeguards with respect to the provision of a free and appropriate public education.
(ii) Confidentiality provisions of this rule and the Family Educational Rights and Privacy Act, 20 U.S.C 1232g.
(2) Maintain for public inspection a current listing of the names and positions of those employees within the public agency authorized to access personally identifiable information.
(3) Inform the parent or student of legal age, in writing, when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information must be destroyed at the request of the parent or student of legal age in accordance with the public agency's record retention schedules.
(4) Maintain a student's educational record for at least three (3) years after the student exits from the special education program and in accordance with the public agency's record retention schedules. The public agency must not destroy any educational record if there is an outstanding request to inspect and review the record.

(b) The public agency may do the following:
(1) Maintain a permanent record, without time limitation, of the following student information:
(A) Name, address, and telephone number.
(B) Grades.
(C) Classes attended.
(D) Grade level completed and year completed.
(E) Attendance record.
(F) The year the student exited from school.
(G) High school transcript that includes the following:
(i) Attendance records.
(ii) The student's latest statewide assessment program test results.
(iii) Any secondary or postsecondary certificates of achievement.
(iv) Immunization information.
(v) Other information as determined by the public agency.
(2) Maintain and store a student's educational record in any manner, provided the following requirements are met:
(A) The manner of maintenance and storage does not abridge any rights under this rule.
(B) The educational record can be reviewed and copies made if needed.

RULE 39. EDUCATIONAL SURROGATE PARENTS

511 IAC 7-39-1 Method for determining whether a student needs an educational surrogate parent

Sec. 1. (a) The public agency must establish, maintain, and implement written procedures regarding the following:
(1) How the public agency determines a student is in need of an educational surrogate parent.
(2) How eligible persons will be trained to serve as educational surrogate parents.

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

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

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

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

511 IAC 7-39-2 Method for assigning an educational surrogate parent

Sec. 2. (a) The public agency shall establish, maintain, and implement written procedures regarding the assignment of educational surrogate parents that include the following:
(1) A system to assign educational surrogate parents.
(2) A system for determining the eligibility of individuals to serve as educational surrogate parents.
(3) A system for training individuals to serve as educational surrogate parents that includes training regarding special education laws and rules.

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

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

(d) In the case of a homeless student as defined in 511 IAC 7-32-46, who is not in the physical custody of a parent or guardian, appropriate staff of:
(1) emergency shelters;
(2) transitional shelters;
(3) independent living programs; and
(4) street outreach programs;
may be appointed as temporary educational surrogate parents without regard to subsection (b)(1) until a nontemporary educational surrogate parent can be appointed that meets all of the requirements of subsection (b).

(e) An educational surrogate parent may represent the student in all matters relating to the following:
(1) Identification.
(2) Evaluation and eligibility.
(3) Placement.
(4) Provision of a free appropriate public education.

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

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

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

(i) When a student attends an educational program outside the school corporation of legal settlement and is in need of an educational surrogate parent, the corporation of legal settlement is responsible to ensure an educational surrogate parent is assigned. The educational surrogate parent may be from the:
(1) school corporation of legal settlement; or
(2) geographic area where the educational program is located;
as agreed upon by the administrators of both programs involved.

(j) The public agency shall keep a list of educational surrogate parents from which it makes its assignments. The list shall include the:
(1) qualifications of; and
(2) number of assignments for;
each educational surrogate parent.

RULE 40. IDENTIFICATION AND EVALUATION

511 IAC 7-40-1 Child find

Sec. 1. (a) The public agency shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students three (3) years of age, but less than twenty-two (22) years of age, who are in need of special education and related services, regardless of the severity of their disabilities, including students who:
(1) have legal settlement within the jurisdiction of the public agency;
(2) attend a nonpublic school, are served by an agency, or live in an institution located within the jurisdiction of the public agency;
(3) are homeless students as defined at 511 IAC 7-32-46;
(4) are wards of the state;
(5) are highly mobile students, including migrant students; and
(6) are suspected of being students with disabilities in need of special education even though they are advancing from grade to grade.

(b) A charter school that is not part of a public school corporation shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students attending the charter school who are in need of special education and related services, regardless of the severity of their disabilities.

(c) Public agencies, and charter schools that are not part of public school corporations, must develop and implement a practical method to determine which students are currently receiving needed special education and related services.

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

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:
(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 Action 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.

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

Sec. 3. (a) This rule applies to educational evaluation procedures that enable a student's CCC to determine:
(1) whether the student is eligible for special education and related services; and
(2) if eligible, the special education and related services necessary to meet the educational needs of the student.

(b) These procedures do not apply to the following:
(1) A test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
(2) A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.
(3) A review of existing data regarding a student.
(4) The collection of progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions described in section 2 of this rule.

(c) The public agency shall establish, maintain, and implement written procedures regarding initial evaluations and reevaluations, including a description of the following:
(1) The way in which a parent or the public agency may request an initial educational evaluation.
(2) The methods used to assign a multidisciplinary team to conduct educational evaluations.
(3) The procedures used for reevaluations.

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

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

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

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

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

(A) Provided and administered in the:

(i) student's native language or other mode of communication; and

(ii) form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

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

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

(D) Administered as follows:

(i) By trained and knowledgeable personnel.

(ii) In accordance with any instructions provided by the producer of the assessments.

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

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

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

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

(A) Development.

(B) Cognition.

(C) Academic achievement.

(D) Functional performance or adaptive behavior.

(E) Communication skills.

(F) Motor and sensory abilities, including vision or hearing.

(G) Available educationally relevant medical or mental health information.

(H) Social and developmental history.

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

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

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

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

(1) Whether the student is eligible for special education and related services.

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

(g) The public agency must evaluate a student with a disability in accordance with the requirements of this rule and 511 IAC 7-41 before a CCC can determine that the student is no longer a student with a disability, except when termination of the student's eligibility is due to:
(1) graduation with a high school diploma as defined in 511 IAC 6-7.1-1(e); 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 leaves high school with a certificate of completion.
(3) A student exceeds the age eligibility for special education and related services under this article.

(i) A public agency may provide a student with a summary of performance when the:
(1) student withdraws from high school after an exit interview is conducted; and
(2) student's parent and principal consent to the withdrawal;
as specified in IC 20-33-2-28.5(b).

511 IAC 7-40-4 Initial educational evaluation; public agency written notice and parental consent

Sec. 4. (a) Either a parent of a student or a public agency may initiate a request for an educational evaluation to determine if a student is eligible for special education and related services under this article. If a parent makes a request for an evaluation after revoking consent for special education and related services in accordance with 511 IAC 7-42-15, the public agency must treat the parent's request for evaluation as a request for an initial evaluation, and the evaluation must be conducted in accordance with this section.

(b) If a student is suspected of having a specific learning disability because the student has not made adequate progress after an appropriate period of time when provided with appropriate instruction described in 511 IAC 7-41-12(a)(3)(G), the public agency must initiate a request for an educational evaluation.

(c) If a request is made to conduct an educational evaluation, the public agency must, before conducting the evaluation, do the following:
(1) Provide the parent of the student with written notice as specified in subsection (e).
(2) Obtain parental consent as defined in 511 IAC 7-32-17.

(d) A parent's request for an evaluation 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 (e).

(e) Written notice provided to the parent regarding an educational evaluation must include the following:
(1) A statement that the public agency is proposing or refusing to conduct the educational evaluation 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 conduct the educational evaluation.
(2) A description of other factors relevant to the public agency's proposal or refusal to conduct the educational evaluation.
(3) If the public agency:
(A) is proposing to conduct the educational evaluation, a description of any evaluation procedures the agency proposes to conduct; or
(B) refuses to conduct the educational evaluation, 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 conduct an educational evaluation, the following:
(A) The timeline for conducting the educational evaluation and convening the CCC meeting.
(B) An explanation of how to request one (1) or both of the following:
(i) A copy of the educational evaluation report, at no cost to the parent, prior to the CCC meeting.
(ii) A meeting with an individual who can explain the results of the educational evaluation prior to 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. A copy of the notice of procedural safeguards must be provided to the parent with the written notice described in this section.
(6) A list of sources for parents to contact to obtain assistance with understanding the provisions of this article.

(f) The written notice required under subsection (e) 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.

(g) A parent may challenge the public agency's refusal to conduct an initial evaluation by requesting:
(1) mediation in 511 IAC 7-45-2; or
(2) a due process hearing in 511 IAC 7-45-3.

(h) After receiving the written notice described in subsections (e) and (f), the parent of the student must provide consent, as defined in 511 IAC 7-32-17, to licensed personnel before the public agency can conduct the initial educational evaluation. The parent may also, at the same time the parent provides consent for the educational evaluation, request one (1) or both of the following:
(1) A copy of the educational evaluation report, at no cost to the parent, prior to the CCC meeting.
(2) A meeting with an individual who can explain the results of the educational evaluation prior to the CCC meeting.

(i) Parental consent is not required for the following:
(1) To review existing data as part of an educational evaluation.
(2) To administer 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.
(3) To screen students if a teacher or a specialist is using the information to determine appropriate instructional strategies for curriculum implementation.
(4) To collect progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions as described in section 2 of this rule.

(j) The public agency must make reasonable efforts to obtain parental consent, as defined in 511 IAC 7-32-17, for the initial educational evaluation. 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.
(k) Parental consent for an initial educational evaluation must not be construed as consent for initial provision of special education and related services.

(l) For initial educational evaluations only, if the student is a ward of the state and is not residing with the student's parent, the public agency is not required to obtain consent as defined in 511 IAC 7-32-17, from the parent for an initial evaluation to determine whether the student is a student with a disability if:
(1) despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;
(2) the rights of the parents of the student have been terminated in accordance with state law; or
(3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(m) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial educational evaluation under subsection (i), or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial educational evaluation of the student by:
(1) utilizing mediation in 511 IAC 7-45-2; or
(2) requesting a due process hearing in 511 IAC 7-45-3.
The public agency does not violate its obligations under this rule if it declines to pursue the educational evaluation.

(n) If a parent of a student who is parentally-placed in a nonpublic school, including a home school, does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a public agency's efforts to obtain consent, the public agency:
(1) may not pursue the initial educational evaluation of the student by:
(A) utilizing mediation in 511 IAC 7-45-2; or
(B) requesting a due process hearing in 511 IAC 7-45-3; and
(2) is not required to consider the student as eligible for special education and related services under 511 IAC 7-34.

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

Sec. 5. (a) After a parent has provided consent, as defined in 511 IAC 7-32-17, for an initial educational evaluation, the public agency must conduct a comprehensive and individual educational evaluation in accordance with the requirements of this rule and 511 IAC 7-41. The educational evaluation must be conducted by a multidisciplinary team that prepares an educational evaluation report addressing the necessary components of evaluation specific to each suspected disability set forth in 511 IAC 7-41. The report is utilized:
(1) by the student's CCC to determine eligibility for special education and related services; and
(2) if a student is found to be eligible, to inform the student's CCC of the student's special education and related service needs.

(b) The educational evaluation must be conducted by a multidisciplinary team, which is a group of qualified professionals who conduct a student's educational evaluation with input from the student's parent. The qualified professionals include, but are not limited to, the following:
(1) At least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability.
(2) A school psychologist, except for a student with a suspected:
(A) developmental delay, in which case the multidisciplinary team shall be at least two (2) qualified professionals from different disciplines based upon the needs of the student;

(B) language impairment, a speech-language pathologist and at least one (1) qualified professional from a different discipline based upon the needs of the student; or
(C) speech impairment only, a speech-language pathologist may serve as the sole qualified professional on the multidisciplinary team.
(3) For a student with a suspected specific learning disability, the following:
(A) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach students of the same age.
(B) For early childhood students, an individual who holds an appropriate license to teach early childhood special education.
(4) For a student who:
(A) is blind or has low vision;
(B) is deaf or hard of hearing; or
(C) has suspected multiple disabilities;
the public agency may request that representatives of the state-operated schools serve as part of the multidisciplinary team only if the parent has provided written consent, in addition to the written consent to conduct the initial educational evaluation, for the representative's participation in the educational evaluation.

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

(d) The initial educational evaluation must be conducted and the CCC convened within fifty (50) instructional days of the date the written parental consent is received by licensed personnel in accordance with section 4(h) of this rule. The time frame does not apply in the following situations:
(1) When a student has participated in a process that assesses the student's response to scientific, research based interventions described in section 2 of this rule, in which case the time frame is twenty (20) instructional days.
(2) When a child is transitioning from early intervention (Part C) to early childhood special education (Part B), in which case the evaluation must be completed and the CCC convened to ensure that the child receives special education services by his or her third birthday.
(3) When the parent of a student repeatedly fails or refuses to produce the student for the evaluation.
(4) When a student enrolls in a school of another public agency after the relevant time frame in subsection (a) has begun, and prior to completion of the evaluation, if the:
(A) subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation; and
(B) parent and subsequent public agency agree to a specific time when the evaluation will be completed.

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

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

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

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

(A) documentation of previous parent notification about:

(i) the:

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

(BB) general education services that would be provided;

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

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

(B) the:

(i) instructional strategies used; and

(ii) student centered data collected.

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

(A) Whether the student:

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

(ii) meets either of the following criteria:

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

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

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

(i) Visual, hearing, or motor disability.

(ii) Cognitive 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.

511 IAC 7-40-6 Determination of eligibility

Sec. 6. (a) Upon completion of the educational evaluation, the CCC must be convened to determine the following:
(1) Whether the student is eligible for special education and related services.
(2) If eligible, the special education and related services necessary to meet the educational needs of the student.

(b) The CCC must not determine that a student is eligible for special education and related services under this article if:
(1) the determinant factor is:
(A) lack of appropriate instruction in reading, including the essential components of reading instruction, which means explicit and systematic instruction in:
(i) phonemic awareness;
(ii) phonics;
(iii) vocabulary development;
(iv) reading fluency, including oral reading skills; and
(v) reading comprehension strategies;
(B) lack of appropriate instruction in math; or
(C) limited English proficiency; and
(2) a student does not otherwise meet the eligibility criteria under this rule and 511 IAC 7-41.

(c) When determining eligibility for special education and related services, the CCC must:
(1) consider all of the information contained in the educational evaluation report; and
(2) not rely on any single measure or assessment as the sole criterion for determining eligibility or appropriate educational services.

(d) If the CCC determines that the student only needs a related service, but not special education, the CCC must not determine that the student is eligible for services under this article.

(e) If a determination is made that a student is eligible for special education and related services, an IEP that meets the special education and related service needs of the student must be developed in accordance with 511 IAC 7-42.

511 IAC 7-40-7 Independent educational evaluation

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).
“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.

511 IAC 7-40-8 Reevaluation

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

(b) A public agency must consider reevaluation for each student receiving special education and related services:
(1) at least once every three (3) years; however, reevaluation need not occur if the parent and the public agency agree that it is unnecessary;
(2) if the public agency determines, at any time during the three (3) year cycle, that additional information is needed to address the special education or related services needs of the student; and
(3) if the student's parent or teacher requests reevaluation.

(c) The following procedures are not reevaluation:

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

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

(e) If the CCC determines or the parent or teacher requests that a reevaluation be conducted to:
(1) determine that the student is eligible for special education and related services under a different or additional eligibility category; or
(2) inform the CCC of the student's needs, such as the student's need for assistive technology or a related service;
the reevaluation must occur and the CCC convened within fifty (50) instructional days of the date that written parental consent is received by licensed personnel, in accordance with subsection (i).

(f) Before a public agency can reevaluate a student, or refuse to reevaluate a student, the public agency must provide the student's parent with written notice that includes the following:
(1) A statement that the public agency is proposing or refusing to reevaluate the student that includes a description of each:
(A) evaluation procedure;
(B) assessment;
(C) record; or
(D) report;
the public agency used as a basis for proposing or refusing to reevaluate the student.
(2) A description of other factors relevant to the public agency's proposal or refusal to reevaluate the student.
(3) If the public agency:
(A) is proposing to reevaluate the student, a description of the reevaluation process; or
(B) refuses to reevaluate the student, an explanation of the parent's right to contest the agency's decision by requesting:
(i) mediation in 511 IAC 7-45-2; or
(ii) a due process hearing in 511 IAC 7-45-3.
(4) If a public agency is proposing to reevaluate the student, the timeline for conducting the reevaluation and convening the CCC meeting.
(5) A statement that a parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1, including information regarding how a copy of the written notice of procedural safeguards can be obtained.
(6) A list of sources for parents to contact to obtain assistance with understanding the provisions of this article.

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

(h) A parent may challenge the public agency's refusal to reevaluate the student by requesting:
(1) mediation in 511 IAC 7-45-2; or
(2) a due process hearing in 511 IAC 7-45-3.

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

(j) If the parent refuses to consent to reevaluation, the public agency may, but is not required to, pursue reevaluation by requesting:
(1) mediation in 511 IAC 7-45-2; or

(2) a due process hearing in 511 IAC 7-45-3.
The public agency does not violate its obligation to reevaluate the student if it declines to request mediation or a due process hearing.

(k) Parental consent for reevaluation does not need to be obtained if the public agency makes reasonable efforts to obtain consent and the parent fails to respond. To document reasonable efforts, the public agency must keep a record of its attempts to obtain parental consent, including the following:
(1) Detailed records of:
(A) telephone calls made or attempted; and
(B) the results of the calls.
(2) Copies of:
(A) correspondence sent to the parent; and
(B) any responses received.
(3) Detailed records of:
(A) visits made to the parent's home or place of employment; and
(B) the results of those visits.

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

(m) The review described in subsection (l) may be conducted without a meeting.

(n) If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection (l), determine that no additional data are needed to determine whether the student continues to be eligible for special education and to determine the student's special education and related service needs, the public agency must do the following:
(1) Notify the parent of the following:
(A) The determination and the reasons for the determination.
(B) The right to request an assessment to determine the following:
(i) Whether the student continues to be eligible for special education.
(ii) The student's special education and related service needs.
(2) Not be required to conduct such an assessment unless requested to by the student's parent.

(o) If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection (l), 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 (l).

RULE 41. ELIGIBILITY CRITERIA

511 IAC 7-41-1 Autism spectrum disorder

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

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

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

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

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

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

(1) An assessment of the following:
  (A) Current academic achievement as defined at 511 IAC 7-32-2.
  (B) Functional skills or adaptive behavior across various environments from multiple sources.
  (C) The student's receptive, expressive, pragmatic, and social communication skills that must include at least one (1) of the following:
    (i) An individually administered norm-referenced assessment when appropriate for the student.
    (ii) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
      (AA) has been designed or may be adapted or modified for use with students who have autism spectrum disorder; and
      (BB) is administered by a professional or professionals with knowledge of assessment strategies appropriate for the student.
  (D) An assessment of motor skills and sensory responses.
(2) A social and developmental history that may include, but is not limited to, the following:
  (A) Communication skills.
  (B) Social interaction skills.
  (C) Motor skills.
  (D) Responses to sensory experiences.
  (E) Relevant family and environmental information.
  (F) Patterns of emotional adjustment.
  (G) Unusual or atypical behaviors.
(3) A systematic observation of the student across various environments.
(4) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
  (A) exclude the disabilities listed in subsection (b);
  (B) determine eligibility for special education and related services; and
  (C) inform the student's CCC of the student's special education and related services needs.

511 IAC 7-41-2 Blind or low vision

Sec. 2. (a) “Blind or low vision”, which may be referred to as a visual impairment, means a disability that even with best correction affects the student's ability to use vision for learning, which adversely affects the student's educational performance. The term:
(1) includes a reduced ability or a complete inability to utilize the visual system to acquire information; and
(2) may include or be limited to a reduction in field of vision.

(b) Eligibility for special education as a student who is blind or has low vision 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) Current academic achievement as defined at 511 IAC 7-32-2.
(B) 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) An assessment of the following:
(A) Functional vision.
(B) Functional literacy as described in 511 IAC 7-42-6(c)(5).
(4) A systematic observation of the student across various environments.
(5) An assessment of motor skills, which may include travel skills.
(6) A written report from an optometrist or an ophthalmologist that includes the following:
(A) Etiology and prognosis of the visual dysfunction.
(B) Secondary or accompanying visual conditions, such as nystagmus or photophobia, if appropriate.
(C) Near/distance and corrected/uncorrected acuity measures for left, right, and both eyes, as appropriate.
(D) Measures of visual fields for both eyes, if appropriate.
(E) Recommendations for use of aids, glasses, or lighting requirements, if appropriate.
(7) 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.

511 IAC 7-41-3 Cognitive disability

Sec. 3. (a) A cognitive disability:
(1) is manifested during the developmental period;
(2) is characterized by significant limitations in cognitive functioning;
(3) is demonstrated through limitations in adaptive behavior; and
(4) adversely affects educational performance.

(b) A student with a mild cognitive disability has cognitive functioning that generally:
(1) falls two (2) standard deviations below the mean; and
(2) manifests delays in adaptive behavior consistent with the mild cognitive disability.

(c) A student with a moderate cognitive disability has cognitive functioning that generally:
(1) falls three (3) standard deviations below the mean; and
(2) manifests delays in adaptive behavior consistent with the moderate cognitive disability.

(d) A student with a severe cognitive disability has cognitive functioning and adaptive behavior skills that generally:
(1) falls four (4) or more standard deviations below the mean; and
(2) manifests delays in adaptive behavior consistent with the severe cognitive disability.

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

(1) An assessment of the following:

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

(i) An individually administered norm-referenced assessment.

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

(AA) has been designed or may be adapted or modified for use with students who have a cognitive disability; and

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

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

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

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

(A) Communication skills.

(B) Social interaction skills.

(C) Motor skills.

(D) Responses to sensory experiences.

(E) Relevant family and environmental information.

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

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

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

511 IAC 7-41-4 Deaf or hard of hearing

Sec. 4. (a) “Deaf or hard of hearing”, which may be referred to as a hearing impairment, means the following:

(1) A disability that, with or without amplification, adversely affects the student's:

(A) ability to use hearing for developing language and learning;

(B) educational performance; and

(C) developmental progress.

(2) The hearing loss may be:

(A) permanent or fluctuating;

(B) mild to profound; or

(C) unilateral or bilateral.

(3) Students who are deaf or hard of hearing may use:

(A) spoken language;

(B) sign language; or

(C) a combination of spoken language and signed systems.

(b) Eligibility for special education as a student who is deaf or hard of hearing 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) Current academic achievement as defined at 511 IAC 7-32-2.

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

(C) Communication conducted in the:

(i) language or system utilized for the student's instruction; or

(ii) student's preferred mode of communication;

that assesses the student's receptive and expressive language skills.

(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 written report from an educational or clinical audiologist, otologist, or otolaryngologist with information regarding the:
(A) etiology of the hearing loss; and
(B) student's potential requirement for amplification, if appropriate.
(4) 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.

511 IAC 7-41-5 Deaf-blind

Sec. 5. (a) “Deaf-blind”, which may be referred to as dual sensory impaired, means a disability that:
(1) is a concomitant hearing and vision loss or reduction in functional hearing and vision capacity;
(2) causes significant communication and adaptive behavior deficits;
(3) adversely affects the student's educational performance; and
(4) cannot be accommodated for by use of a program or service designed solely for students who are:
(A) deaf or hard of hearing; or
(B) blind or have low vision.

(b) Students who are deaf-blind represent a heterogeneous group that includes the following:
(1) Students who are both deaf and blind with:
(A) measured acuities and intellectual and adaptive functioning; or
(B) estimated acuities and intellectual and adaptive functioning supported by a description of pathology.
(2) Students with hearing and visual reductions of a mild to severe degree:
(A) with additional learning or language disabilities that adversely affect educational performance; or
(B) who have been diagnosed with a chronic or degenerative pathology or a disease that may potentially result in deaf-blindness.
(3) Students with generalized central nervous system dysfunction who:
(A) exhibit:
(i) auditory and visual impairments; or
(ii) deficits in auditory-visual functioning; and
(B) may demonstrate inconclusive or inconsistent responses:
(i) during hearing and vision assessments; or
(ii) to auditory and visual stimuli in the environment.

(c) A student who is solely deaf-blind is not considered to be a student who has multiple disabilities as defined in section 9 of this rule.

(d) Eligibility for special education as a student who is deaf-blind 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) Current academic achievement as defined at 511 IAC 7-32-2.
(B) Functional skills or adaptive behavior across various environments from multiple sources.
(C) Communication conducted in the:
(i) language or system utilized for the student's instruction; or
(ii) student's preferred mode of communication;
that assesses the student's receptive and expressive language skills.
(D) Functional vision.
(E) Functional literacy as described in 511 IAC 7-42-6(c)(5).
(2) A systematic observation of the student across various environments.
(3) 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.

(4) An assessment of motor skills, including travel skills.
(5) A written report from an optometrist or an ophthalmologist that includes the following:
(A) Etiology and prognosis of the visual dysfunction.
(B) Secondary or accompanying visual conditions, such as nystagmus or photophobia, if appropriate.
(C) Near/distance and corrected/uncorrected acuity measures for left, right, and both eyes, as appropriate.
(D) Measures of visual fields for both eyes, if appropriate.
(E) Recommendations for use of aids, glasses, or lighting requirements, if appropriate.
(6) A written report from an educational or clinical audiologist, otologist, or otolaryngologist with information regarding the:
(A) etiology and prognosis of the hearing loss; and
(B) student's potential requirement for amplification, if appropriate.
(7) 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.

511 IAC 7-41-6 Developmental delay (early childhood)

Sec. 6. (a) Developmental delay is a disability category solely for students who are at least three (3) years of age and not more than five (5) years of age, or five (5) years of age but not eligible to enroll in kindergarten. Developmental delay means a delay of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas:
(1) Gross or fine motor development.
(2) Cognitive development.
(3) Receptive or expressive language development.
(4) Social or emotional development.
(5) Self-help or other adaptive development.

(b) Eligibility for special education as a student with a developmental delay shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes the following:
(1) An assessment of the developmental areas listed in subsection (a) that must include at least one (1) of the following:
(A) An individually administered norm-referenced assessment.
(B) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
(i) has been designed or may be adapted or modified for use with students who have a developmental delay or delays; and
(ii) is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
(2) A social and developmental history that may include, but is not limited to, the following:
(A) Communication skills.
(B) Social interaction skills.
(C) Play skills.
(D) Motor skills.
(E) Responses to sensory experiences.
(F) Relevant family and environmental information.
(G) Patterns of emotional adjustment.
(H) Unusual or atypical behaviors.
(3) Available medical information that is developmentally relevant.
(4) A vision and hearing screening.
(5) A systematic observation of the student across various environments.
(6) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
(A) determine eligibility for special education and related services; and

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

511 IAC 7-41-7 Emotional disability

Sec. 7. (a) “Emotional disability” means an inability to learn or progress that cannot be explained by cognitive, sensory, or health factors. The student exhibits one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:
(1) A tendency to develop physical symptoms or fears associated with personal or school problems.
(2) A general pervasive mood of unhappiness or depression.
(3) An inability to build or maintain satisfactory interpersonal relationships.
(4) Inappropriate behaviors or feelings under normal circumstances.
(5) Episodes of psychosis.

(b) Eligibility for special education as a student with an emotional disability shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes the following:
(1) An assessment of the following:
(A) Current academic achievement as defined at 511 IAC 7-32-2.
(B) Emotional and behavioral functioning.
(2) A social and developmental history that may include, but is not limited to, the following:
(A) Communication skills.
(B) Social interaction skills.
(C) Responses to sensory experiences.
(D) Relevant family and environmental information.
(E) Patterns of emotional adjustment.
(F) Unusual or atypical behaviors.
(3) A functional behavior assessment as defined at 511 IAC 7-32-41 that includes an analysis of any interventions used to address the behaviors leading to the referral for the educational evaluation.
(4) Available medical and mental health information that is educationally relevant.
(5) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
(A) address whether the student's inability to learn or progress is caused by:
(i) cognitive;
(ii) sensory; or
(iii) health factors;
(B) determine eligibility for special education and related services; and
(C) inform the student's CCC of the student's special education and related services needs.

511 IAC 7-41-8 Language or speech impairment

Sec. 8. (a) A language or speech impairment is characterized by one (1) of the following impairments that adversely affects the student's educational performance:
(1) Language impairments in the comprehension or expression of spoken or written language resulting from organic or nonorganic causes that are nonmaturational in nature. Language impairments affect the student's primary language systems, in one (1) or more of the following components:
(A) Word retrieval.
(B) Phonology.
(C) Morphology.
(D) Syntax.
(E) Semantics.
(F) Pragmatics.
(2) Speech impairments that may include fluency, articulation, and voice disorders in the student's speaking behavior in more than one (1) speaking task that are nonmaturational in nature, including impairments that are the result of a deficiency of structure and function of the oral peripheral mechanism.

(b) A student is not eligible for special education and related services as a student with a language or speech impairment solely because the student's native language is not English. Bilingual or multilingual speakers include students whose speech or language patterns:
(1) deviate from those of standard English; and
(2) are characteristic of dialectical differences.
A student who is bilingual or multilingual may be a student with a language or speech impairment only if the impairment is exhibited in all languages spoken by the student.

(c) Students who are deaf or hard of hearing or students with specific learning disabilities, who have language deficits or auditory processing difficulties, are not eligible for services designed solely for students with language impairments in lieu of services designed for:
(1) students who are deaf or hard of hearing; or
(2) students with specific learning disabilities.

(d) Severe language or speech impairments may require the use of augmentative communication systems, such as:
(1) gestures;
(2) signed language;
(3) communication books or boards;
(4) electronic devices; or
(5) other systems determined by the student's CCC.

(e) Eligibility for special education as a student with a language impairment 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) Progress in the general education curriculum that includes an analysis of any interventions used to address the academic concerns leading to the referral for the educational evaluation.
(B) Current academic achievement as defined at 511 IAC 7-32-2.
(2) A social and developmental history that may include, but is not limited to, the following:
(A) Communication skills.
(B) Social interaction skills.
(C) Responses to sensory experiences.
(D) Relevant family and environmental information.
(3) An observation of the student in the student's learning environment to document the student's academic performance in the area or areas of difficulty. The multidisciplinary team:
(A) may use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation; or
(B) have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after the child has been referred for an educational evaluation and parental consent for the educational evaluation has been obtained. In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.
(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) address the exclusionary factors listed in subsections (b) and (c);
(B) determine eligibility for special education and related services; and
(C) inform the student's CCC of the student's special education and related services needs.

(f) Eligibility for special education as a student with a speech impairment 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) The student's skills in:
(i) articulation;
(ii) fluency; and

(iii) voice.
(B) Current academic achievement as defined at 511 IAC 7-32-2.
(2) A social and developmental history that may include, but is not limited to, the following:
(A) Communication skills.
(B) Social interaction skills.
(C) Oral motor skills.
(D) Responses to sensory experiences.
(E) Relevant family and environmental information.
(3) At least one (1) observation of the student's speech completed by a speech and language pathologist.
(4) If an organic cause is the suspected cause of the speech impairment, a statement from a physician with an unlimited license describing:
(A) the student's medical needs; and
(B) any consequent limitations to communication training.
(5) Available medical information that is educationally relevant.
(6) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
(A) address the exclusionary factors listed in subsection (b);
(B) determine eligibility for special education and related services; and
(C) inform the student's CCC of the student's special education and related services needs.

511 IAC 7-41-9 Multiple disabilities

Sec. 9. (a) “Multiple disabilities” means coexisting disabilities, one of which must be a significant cognitive 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 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.

511 IAC 7-41-10 Other health impairment

Sec. 10. (a) “Other health impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

(1) is due to chronic or acute health problems, such as:
  (A) asthma;
  (B) attention deficit disorder or attention deficit hyperactivity disorder;
  (C) diabetes;
  (D) epilepsy;
  (E) a heart condition;
  (F) hemophilia;
  (G) lead poisoning;
  (H) leukemia;
  (I) nephritis;
  (J) rheumatic fever;
  (K) sickle cell anemia; and
  (L) Tourette syndrome; and
(2) adversely affects a student's educational performance.

(b) Eligibility for special education as a student as other health impaired 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) Current academic achievement as defined at 511 IAC 7-32-2.
  (B) 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.

511 IAC 7-41-11 Orthopedic impairment

Sec. 11. (a) An orthopedic impairment is a severe physically disabling condition that adversely affects educational performance. The term may include impairments caused by any of the following:

(1) A congenital anomaly.
(2) A disease, such as:
  (A) poliomyelitis; or
  (B) bone tuberculosis.
(3) Other causes, such as:
  (A) cerebral palsy;
  (B) amputations; or
  (C) fractures or burns that cause contractures.

(b) Eligibility for special education as a student with an orthopedic impairment 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) Current academic achievement as defined at 511 IAC 7-32-2.
  (B) 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) Available medical information that is educationally relevant.
(4) 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.

511 IAC 7-41-12 Specific learning disability

Sec. 12. (a) “Specific learning disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that adversely affect the student's educational performance, including conditions referred to, or previously referred to, as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. As follows, a specific learning disability:
(1) Manifests itself when the student does not achieve adequately for the student's age or to meet state approved grade level standards in one (1) or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state approved grade level standards:
(A) Reading disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. It is characterized by difficulties with accurate or fluent, or both, word recognition and by poor spelling and decoding abilities. A reading disability may be due to difficulties in the following:
(i) Basic reading skills.
(ii) Reading fluency skills.
(iii) Reading comprehension.
(B) Written expression disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. Written expression is a complex domain that requires the integration of the following:
(i) Oral language.
(ii) Written language.
(iii) Cognition.
(iv) Motor skills.
(C) Math disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. The ability to perform mathematical computations and reasoning requires multiple core cognitive processes. A math disability may be due to difficulties in the following:
(i) Mathematics calculation.
(ii) Mathematics problem solving.
(D) Oral expression disability, which is a specific learning disability that:
(i) is neurological in origin;
(ii) has a continuum of severity; and
(iii) is characterized by deficits in using expressive language processes to mediate learning of:
(AA) reading;
(BB) writing;
(CC) spelling; or
(DD) mathematics;
skills.
(E) Listening comprehension disability, which is a specific learning disability that:
(i) is neurological in origin;
(ii) has a continuum of severity; and
(iii) is characterized by difficulties in using receptive language processes to mediate learning of:
(AA) reading;
(BB) writing;
(CC) spelling; or
(DD) mathematics;
skills.
(2) Can be evidenced through either of the following:

(A) Insufficient progress to meet age or state approved grade level standards in one (1) or more of the areas identified in subdivision (1) when using a process based on the student's response to scientific, research based intervention.
(B) A pattern of strengths and weaknesses in performance or achievement, or both, relative to:
(i) age;
(ii) state approved grade level standards; or
(iii) intellectual development;
that is determined by the group to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between academic achievement and global cognitive functioning to meet this requirement.
(3) Does not include learning problems that are primarily the result of any of the following:
(A) A visual, hearing, or motor disability.
(B) A cognitive disability.
(C) An emotional disability.
(D) Cultural factors.
(E) Environmental or economic disadvantage.
(F) Limited English proficiency.
(G) Lack of appropriate instruction in reading or math evidenced by the following:
(i) Data demonstrating that prior to, or part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel.
(ii) Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(b) Eligibility for special education as a student with a specific learning disability shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e) and 511 IAC 7-40-5(g), which includes the following:
(1) An assessment of current academic achievement as defined at 511 IAC 7-32-2.
(2) An observation of the student in the student's learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The multidisciplinary team may do either of the following:
(A) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation.
(B) Have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after:
(i) the child has been referred for an educational evaluation; and
(ii) parental consent for the educational evaluation has been obtained.
In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.
(3) Available medical information that is educationally relevant.
(4) A social and developmental history that may include, but is not limited to, the following:
(A) Communication skills.
(B) Social interaction skills.
(C) Responses to sensory experiences.
(D) Relevant family and environmental information.
(E) Patterns of emotional adjustment.
(F) Unusual or atypical behaviors.
(5) An assessment of progress in the general education curriculum that includes an analysis of any interventions used to address the academic concerns leading to the referral for the educational evaluation.
(6) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
(A) address the exclusionary factors listed in subsection (a)(3);
(B) determine eligibility for special education and related services; and
(C) inform the student's CCC of the student's special education and related services needs.

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

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

511 IAC 7-41-13 Traumatic brain injury

Sec. 13. (a) A traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as the following:
(1) Cognition.
(2) Language.
(3) Memory.
(4) Attention.
(5) Reasoning.
(6) Abstract thinking.
(7) Judgment.
(8) Problem solving.
(9) Sensory, perceptual, and motor abilities.
(10) Psychosocial behavior.
(11) Physical functions.
(12) Information processing.
(13) Speech.

(b) The term does not apply to brain injuries that are:
(1) congenital or degenerative; or
(2) induced by birth trauma.

(c) Eligibility for special education as a student with a traumatic brain injury 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 ability and functioning that must include at least one (1) of the following:

(i) An individually administered norm-referenced assessment.
(ii) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
(AA) has been designed or may be adapted or modified for use with students who have a traumatic brain injury; 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) Assessments of 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) Available medical information that is educationally relevant
(4) 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.

RULE 42. DETERMINATION OF SPECIAL EDUCATION SERVICES

511 IAC 7-42-1 Local procedures and training

Sec. 1. (a) The public agency must have in place written procedures to ensure the appropriate implementation of the CCC process, including the following:
(1) The title or position of the individuals designated as, or who may serve as, the representative of the public agency and a description of the roles and responsibilities of the:
(A) public agency representative; and
(B) other public agency personnel;
before, during, and after the CCC meeting.
(2) A description of the following:
(A) The methods used to assure the parent is provided with adequate notice of the CCC meeting.
(B) The written notice that must be provided to a parent prior to an initial CCC meeting as specified in section 4 of this rule.
(C) The methods used to assure the parent understands the proceedings of the CCC meeting.
(D) The written notice that must be provided to a parent to assure the parent is fully informed of the public agency's proposal to initiate or change, or refusal to initiate or change, the identification or educational placement of the student, or the provision of a free appropriate public education to the student prior to the parent giving or denying permission for the initial provision of services, if applicable, and prior to the public agency implementing the IEP.

(b) The public agency must provide information and training that addresses the requirements set forth in this article to ensure that public agency staff have the necessary knowledge regarding the following:
(1) How to arrange and document CCC meetings.
(2) How to develop an IEP, including the required components of an IEP.
(3) How to serve as the public agency representative, including information about the availability of, and has the authority to commit, resources of the public agency.

511 IAC 7-42-2 Notice of case conference committee meetings

Sec. 2. (a) A CCC meeting must be scheduled at a mutually agreed upon date, time, and place. If a parent cannot attend in person, the public agency must use other methods to ensure parent participation, including an individual or conference telephone call or video conference.

(b) A CCC meeting may be conducted without a parent in attendance if the parent chooses not to participate in person or by other methods. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed upon date, time, and place for the CCC 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.

(c) The parent must be given adequate notice of the CCC meeting in the parent's native language or other mode of communication, early enough to ensure that one (1) or both parents have the opportunity to attend. Notice of the meeting must be sent to the following persons:

(1) The parent, regardless of the age of the student.
(2) The student of legal age, as defined in 511 IAC 7-32-91, regardless of the purpose of the CCC meeting.
(3) All other persons that must attend the CCC meeting as specified in section 3(b) and 3(c) of this rule.

(d) The notice of the meeting must include the following:

(1) The date, time, and place of the meeting.
(2) The purpose of the meeting.
(3) The name and title or position of the designated public agency representative and a list, by name and title or position, of other expected participants.
(4) A two (2) part statement that the:
  (A) parent or public agency may invite any other individual whom the parent or public agency has determined has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
  (B) determination of the knowledge or special expertise of any invited individual must be made by the person (parent or public agency) who invited the individual to participate in the CCC meeting.
(5) A statement that, in the case of a child who was previously served under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., 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.
(6) An explanation:
  (A) that the student will be invited to the CCC meeting 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; and
  (B) of any other agency that will be invited to send a representative.

511 IAC 7-42-3 Case conference committee participants

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

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

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

(1) The designated public agency representative as described in subsection (a).
(2) One (1) of the following:
  (A) The student's current teacher of record.

(B) In the case of a student with a language or speech impairment only, the speech-language pathologist.
(C) For a student whose initial eligibility for special education and related services is under consideration, a teacher licensed in the area of the student's suspected disability.
(3) Not fewer than one (1) of the student's general education teachers, if the student is or may be participating in the general education environment. For purposes of early childhood, a general education teacher may be:
(A) a general education:
(i) teacher who provides services to nondisabled students in the public agency's preschool program; or
(ii) kindergarten teacher who provides services to nondisabled students if the student is of kindergarten age; or
(B) an individual knowledgeable about early childhood development, curriculum, and integrated placement options if the public agency does not have a general education preschool program.
(4) An individual who can interpret the instructional implications of evaluation results, who may be a member of the CCC described in subdivisions (1) through (3) or subsection (e).
(5) The:
(A) parent of a student less than eighteen (18) years of age; or
(B) student of legal age as defined in 511 IAC 7-32-91;
unless the parent or student of legal age choose not to participate, as described in section 2(b) of this rule.

(c) The public agency must ensure the participation in the CCC of additional individuals in the following circumstances:
(1) When a purpose of the meeting is the initial consideration of the student's eligibility for special education and related services, at least one (1) qualified professional who is a member of the multidisciplinary team that evaluated the student.
(2) When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in an alternative school or alternative education program under IC 20-30-8, a representative of the alternative school or alternative education program who is authorized to:
(A) make a recommendation regarding admission to the school; and
(B) commit resources.
(3) When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in a state-operated school or state-operated facility, a representative of the state-operated school or state-operated facility who is authorized to:
(A) make a recommendation regarding admission to the school or facility; and
(B) commit resources.
(4) When a purpose of the meeting is to develop an IEP for a student to be placed to in a nonpublic school or facility by a public agency in accordance with section 13 of this rule, the following persons must participate in person or by other methods, including individual or conference telephone calls:
(A) A representative of the nonpublic school or facility.
(B) A representative of the local public agency providing any of the student's special education and related services.
(5) When the student has been unilaterally enrolled in a nonpublic school or facility by the student's parent, a representative of the nonpublic school or facility. If the representative cannot attend, the public agency must use other methods to ensure participation by the representative of the nonpublic school or facility, including individual or conference telephone calls or video conference.

(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.

511 IAC 7-42-4 Written notice before initial case conference committee meetings

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

(b) The written notice described in subsection (a) must contain the following:
(1) A description and overall findings of each:
(A) evaluation;
(B) procedure;
(C) assessment;
(D) record; or
(E) report;
the public agency used as a basis for any proposed action.
(2) A description of action that may be proposed by the public agency.
(3) An explanation of why the public agency may propose an action.

511 IAC 7-42-5 Case conference committee meetings

Sec. 5. (a) A CCC must convene in the following circumstances:
(1) In accordance with:
(A) the timelines in 511 IAC 7-40-5(d) after an initial evaluation is conducted; and
(B) 511 IAC 7-40-8 after a student has been reevaluated.
(2) Periodically, but not less than annually, for a student previously determined eligible for special education to:
(A) 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; and
(B) revise the IEP, as appropriate, to address:
(i) any lack of expected progress, based on progress monitoring data, toward the annual goals and in the general education curriculum, if appropriate;
(ii) 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(l)(2);

(iii) the student's anticipated needs; or
(iv) other matters.
(3) If either the parent or the public agency believes that a required component of the student's individualized education should be changed to ensure the provision of a free appropriate public education.
(4) Within ten (10) instructional days of the enrollment date of a student who has been receiving special education in another state or another district within the state.
(5) Within ten (10) instructional days of a disciplinary change of placement to determine whether the student's behavior is a manifestation of the student's disability in accordance with 511 IAC 7-44-5.
(6) To determine the interim alternative educational setting when public agency personnel remove a student to an interim alternative educational setting in accordance with 511 IAC 7-44-6, unless the setting has been included in the student's IEP or behavioral intervention plan.
(7) At least every sixty (60) instructional days when the setting in which the student is receiving educational services is the student's home or out-of-school location determined in accordance with section 11 of this rule.

(b) A CCC meeting does not include:
(1) informal or unscheduled conversations involving public agency personnel and conversations on issues such as:
(A) teaching methodology;
(B) lesson plans; or
(C) coordination of service provision; or
(2) preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later CCC meeting.

(c) When a CCC is convened, the public agency must take whatever action is necessary to ensure the parent understands the proceedings of the CCC meeting, including arranging for an interpreter for a parent:
(1) who is deaf or hard of hearing; or
(2) whose native language is not English.

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

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:
(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) The language needs of a student with limited English proficiency as those needs relate to the student's IEP.
(4) 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) 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) 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.

511 IAC 7-42-7 Written notice by the public agency and parental consent

Sec. 7. (a) Written notice that meets the requirements of subsection (b) must be given to the parent of a student with a disability before the public agency:
(1) proposes to initiate or change the identification or educational placement of the student or the provision of a free appropriate public education to the student; or

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

(b) The written notice required under subsection (a) must include the following:
(1) A description of the action proposed or refused by the public agency.
(2) An explanation of why the public agency proposed or refused to take the action.
(3) A description of the following:
(A) Each:
(i) evaluation;
(ii) procedure;
(iii) assessment;
(iv) record; or
(v) report;
the agency used as a basis for the proposed or refused action.
(B) Other options that the CCC considered and the reasons why those options were rejected.
(C) Other factors relevant to the agency's proposal or refusal.
(4) A statement that the parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1 and the means by which a copy of a description of the procedural safeguards can be obtained. The statement must also explain that after a public agency provides written notice regarding a proposed or refused action that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by doing any of the following:
(A) Requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency.
(B) Initiating mediation under 511 IAC 7-45-2.
(C) Requesting a due process hearing under 511 IAC 7-45-3.
(5) A statement that if a parent challenges a proposed IEP prior to its implementation, the public agency must continue to implement the current IEP, except as provided in section 8(e) and 8(f) of this rule.
(6) Sources for the parent to contact to obtain assistance in understanding the provisions of this article.

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

(d) The written notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language of the parent or other mode of communication used by the parent is not a written language, the public agency must take steps to ensure the following:
(1) That the written notice is translated orally or by other means to the parent in his or her native language or other mode of communication.
(2) That the parent understands the content of the written notice.
(3) That there is written documentation that the requirements in subdivisions (1) and (2) have been met.

(e) The written notice described in this section may be:
(1) provided to the parent at the conclusion of the CCC meeting; or
(2) mailed to the parent at a later date.
If mailed, the written notice must be received by the parent not later than ten (10) business days after the date of the CCC meeting.

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

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

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

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

(i) If the parent of a student refuses to consent to (or fails to respond to a request for consent for) the initial provision of special education and related services described in subsection (f), the public agency:
(1) may not:
(A) initiate mediation under 511 IAC 7-45-2; or
(B) request a due process hearing under 511 IAC 7-45-3;
in order to obtain an agreement or a ruling that the services may be provided to the student; and
(2) must not be considered to be in violation of the requirement to make available a free appropriate public education to the student.

(j) After a public agency provides written notice regarding a proposed IEP that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by doing any of the following:
(1) Requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency.
(2) Initiating mediation under 511 IAC 7-45-2.
(3) Requesting a due process hearing under 511 IAC 7-45-3.

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

Sec. 8. (a) The services identified in an IEP must be provided as soon as the necessary arrangements are completed, but not later than the following:
(1) Ten (10) instructional days after parental consent to the student's initial IEP is received.
(2) Ten (10) instructional days after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP. However, the public agency must continue to implement the current IEP if the parent challenges the proposed IEP 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) For students transitioning from early intervention services to early childhood special education, on the student's third birthday in accordance with 511 IAC 7-43-2.
(4) 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) Be responsible for all other activities identified in 511 IAC 7-32-97.

(d) At the beginning of each school year, a public agency must have in effect, for each student with a disability within its district:
(1) an IEP as specified in section 5 of this rule; or
(2) a service plan as described in 511 IAC 7-34-5 if the student is parentally-placed in a nonpublic school within the jurisdiction of the public agency.

(e) If a newly enrolled student received special education services from another public agency within the state, and enrolls in a new public agency within the same school year, the new public agency, in consultation with the student's parent, must immediately provide the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either:
(1) adopts the student's IEP from the previous public agency; or
(2) develops, adopts, and implements a new IEP that meets the applicable requirements of this rule.

(f) If a newly enrolled student received special education services in another state, and enrolls within the same school year, the new public agency, in consultation with the student's parent, must immediately provide the student with a free appropriate public education, including services comparable to those described in the student’s IEP from the previous public agency, until the new public agency:
(1) conducts an educational evaluation under 511 IAC 7-40, if the new public agency determines that this is necessary; and
(2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in this rule.

(g) To facilitate the transition of students described in subsections (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.

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

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(l)(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) 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.

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

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 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 of this rule.

(10) Students with disabilities are not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.

(b) The public agency 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.

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

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, 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.

511 IAC 7-42-12 Instruction for students with injuries and temporary or chronic illnesses

Sec. 12. (a) All students with injuries and temporary or chronic illnesses that preclude their attendance in school, including students who are not eligible for special education and related services, must be provided with instruction.

(b) Before instruction for a student unable to attend school can begin, the parent must provide the school corporation with a written statement from a physician (which includes a doctor of osteopathy) with a valid, unlimited license to practice medicine, or a Christian Science practitioner, that states one (1) of the following:
(1) The student has a temporary illness or injury that will require the student's absence from school for a minimum of twenty (20) consecutive instructional days. If the:
(A) illness or injury occurs less than twenty (20) instructional days prior to the end of the school year; and
(B) student needs instruction to meet promotion or graduation requirements;
the physician's statement must indicate that the student will be unable to attend school through the end of the current school year.
(2) The student has a chronic illness or other medical condition that will require the student's absence for an aggregate of at least twenty (20) instructional days over the period of the school year.

(c) For a student 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.

(f) The mediation and due process procedures provided in 511 IAC 7-45 do not apply to nondisabled students who receive instruction under this section.

511 IAC 7-42-13 Nonpublic school or facility placements by public agencies

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

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

(c) After a student enters a nonpublic school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency. If the nonpublic school or facility initiates and conducts the CCC meetings, the public agency must ensure that the parent and a public agency representative:
(1) are involved in any decision about the student's IEP; and
(2) agree to any proposed changes in the IEP before those changes are implemented.

(d) Even if a nonpublic school or facility implements a student's IEP, responsibility for compliance with this article remains with the public agency. The public agency must ensure that the student:
(1) is provided:
(A) special education and related services:
(i) in conformance with an IEP that meets the requirements of this rule; and
(ii) at no cost to the parents; and
(B) an education that meets the standards applicable to the state's public agencies, including the requirements of this article, except for the highly qualified special education teacher requirements in 511 IAC 7-36-3; and
(2) has all of the rights of a student with a disability who is served by a public agency.

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

511 IAC 7-42-14 Transportation of students in public or private residential placements

Sec. 14. (a) The school corporation of legal settlement:
(1) is responsible for the cost of transporting students placed in public or private residential facilities by the public agency; and
(2) must pay for the number of round trips as determined appropriate by the CCC in accordance with statutory requirements and this rule.

(b) The frequency, length, and timing of home visits must be mutually agreed upon by the residential facility, the parent, and the school corporation of legal settlement. Transportation for the student for home visits must be arranged to assure the welfare and safety of the student, including, if necessary, paying the cost for a responsible adult to accompany the student during the travel.

(c) If a parent travels to the residential facility, that travel may be in lieu of a student home visit. The school corporation of legal settlement must pay the cost for the parent to travel to the residential facility if the CCC determines any of the following is essential to the student's educational, emotional, or behavioral progress:
(1) The nature or severity of the student's disability precludes home visits.
(2) The residential facility provides family counseling and training essential to the student's educational, emotional, or behavioral progress.
(3) The student cannot travel home unaccompanied.

(d) When a parent travels to the residential facility under subsection (c), the school corporation of legal settlement must reimburse or pay for travel-associated costs, such as meals and lodging, in accordance with the policies established for school employees.

(e) At the time a residential placement is made, the public agency must do the following:
(1) Establish guidelines and procedures concerning transportation.
(2) Inform the parent of those guidelines and procedures.

(f) The guidelines and procedures established under subsection (e) must include at least the following information:
(1) The modes of transportation for which payment or reimbursement will be made.
(2) The method by which transportation will be paid.
(3) The length of advance notice required.
(4) The travel-associated costs allowed under public agency policy.

511 IAC 7-42-15 Revocation of consent for special education and related services

Sec. 15. (a) At any time after the parent gives consent for the initiation of special education and related services, the parent may revoke that consent by doing the following:
(1) Putting the revocation of consent in writing.
(2) Signing the revocation.
(3) Submitting the written revocation to licensed personnel.

(b) Within ten (10) instructional days of the date licensed personnel receive the parent's written revocation, the public agency must provide the parent with a copy of the written notice described in section 7 of this rule.

(c) The public agency is not required to convene a CCC or develop an IEP when the public agency receives the parent's written revocation.

(d) The public agency may ask the parent why the parent is revoking consent, but the public agency may not require the parent to provide an explanation, either orally or in writing, as a condition of terminating the provision of special education and related services. The public agency may not use the inquiry to delay or deny the termination of special education and related services.

(e) A parent's revocation of consent covers all instruction, services, and supports included in the student's IEP, including, but not limited to, the following:
(1) Specialized instruction.
(2) Related services.
(3) Accommodations.
(4) Adaptations.
(5) Modifications.
(6) Supports for the student or personnel on behalf of the student.
(7) Assistive technology devices and services.
(8) Placement outside of a general education classroom.

(f) A parent may not revoke consent for fewer than all of the special education and related services included in the student's IEP.

(g) The public agency may not terminate special education and related services until ten (10) instructional days after the parent receives the written notice described in subsection (b) unless the parent provides written consent for services to be terminated prior to the expiration of ten (10) instructional days after receipt of the written notice.

(h) The public agency may not use mediation or a due process hearing to override the parent's revocation of consent for services.

(i) Upon revocation of consent and termination of special education and related services, the student is no longer eligible as a student with a disability and is not entitled to the protections of this article, except as permitted in 511 IAC 7-44-9.

(j) The public agency is not required to amend the student's educational records to remove any

reference to the student's special education and related services when the parent revokes consent for services. This does not preclude a parent from requesting that the student's educational record be amended in accordance with the procedures contained in 511 IAC 7-38-2.

(k) The public agency shall not be considered to be in violation of the requirement to make a free appropriate public education available to the student when the public agency terminates the special education and related services to the student subsequent to the parent's revocation of consent in accordance with this section.

(l) If, after revoking consent, a parent wants the student to receive special education and related services, the parent must request an initial evaluation in accordance with 511 IAC 7-40-4 and the CCC must determine, in accordance with 511 IAC 7-40-6, if the student is eligible for special education and related services as a student with a disability as defined in 511 IAC 7-32-92.

RULE 43. RELATED SERVICES; TRANSITIONS; TRANSFER OF RIGHTS

511 IAC 7-43-1 Related services

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.
(2) Maintenance of a surgically implanted device.
(3) The replacement of a surgically implanted device.

(e) Nothing in subsection (d):

(1) limits the right of a student with a cochlear implant or other surgically implanted devices to receive special education (such as speech and language services) and related services that the student's CCC determines are necessary for the student to receive a free appropriate public education;
(2) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including:
(A) breathing;
(B) nutrition; or
(C) operation of other bodily functions;
while the student is transported to and from school or is at school; or
(3) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 511 IAC 7-36-7(n).

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

(g) Counseling services may:
(1) include:
(A) sharing career information;
(B) administering interest inventories or other career assessment instruments;
(C) providing assistance in career planning;
(D) guiding the identification of and planning for a student's course of study designed to help the student achieve the postschool goals and outcomes; and
(E) assisting the student to:
(i) understand and cope with a disability;
(ii) cope with a personal problem or crisis; and
(iii) develop and implement a behavioral intervention plan;
(2) be provided:
(A) in the instructional setting or another setting; and
(B) on a regular schedule or an as-needed basis; and
(3) be provided by:
(A) school social workers or school counselors;
(B) school, clinical, or child psychologists;
(C) administrators or teachers;
(D) related services personnel;
(E) vocational rehabilitation counselors; or
(F) other qualified professionals.

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

(i) Requirements for interpreting services are as follows:
(1) Interpreting services include the following:
(A) When used with respect to students who are deaf or hard of hearing, the following:
(i) Oral transliteration services.
(ii) Cued language transliteration services.

(iii) Sign language transliteration and interpreting services.
(iv) Transcription services, such as the following:
(AA) Communication access real time translation (CART).
(BB) C-Print.
(CC) TypeWell.
(B) Special interpreting services for students who are deaf-blind.
(2) Individuals who provide sign language transliteration and interpreting services described in subdivision (1)(A)(iii) must be certified to interpret in an educational setting.

(j) Medical services for the purpose of diagnosis and evaluation must be:
(1) considered a related service provided at no cost to the parent only if:
(A) a diagnosis and evaluation of a medically related disability is needed to determine eligibility for special education or related services; or
(B) ordered by a hearing officer to determine a student's eligibility for special education and related services or appropriate services for an eligible student; and
(2) provided by a physician with an unlimited license to practice medicine.

(k) Occupational therapy services:
(1) may include:
(A) evaluating:
(i) developmental levels;
(ii) gross and fine motor functioning; and
(iii) self-care skills;
(B) developing, improving, or restoring functions impaired or lost through:
(i) illness;
(ii) injury; or
(iii) deprivation;
(C) improving ability to perform tasks for independent functioning if functions are impaired or lost;
(D) preventing, through early intervention, initial or further impairment or loss of function;
(E) designing or adapting:
(i) materials;
(ii) equipment; or
(iii) the educational environment;
to meet a student's needs;
(F) consulting with:
(i) parents;
(ii) teachers;
(iii) paraprofessionals; and
(iv) other related services personnel;
regarding activities that can assist in meeting the goals of therapy; and
(2) must be provided by a:
(A) certified occupational therapist; or
(B) certified occupational therapy assistant under the supervision of a certified occupational therapist.

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

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

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

(o) Psychological services must be provided by school, clinical, and child psychologists or psychiatrists who are appropriately licensed and trained to provide the following services:
(1) Administering psychological and educational assessments as a member of the multidisciplinary team.
(2) Interpreting assessment results.
(3) Obtaining, integrating, and interpreting information regarding student behavior and conditions related to learning.
(4) Consulting and working with school personnel and parents in planning and developing a student's IEP to meet the special needs of a student as indicated by the following:
(A) Psychological assessments.
(B) Interviews.
(C) Direct observation.

(D) Behavioral assessments.
(5) Planning and managing a program of psychological services, including psychological counseling for students and parents.
(6) Assisting in developing positive behavioral intervention strategies.
(p) Recreation services may include the following:
(1) Assessment of leisure function.
(2) Therapeutic recreation services.
(3) Recreation programs in the schools and community agencies.
(4) Leisure education.

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

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

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

(t) School social work services:
(1) may include:
(A) serving as a member of the educational evaluation multidisciplinary team with responsibilities that may include the preparation of a social and developmental history on a student;
(B) group and individual counseling with the student and family;
(C) working, in partnership with parents and others, on those problems in a student's home, school, and community life that affect the student's adjustment in the educational setting;
(D) mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; or
(E) assisting in developing positive behavioral intervention strategies; and
(2) must be provided by a licensed school social worker.

(u) Transportation:
(1) may include:
(A) travel:
(i) to and from the educational setting and between educational settings;
(ii) in and around the educational setting;
(iii) to and from related services that are provided outside the educational setting; or
(iv) for participation in nonacademic and extracurricular activities if transportation is provided to nondisabled students; or
(B) any service not provided to nondisabled students, including:
(i) special bus routes;
(ii) special or adapted vehicles;
(iii) aides in attendance;
(iv) separate or different modes of transportation, such as taxi or individual transportation; or

(v) special equipment such as oxygen, lifts, and ramps;
(2) must be provided by the:
(A) public agency, directly or by contract; or
(B) student's parent, but only if the parent is willing to provide transportation, in which case the parent is entitled to reimbursement at the rate that employees of the public agency are reimbursed for travel expenses; and
(3) must be provided:
(A) when the student:
(i) needs assistance moving from place to place within the educational setting;
(ii) is enrolled in a school other than the school the student would attend if not disabled, including another building in the same school corporation, to another school corporation, or to a state-operated school; or
(iii) is enrolled as a residential student in a public or private residential facility, in accordance with 511 IAC 7-42-14;
(B) when issues about the student's special physical health, mobility, or behavior require special consideration for type of transportation safety, supervision, assistance, or time in transit; or
(C) when the student:
(i) requires a shortened instructional day;
(ii) needs a related service that is provided:
(AA) at a site other than the school attended by the student; or
(BB) outside of the instructional day; or
(iii) for other reasons, cannot be transported with nondisabled students or needs special assistance or consideration.

511 IAC 7-43-2 Transition from early intervention services (Part C) to early childhood special education (Part B)

Sec. 2. (a) The public agency's obligation to make a free appropriate public education available to a student with a disability begins on the student's third birthday.

(b) The public agency must do the following:
(1) Establish, maintain, and implement policies and procedures to assist the child participating in early intervention programs under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., who will be participating in early childhood special education experience a smooth and effective transition in a manner consistent with Part C of the Act.
(2) Participate in transition planning conferences convened by the Part C service coordinator, with the approval of the parent of the child. The transition planning conferences must be conducted in accordance with Part C of the Individuals with Disabilities Education Act.

(c) With parental consent, at least six (6) months prior to a student's third birthday, the state-operated or state-supported program must transmit to the school corporation of legal settlement, the most recent:
(1) IFSP;
(2) family service plan report; and
(3) evaluation reports from any source.

(d) By the date of the third birthday of a student who may be eligible for early childhood special education, the public agency must do the following:
(1) Complete its evaluation.
(2) Convene a CCC to determine eligibility for special education and related services.
(3) If the student is eligible, develop an IEP for the student, taking into consideration the student's IFSP and the other general and special factors listed in 511 IAC 7-42-6(b) and 511 IAC 7-42-6(c).
(4) Implement the IEP.

(e) If a student's third birthday occurs during the summer and the CCC determines the student:
(1) requires extended school year services, the student's IEP must state that services will be initiated during the summer of the student's third birthday; or
(2) does not require extended school year services, the student's IEP shall state that services will be initiated at the beginning of the upcoming school year.

511 IAC 7-43-3 Review of transition age students

Sec. 3. Upon obtaining written consent from parents or students of legal age to disclose confidential educational records in accordance with 511 IAC 7-38-1(q)(1), the public agency and the vocational rehabilitation counselor must confer at least one (1) time per year to review transition age students. If the public agency and the vocational rehabilitation counselor believe a student may be eligible for and benefit from vocational rehabilitation services, the public agency must do the following:

(1) Obtain written consent, as defined in 511 IAC 7-32-17, from the parent or the student of legal age to invite the vocational rehabilitation counselor to the CCC meeting that will take place during the school year before the student's projected final year of school, or earlier, if appropriate.

(2) Provide adequate notice to the vocational rehabilitation counselor regarding the CCC meeting described in subdivision (1). The notification to the vocational rehabilitation counselor must include the:

(A) name;
(B) address;
(C) age; and
(D) identified disability;

of the student for whom the CCC meeting is being conducted.

(3) At the CCC meeting, orally advise and provide written materials to the student and the parent that describe the:

(A) array of vocational rehabilitation services that may be available; and
(B) process to access those services.

511 IAC 7-43-4 Transition individualized education program

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) high school diploma as defined in 511 IAC 6-7.1-1(e); or
(B) certificate of completion.
(4) The transition services, as defined at 511 IAC 7-32-100, needed to assist the student in reaching postsecondary goals, including the individuals and agencies identified for implementing the transition services.
(5) If appropriate based upon the transition services identified in subdivision (4), documentation that the CCC reviewed information, and the public agency presented written information to the parent and student, regarding available adult services provided through state and local agencies and other organizations to facilitate student movement from the public agency to adult life. Adult services may include, but are not limited to, services provided by the following:
(A) A vocational rehabilitation services program.
(B) The department of workforce development.
(C) The Social Security Administration.
(D) The bureau of developmental disabilities services.
(E) A community mental health center.
(F) A community rehabilitation program.
(G) An area agency on aging.
(6) The following:
(A) A statement of measurable annual goals, including academic and functional goals designed to support and align with the student's postsecondary goals, that meet:
(i) the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
(ii) each of the student's other educational needs that result from the student's disability.
(B) For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.
(7) A description of the following:
(A) How the student's progress toward meeting the postsecondary and annual goals described in subdivision (6) will be measured.
(B) When periodic reports on the progress the student is making toward meeting the postsecondary and annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
(8) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
(A) Advance appropriately toward attaining the postsecondary and annual goals.
(B) Be involved in and make progress in the general education curriculum in accordance with subdivision (1) and participate in extracurricular and other nonacademic activities.

(C) Be educated and participate with other students with disabilities and nondisabled students in the activities described in this article.

(9) An explanation of the extent, if any, to which the student will not participate with nondisabled students in:

(A) the general education environment; and

(B) extracurricular and other nonacademic activities.

(10) A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:

(A) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.

(B) If the CCC determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:

(i) of why the student cannot participate in the general assessment;

(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.

(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.

511 IAC 7-43-5 Transfer of rights to student

Sec. 5. (a) Except as provided in subsection (b), when a student becomes a student of legal age, as defined in 511 IAC 7-32-91, all of the rights that were formerly provided to the student's parents under this article transfer to the student of legal age.

(b) If a student who has attained eighteen (18) years of age has:
(1) a guardian appointed under IC 29-3, the rights under this article must transfer to the guardian unless specifically provided otherwise in the guardianship order; or
(2) an educational representative appointed according to the procedures in section 6 of this rule, the rights under this article must transfer to the student's educational representative.

(c) When a student who is incarcerated in an adult or juvenile, state or local correctional institution attains eighteen (18) years of age, the student must have all of the rights that were formerly provided to the student's parents under this article.

(d) At a CCC meeting not later than one (1) year before the student becomes eighteen (18) years of age, the public agency must inform the student and the parent that the parent's rights under this article will transfer to the student at eighteen (18) years of age unless a guardianship or an educational representative has been established for the student. The student's IEP must include a statement that the student and the parent were informed of the transfer of parental rights in accordance with 511 IAC 7-42-6(f)(10).

(e) At the time the student attains eighteen (18) years of age, and unless a guardianship or an educational representative has been established for the student, the public agency must provide written notice to the parent and the student that the rights under this article have transferred to the student.

(f) After rights transfer to the student in accordance with this section, the public agency must provide any notice required under this article to both the parent and the student.

511 IAC 7-43-6 Appointment of an educational representative

Sec. 6. (a) Any student eligible for special education and related services who has become eighteen (18) years of age and has not had a guardian appointed under IC 29-3 may have an educational representative appointed to make educational decisions on the student's behalf if the student:
(1) requests in writing that an educational representative be appointed; or
(2) is certified as unable to provide informed consent under subsection (f).

(b) A student's parent must be appointed to act as the educational representative under this section. If the parent is unavailable, a person trained as an educational surrogate parent under 511 IAC 7-39-2 must be appointed by the public agency to serve as the educational representative.

(c) An appointment of an educational representative under this section may be made as early as sixty (60) calendar days prior to the student's eighteenth birthday.

(d) The public agency is not responsible for the cost of appointing an educational representative.

(e) A student who requests that an educational representative be appointed under subsection (a)(1) may request, in writing, that the appointment be revoked.

(f) For an educational representative to be appointed under subsection (a)(2), two (2) persons described in subsection (g) must, based on personal examination or interview, certify in writing that the student is incapable of providing informed consent and that the student has been informed of this decision. As used in this section, “incapable of providing informed consent” means that the student is unable to do the following:
(1) Understand on a continuing or consistent basis the nature, extent, and probable consequences of a proposed educational program or option.

(2) Make a rational evaluation on a continuing or consistent basis of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program.
(3) Communicate such understanding in a meaningful way.

(g) Persons who certify in writing that a student is incapable of providing informed consent must be one (1) of the following:
(1) A physician with an unlimited license.
(2) A licensed nurse practitioner.
(3) A licensed clinical psychologist.
(4) A licensed psychologist.
(5) A licensed school psychologist.
(6) A licensed clinical social worker.

(h) Persons providing certification described in subsection (f) cannot be related to the student.

(i) At least one (1) of the persons providing certification described in subsection (f) cannot be employed by the public agency serving the student.

511 IAC 7-43-7 Summary of performance

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) leaves high school with a certificate of completion; or
(3) exceeds the age eligibility for special education and related services under this article.

(b) A public agency may provide a student with a summary of performance when the student withdraws from high school after:
(1) an exit interview is conducted; and
(2) the student's parent and principal consent to the withdrawal as specified in IC 20-33-2-28.5(b).

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

(d) A summary of performance should include, but not be limited to, the following items:
(1) Basic demographic information about the student.
(2) Postsecondary goals that:
(A) take into account the student's educational program; and
(B) reflect the:
(i) interests;
(ii) preferences; and
(iii) strengths;
of the student.
(3) A summary of the student's academic achievement and functional performance. Information that can be used to prepare the summary includes, but is not limited to, the following:
(A) An academic transcript.
(B) Academic assessment results.
(C) Assessments of functional skills or adaptive behavior that explain a student's ability to:
(i) live;
(ii) work; and
(iii) access the community.
(D) Work force readiness assessments, career exploration internships, cooperative education experiences, or workforce credentials under IC 20-32-4-4(6)(A).
(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.

RULE 44. DISCIPLINE PROCEDURES

511 IAC 7-44-1 Removals in general

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.

(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 bus transportation is 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.

511 IAC 7-44-2 Disciplinary change of placement

Sec. 2. (a) 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.
(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 removals; 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) The public agency determines on a case-by-case basis whether a series of removals under subsection (a)(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.

(e) 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.

(f) Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-45-10.

(g) 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.

511 IAC 7-44-3 Removals of more than 10 cumulative days that do not result in a change of placement

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) 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 setting.

511 IAC 7-44-4 Removals of more than 10 consecutive days or 10 cumulative days that result in a change of placement

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) 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.

511 IAC 7-44-5 Manifestation determinations

Sec. 5. (a) Within ten (10) instructional days of any decision to change the placement of a student with a disability for violating a code of student conduct, the CCC must meet to determine whether the student's behavior is a manifestation of the student's disability.

(b) All relevant information in the student's file must be reviewed, including the student's IEP, any teacher observations, and any relevant information provided by the parent, to determine if the conduct in question was:
(1) caused by, or had a direct and substantial relationship to, the student's disability; or
(2) the direct result of the public agency's failure to implement the student's IEP.

(c) The conduct must be determined to be a manifestation of the student's disability if the CCC determines that either of the conditions in subsection (b)(1) or (b)(2) were met.

(d) If the conduct was the direct result of the public agency's failure to implement the IEP, the public agency must take immediate steps to remedy those deficiencies.

(e) If the CCC determines that the conduct was a manifestation of the student's disability, the student's CCC must:
(1) either:
(A) conduct a functional behavioral assessment, unless the public agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or
(B) if a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and
(2) except as provided in section 6 of this rule, return the student to the placement from which the student was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(f) If the CCC determines that the conduct is not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as those procedures would be applied to students without disabilities. However, the student must, during any removal that is ordered, continue to receive appropriate services. The student's CCC must determine 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.

(g) Services required by subsection (f) may be provided in an interim alternative education setting. The student's CCC determines the interim alternative education setting for services.

(h) The parent of a student with a disability who disagrees that the student's conduct was not a manifestation of the student's disability 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.

(i) Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing under 511 IAC 7-45-10.

(j) In reviewing a decision with respect to the manifestation determination, 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 student's conduct was a manifestation of the student's disability.

511 IAC 7-44-6 Interim alternative educational setting; weapons, drugs, and serious bodily injury

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;
(2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; 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 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 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.

511 IAC 7-44-7 Substantial likelihood of injury to student or others

Sec. 7. (a) If a public agency believes that maintaining the student in the current educational placement (the student's placement prior to a removal) is substantially likely to result in injury to the student or others, the public agency may request an expedited due process hearing to determine an appropriate placement for the student. The student's placement during an expedited due process hearing is governed by section 8 of this rule.

(b) The hearing officer, in accordance with 511 IAC 7-45-7, must:
(1) hear the matter; and
(2) make a determination regarding the student's placement.

(c) In making the determination, an independent hearing officer may order a change of placement to an appropriate interim alternative educational setting for not more than forty-five (45) instructional days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(d) Nothing in this rule shall prohibit a public agency from seeking injunctive relief to:

(1) remove a student with a disability from school; or
(2) change a student's current educational placement;
if the public agency believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or others.

511 IAC 7-44-8 Placement of the student during due process hearings or appeals of disciplinary action

Sec. 8. (a) If a parent requests a hearing or an appeal to challenge a removal or the manifestation determination, the student must remain in the interim alternative educational setting:
(1) pending the decision of the independent hearing officer; or
(2) until the time period for the disciplinary action expires;
whichever occurs first, unless the parent and the public agency agree otherwise.

(b) If a student is placed in an interim alternative educational setting under section 6 or 7 of this rule, and the student's parent opposes the public agency's proposed change in educational placement after expiration of the forty-five (45) instructional days, during the pendency of any proceeding to challenge the proposed change in placement, the student remains in the interim alternative education setting:
(1) pending the decision of the hearing officer; or
(2) until the expiration of the forty-five (45) instructional days;
whichever occurs first, unless the parent and the school agree otherwise.

(c) If the public agency and the parent are unable to resolve the dispute in subsection (b) regarding the proposed change of placement after the expiration of the forty-five (45) instructional days, and the public agency maintains that the current placement (the placement prior to removal to the interim alternative education setting) is substantially likely to result in injury to the student or others, the public agency may request the following:
(1) An expedited due process hearing under section 7 of this rule.
(2) The independent hearing officer to extend the interim alternative education placement.

511 IAC 7-44-9 Protections for students not yet eligible for special education and related services

Sec. 9. (a) A student who has:
(1) not been determined eligible for special education and related services under this article; and
(2) engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described in this rule;
may assert any of the protections provided for in this article if the public agency had knowledge, as described in subsection (b), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

(b) A public agency shall be deemed to have knowledge that a student is a student with a disability if any of the following have occurred:
(1) The parent of the student has expressed concern in writing to licensed personnel of the appropriate public agency, or a teacher of the student, that the student is in need of special education and related services.
(2) The parent of the student or the public agency has requested an evaluation of the student under 511 IAC 7-40-4.
(3) The teacher of the student, or other personnel of the public agency, has expressed specific concern about a pattern of behavior demonstrated by the student directly to supervisory personnel of the public agency.

(c) A public agency shall not be deemed to have knowledge under subsection (b) if any of the following has occurred:
(1) The parent of the student has not allowed an evaluation of the student under 511 IAC 7-40.
(2) The parent of the student has refused services under this article or the Individuals with Disabilities Education Act.
(3) The public agency:

(A) conducted an educational evaluation;
(B) determined that the student was not a student with a disability under this article; and
(C) provided notice to the student's parents of the determination consistent with 511 IAC 7-42-7.
(4) The parent of the student has revoked consent for special education and related services in accordance with 511 IAC 7-42-15.

(d) If a public agency does not have knowledge, in accordance with subsections (b) and (c), that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who have engaged in comparable behaviors, subject to subsections (e) and (f).

(e) If a referral is made for an initial educational evaluation of a student during the time period in which the student is subjected to:
(1) suspension;
(2) expulsion; or
(3) placement in an interim alternative educational setting;
the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

(f) As used in this rule, "expedited evaluation" means that the public agency conducts the evaluation and convenes the CCC within twenty (20) instructional days from the date of the parent's written consent for the evaluation. A copy of the educational evaluation report shall be provided to the parent at the CCC convened to consider the student's identification and eligibility for special education services.

(g) If the student is determined to be a student with a disability, taking into consideration information:
(1) from the educational evaluation conducted by the public agency; and
(2) provided by the parents;
the public agency shall provide special education and related services in accordance with this article.

511 IAC 7-44-10 Referral to law enforcement and judicial authorities

Sec. 10. (a) Nothing in this article:
(1) prohibits a public agency from reporting a crime allegedly committed by a student with a disability to appropriate authorities; or
(2) prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) When the public agency reports a crime committed by a student with a disability, the public agency must ensure that copies of the education and disciplinary record of the student are transmitted only to the extent the transmission is permitted by the Family Educational Rights and Privacy Act (which includes requiring the receiving authorities to certify in writing that the records will not be disclosed to any other parties) and as required by IC 20-33-7-3, without the prior written consent of the parent or the student of legal age for consideration by the appropriate authorities to whom it reports the crime.

RULE 45. COMPLAINTS, MEDIATION, AND DUE PROCESS PROCEDURES

511 IAC 7-45-1 Complaints

Sec. 1. (a) Any individual, group of individuals, agency, or organization may file a complaint alleging violations of federal or state laws that apply to special education programs. The complaint must:
(1) be in writing;
(2) include a statement alleging that the public agency has violated a requirement of:
(A) this article;
(B) the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.; or
(C) the federal regulations implementing the Individuals with Disabilities Education Act;
(3) include the facts on which the alleged violation is based;

(4) be signed by the complainant or complainants and include contact information of the complainant or complainants; and
(5) be submitted to the:
(A) division of special education; and
(B) public agency serving the student.

(b) If the complaint alleges violations with respect to a specific student, the complaint must also include the following:
(1) The:
(A) name and address of the residence of the student; or
(B) in the case of a homeless student as defined at 511 IAC 7-32-46, name of the student and available contact information for the student.
(2) The name of the school the student is attending.
(3) A description of the nature of the alleged violations with respect to the student, including facts relating to the alleged violations.
(4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

(d) The division of special education shall develop and implement written procedures to investigate and resolve complaints, including complaints filed by organizations or individuals from other states when the complaints meet the requirements of this section. These procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures shall address the following:
(1) Identifying issues in a complaint.
(2) Assigning a complaint investigator.
(3) Conducting an independent investigation, both on site and off site.
(4) Giving the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
(5) Providing the public agency the opportunity to respond to the complaint including the following:
(A) At the discretion of the public agency, a proposal to resolve the complaint.
(B) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation under section 2 of this rule.
(6) Obtaining an extension of time for the investigation only if:
(A) exceptional circumstances exist with respect to a particular complaint; or
(B) the complainant and the public agency involved agree to extend the time to engage in mediation under section 2 of this rule.
(7) Reviewing all relevant information and making an independent determination as to whether the public agency is violating a requirement of:
(A) this article;
(B) Part B of the Individuals with Disabilities Education Act; or
(C) any other applicable Indiana law.
(8) Issuing a written complaint investigation report that addresses each allegation in the complaint, including findings of fact, conclusions, and reasons for the decision.
(9) Conducting a reconsideration of the decision.
(10) Monitoring compliance with the final decision, including the following:
(A) Corrective action.
(B) Technical assistance activities.
(C) Negotiations.

(e) The written procedures shall also include timelines for the following:
(1) The investigation.
(2) The issuance of a report.
(3) Reconsideration.
(4) Monitoring compliance.

(f) The individuals assigned as complaint investigators shall be trained employees of the department of education or other state agencies, as appropriate.
(g) Within ten (10) calendar days of the date the complaint is received by the public agency, the public agency has the discretion to do any of the following:
(1) Respond to the complaint in writing and forward the response to the division of special education and the complainant.
(2) Resolve the complaint with a written agreement signed by the public agency and the complainant. The agreement must:
(A) be forwarded to the division of special education; and
(B) specify whether any issues remain that require investigation.
(3) Agree with a parent who has filed a complaint to engage in mediation under section 2 of this rule.
(4) Notify the division of special education that it should begin investigating the complaint because the public agency will not be exercising the options in subdivision (1), (2), or (3).

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

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

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

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

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

(m) Either the public agency or the complainant may request reconsideration by the director of the division of special education of any part of a complaint report. A request for reconsideration must be submitted to the division of special education within seven (7) calendar days of receiving the complaint report. The request for reconsideration shall:
(1) be in writing;
(2) state the specific portion or portions of the report the party believes should be reconsidered with specific facts to support the request; and
(3) be sent to the director of the division of special education.

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

(o) Corrective action required by the department of education shall be binding on the public agency. The timelines for the public agency to:
(1) submit a corrective action plan; and
(2) achieve compliance;
shall be included in the complaint investigator's report. Compliance with corrective action required by the department of education shall be monitored by the division of special education.

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

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

(r) If a written complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, of which one (1) or more are part of that hearing, the department of education shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limits and procedures described in this section.

(s) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the:
(1) hearing decision is binding on that issue; and
(2) department of education shall inform the complainant to that effect.

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

511 IAC 7-45-2 Mediation

Sec. 2. (a) A request for mediation may be initiated by either the parent or the public agency, but the mediation process cannot begin unless both parties agree to participate. Mediation may be requested to resolve disputes regarding any of the following:
(1) A student's identification and eligibility for services under this article.
(2) The appropriateness of the:
(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.
(4) Reimbursement for services obtained by the parent.

(b) Mediation may occur prior to or concurrent with a request for a due process hearing. A request for mediation shall not:
(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 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 solely because he or she is paid by the department of education to serve as a mediator.

(f) Each session in the mediation process shall be:
(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 is subsection (h), a written, signed mediation 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 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.

511 IAC 7-45-3 Due process hearing requests

Sec. 3. (a) A parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is 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 parents at the time; and

(6) be sent simultaneously to the superintendent of public instruction 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 shall appoint the independent hearing officer on behalf of the public agency. The independent hearing officer shall be an administrative law judge. When a due process hearing request is received, the department of education 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.

511 IAC 7-45-4 Sufficiency of the request for a due process hearing

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, so that the filing party can amend the notice if appropriate.

(d) 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) 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.

511 IAC 7-45-5 Responding to the request for a due process hearing

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;
(ii) procedure;
(iii) assessment;
(iv) record; or
(v) report;
the public agency used as the basis for proposed or refused action.
(C) Other factors that are relevant to the public agency's proposed or refused action.

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

511 IAC 7-45-6 Resolution meeting

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.

(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 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.

511 IAC 7-45-7 Conducting the hearing

Sec. 7. (a) If the due process hearing is requested by the public agency:
(1) due process hearings shall be conducted;
(2) a final written decision reached; and
(3) a copy of the written decision 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 mailed to each of the parties not later than forty-five (45) calendar days after:
(1) the thirty (30) day resolution period in section 6(f) of this rule; or
(2) one (1) of the events in section 6(f)(1) through 6(f)(3) of this rule.

(c) An independent hearing officer may grant specific extensions of time beyond the forty-five (45) day timeline at the request of either party. Any extension of time granted by the independent hearing officer shall be:
(1) in writing to all parties; and
(2) included in the record of the proceedings.

(d) Any party to a due process hearing has the right to the following:
(1) Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities.
(2) Be represented by an individual who is not an attorney as permitted by IC 4-21.5-3-15(b).
(3) Present evidence and:
(A) confront;
(B) cross-examine; and
(C) compel the attendance of;
witnesses.
(4) Conduct discovery in accordance with IC 4-21.5-3, Indiana Rules of Trial Procedure, and this section.
(5) Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing.
(6) A separation of witnesses who are not parties to the dispute.
(7) Obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.
(8) Obtain written or, at the option of the parents, electronic findings of facts and decision.
(9) Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English.

(e) A parent, or the parent's representative, involved in a due process hearing has the right to the following:
(1) Have the student who is the subject of the hearing attend.
(2) Have the hearing opened or closed to the public.
(3) Inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, its agents, or employees, including all tests and reports upon which the proposed action may be based.
(4) Recover reasonable attorney’s fees if a court determines the parent ultimately prevailed at the:
(A) due process hearing;
(B) administrative appeal; or
(C) 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 of the right and the process to appeal the decision and orders.
(4) A notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals.

(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 mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless appealed under 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) initiate an appeal 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, administrative appeal, 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, any appeal, and any subsequent civil action:
(1) The original hearing decision.
(2) The transcript of the hearing.
(3) The exhibits admitted by the independent hearing officer.
(4) All:
(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.

511 IAC 7-45-8 Independent hearing officer qualifications

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, 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.

(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.

511 IAC 7-45-9 Due process hearing appeals

Sec. 9. (a) The state board of special education appeals (board) is established. The board shall have three (3) members appointed by the state superintendent of public instruction. The members of the board shall alternate as chair when conducting impartial reviews. A member of the board:
(1) may not:
(A) be an officer, employee, or agent of a public agency involved in the education or care of a student; or
(B) have any personal or professional interest that conflicts with the member's objectivity in the appeal process;
(2) must be a resident of Indiana;
(3) must possess knowledge of and the ability to:
(A) understand the provisions of:
(i) the Individuals with Disabilities Education Act (IDEA);
(ii) federal regulations implementing the IDEA;
(iii) legal interpretations of the IDEA by federal and state courts; and
(iv) this article; and
(B) conduct hearings in accordance with appropriate standard legal practice; and
(4) must be subject to any other qualifications established by the superintendent of public instruction.

(b) The general counsel for the department of education shall serve as the agent for the board for the:
(1) receipt of all correspondence; and
(2) filing of documents.

(c) Due process hearing appeals under this section shall be conducted under IC 4-21.5-3 and this section.

(d) A petition for an impartial review of the independent hearing officer's decision by the board may be initiated by any party to the hearing. The petition must be:
(1) in writing;
(2) signed by the party;
(3) filed simultaneously with the department of education and the opposing party;
(4) specific as to the reasons for the exceptions to the independent hearing officer's decision, identifying those portions of the findings, conclusions, and orders to which exceptions are taken; and
(5) filed within thirty (30) calendar days of the date the independent hearing officer's decision is received by the party.

(e) When a petition for review of an independent hearing officer's decision is received by the department of education, the department of education shall do the following:
(1) Notify each member of the board that a petition for review has been filed.
(2) Provide each member with a copy of the following:
(A) The petition for review.
(B) The independent hearing officer's findings, conclusions, and orders.
(C) A transcript of the hearing.
(D) Exhibits.
(E) Pleadings.
(F) Exceptions.
(G) Motions.
(H) Requests.
(I) Any other papers filed with the independent hearing officer or the department of education regarding the hearing.

(f) Any party to a due process hearing for which a petition for review has been filed may, within ten (10) calendar days from the date on which the petition for review is filed with the department of education, file a reply to the petition for review.

(g) Any petition for review that does not comply with the requirements of subsection (d) may be dismissed, in whole or in part, at the discretion of the board. Only matters raised in the initial due process hearing may be raised in a petition for review.

(h) If no petition for review is filed, or is not filed in a timely manner, the decision of the independent hearing officer shall become the decision of the board.

(i) Within thirty (30) calendar days of the receipt of a petition for review by the department of education, the board shall:
(1) conduct an impartial review of the findings and decision appealed;
(2) prepare a written decision; and
(3) mail the written decision via certified mail, return receipt requested, to all parties.
At the option of the parent, the parent's copy of the decision may be in written or electronic format. Specific extensions of time may be requested by any party to the appeal and granted by the chair of the board. The chair shall respond, in writing, to all parties when a request for extension is made. The chair may grant an extension of time to file a petition for review under subsection (d) provided the request is filed within thirty (30) calendar days of the date the independent hearing officer's decision is received by the party.

(j) The board, in conducting an impartial review, shall review the entire record of the due process hearing to ensure the procedures of the hearing were consistent with the requirements of sections 3 through 8 of this rule. The board, at its discretion, must afford the parties an opportunity for oral or written argument, or both. The board shall not disturb the findings of fact, conclusions of law, or orders of the independent hearing officer unless the board finds the independent hearing officer's decision to be one (1) or more of the following:
(1) Arbitrary or capricious.
(2) An abuse of discretion.
(3) Contrary to law, contrary to a constitutional right, power, privilege, or immunity.
(4) In excess the jurisdiction of the independent hearing officer.
(5) Reached in violation of an established procedure.

(6) Unsupported by substantial evidence.

(k) If the board decides to hear oral argument, the parties shall be notified of the decision in advance of the scheduled proceeding. The oral argument shall be held at a time and place reasonably convenient to all parties in the proceeding.

(l) When the board permits oral argument, each party has the right to be represented by counsel or other individuals with knowledge and training with respect to special education or the problems of students with disabilities. Each party has the opportunity for argument and rebuttal. The board may:
(1) ask questions of any person present to clarify the record; and
(2) at its discretion, exercise the same powers as an independent hearing officer under sections 3 through 8 of this rule.
When the board receives evidence or testimony, the parties shall have the same rights as under section 7 of this rule.

(m) The board, upon completion of its impartial review, shall prepare an independent written decision that:
(1) contains findings of fact, conclusions of law, and, if necessary, orders; and
(2) includes a notice of the following:
(A) The right to seek judicial review of the board's decision.
(B) A party has thirty (30) calendar days from the date the party receives the board's written decision in which to seek judicial review.
(C) An action for attorney's fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after receipt of the board's final decision if no request for judicial review is filed in federal or state civil court.
(D) The decision of the board is a final order unless judicial review in federal or state civil court is sought.

(n) Any party disagreeing with the decision of the board may appeal to a civil court with jurisdiction. Under IC 4-21.5-5-5, an appeal to a state or federal civil court must be filed within thirty (30) calendar days after the date the board's written decision is received by the party. The court shall:
(1) receive the record of administrative proceedings;
(2) hear additional evidence at the request of a party; and
(3) grant the relief it determines to be appropriate, basing its decision on a preponderance of the evidence.

(o) Nothing in this article shall be construed to restrict or limit the rights, procedures, and remedies available under:
(1) the federal or state Constitution;
(2) the Americans with Disabilities Act of 1990;
(3) Title V of the Rehabilitation Act of 1973; or
(4) other federal laws protecting the rights of students with disabilities;
except that before the filing of a civil action under such laws seeking relief that is also available under this article, the procedures under sections 3 through 8 of this rule and this section shall be exhausted to the same extent as would be required had the action been brought under this article.

(p) The costs of the board, including:
(1) travel;
(2) associated expenses; and
(3) reporting services;
shall be borne by the department of education.

(q) The division of special education, after deleting personally identifiable information from the findings, conclusions, and orders of the board, shall do the following:
(1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.
(2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(r) If, as a result of the board's review, the board's decision concurs with the parent's contention that a change of placement is appropriate, the placement ordered by the board shall be treated as a placement agreed upon by the parent and the public agency under section 7(u) of this rule.

511 IAC 7-45-10 Expedited due process hearings and appeals

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.
(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) The independent hearing officer's decision in an expedited due process hearing is appealable to the board of special education appeals (board). The appeal shall be conducted under IC 4-21.5-3 and section 9 of this rule, except that:
(1) the request for review by the board must be filed with the department of education and received by the other parties not later than three (3) business days from the petitioning party's receipt of the independent hearing officer's decision;
(2) any reply to the petition for review must be filed and received by the other parties within three (3) business days of the date the petition for review is filed; and
(3) the board:
(A) shall issue a written decision not later than ten (10) business days from the date of receipt of the request for review;
(B) shall not grant any extensions of time;
(C) shall not hear oral argument in reviewing the decision in an expedited due process hearing; and
(D) at its discretion, may elect to nominate one (1) of its members to review the independent hearing officer's decision and issue a final decision without the participation of the other two (2) board members.

(e) At any time after the initiation of an expedited due process hearing or appeal, the parties may agree to waive the requirements of the expedited process and proceed under:
(1) sections 3 through 6 of this rule for a due process hearing; or
(2) section 7 of this rule for a due process hearing appeal.

511 IAC 7-45-11 Attorney's fees

Sec. 11. (a) Independent hearing officers and the board of special education appeals shall include a notice in their written decisions stating that an action for attorney's fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after receipt of the:
(1) independent hearing officer's final decision if no request for review is filed with the board of special education appeals; or
(2) board of special education appeals' final decision if no request for judicial review is filed in federal or state civil court.

(b) A court, in its discretion, may award reasonable attorney's fees and related costs to:
(1) a prevailing party who is the:
(A) parent of a child with a disability; or
(B) department of education or a public agency against the attorney of a parent who:
(i) files a due process hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation; or
(ii) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
(2) the prevailing department of education or the public agency against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to:
(A) harass;
(B) cause unnecessary delay; or
(C) needlessly increase the cost of litigation.

(c) Attorney's fees awarded shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(d) Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:
(1) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins;
(2) the offer is not accepted within ten (10) calendar days; and
(3) the court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(e) Notwithstanding subsection (d), a court may award attorney's fees and related costs to a parent who:
(1) is the prevailing party; and
(2) was substantially justified in rejecting the settlement offer.

(f) Attorney's fees may not be awarded relating to any meeting of the CCC unless such meeting is convened as a result of an administrative proceeding or judicial action. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action. Attorney's fees may not be awarded for a mediation described in section 2 of this rule that is conducted prior to the filing of the due process hearing.

(g) Unless a court finds that the department of education or the public agency unreasonably protracted the final resolution of the action or proceeding or any other violation of this rule, a court reduces, accordingly, the amount of attorney's fees awarded if the court finds any of the following:
(1) During the course of the action or proceeding, the parent, or the parent's attorney, unreasonably protracted the final resolution of the controversy.
(2) The amount of attorney's fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience.
(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding.

(4) The attorney representing the parent did not provide to the public agency appropriate information in the due process hearing request under sections 3 and 4 of this rule.

(h) A public agency may not use funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., to pay attorney's fees or costs of a party related to an action or procedure under the Individuals with Disabilities Education Act and this article.

Rule 46. Child Count and Data Collection

511 IAC 7-46-1 Federal child count procedures

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 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.
(2) Include in its report a certification signed by an authorized official of the department of education that the count is accurate and unduplicated.

(c) The child count report 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 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 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 must be reported in a manner that does not result in disclosure of data identifiable to individual students.

511 IAC 7-46-2 State child count procedures

Sec. 2. (a) On December 1 of each year, each public agency must count the number of school age students identified as disabled and receiving a free appropriate public education consistent with the requirements of this article on that date. For purposes of this count, school age students are students who are five (5) years of age and are eligible to be enrolled in kindergarten during the count year and students who become twenty-two (22) years of age during the school year. This count determines the additional state special education funds allocated to the public agency. If December 1 is not a school or program day, the closest instructional day must be used for the count.

(b) The department of education must, not later than February 5 each year, report to the Indiana state budget committee:
(1) an unduplicated count of students in programs for:
(A) severe;
(B) mild; and
(C) moderate;
disabilities; and
(2) a duplicated count for students in programs for communication disorders who are also served in another special education program.
This count determines the amount of additional state special education funds available to public agencies for the operation of special education programs.

(c) The state child count report must include the following:
(1) A nonduplicated count of students receiving a free appropriate public education consistent with the requirements of this article in one (1) of the programs for severe disabilities as defined by IC 20-43-7-2. A student may not be included in the nonduplicated count in programs for severe disabilities and in the nonduplicated count in programs for mild or moderate disabilities.
(2) A nonduplicated count of students receiving a free appropriate public education consistent with the requirements of this article in one (1) of the programs for mild and moderate disabilities as defined by IC 20-43-7-3. A student may not be included in the nonduplicated count in programs for mild or moderate disabilities and in the nonduplicated count in programs for severe disabilities.
(3) A duplicated count of students in programs for communication disorders, even if the student is served in another program.

(d) The state child count report must also include a cumulative count of students who received homebound instruction up to and including December 1 of the current year and each student who received homebound instruction after December 1 of the prior school year. A student may be included in the cumulative count of students in homebound programs even if the student also is included in any of the following:
(1) The nonduplicated count in programs for severe disabilities.
(2) The nonduplicated count in programs for mild and moderate disabilities.
(3) The duplicated count in programs for communication disorders.
(4) The state preschool count.

(e) The department of education 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:
(A) is accurate; and
(B) meets all state reporting requirements.
(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.

511 IAC 7-46-3 State preschool child count procedures

Sec. 3. (a) On December 1 of each year, each public agency must count the number of preschool students identified as disabled and receiving a free appropriate public education consistent with the requirements of this article on that date. For purposes of this count, preschool students are:
(1) three (3) years of age through five (5) years of age; and
(2) not eligible to enroll in kindergarten during the count year.
This count determines the state preschool special education funds allocated to the public agency. If December 1 is not a school or program day, the closest instructional day must be used for the count.

(b) The department of education must, not later than February 5 each year, report to the Indiana state budget committee an unduplicated count of students in preschool special education programs. This count determines the amount of state preschool special education funds available to public agencies for the operation of special education programs.

(c) The department of education 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:
(A) is accurate; and
(B) meets all state reporting requirements.
(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.

511 IAC 7-46-4 Data collection

Sec. 4. (a) Each public agency must, on an annual basis, count the number of students with disabilities by race, ethnicity, limited English proficiency status, gender, and disability category who:
(1) are receiving a free appropriate public education;
(2) are participating in general education;
(3) are in:
(A) separate classes;
(B) separate schools or facilities; or
(C) public or private residential facilities;
(4) for each year from fourteen (14) years of age to twenty-one (21) years of age, stopped receiving special education and related services because of program completion (including graduation with a high school diploma as defined in 511 IAC 6-7.1-1(e)), or other reasons, and the reasons why those students stopped receiving special education and related services; and
(5) under 511 IAC 7-44-6 or 511 IAC 7-44-7, are removed to an interim alternative educational setting, the acts or items precipitating those removals, and the number who are subject to long-term suspensions or expulsions.

(b) In addition to the data collected in subsection (a), each public agency must, on an annual basis, provide to the department of education the following data:
(1) The number and percentage of students with disabilities by:
(A) race;
(B) gender; and
(C) ethnicity;
who are receiving early intervening services as defined in 511 IAC 7-32-29.
(2) The incidence and duration of disciplinary actions of students with disabilities by:
(A) race;
(B) ethnicity;
(C) limited English proficiency status;
(D) gender; and
(E) disability category;

including removals (suspensions) of one (1) day or more.
(3) The number and percentage of students with disabilities who are removed to alternative educational settings or expelled as compared to nondisabled students who are removed to alternative educational settings or expelled.
(4) The number of due process hearing requests filed under 511 IAC 7-45-3 and the number of due process hearings conducted.
(5) The number of due process hearings requested under 511 IAC 7-44 and the number of changes in placements ordered as a result of those hearings.
(6) The number of mediations held in accordance with 511 IAC 7-45-2 and the number of settlement agreements reached through such mediations.

(c) Each public agency must, on an annual basis, provide the department of education with any other program information that may be required by the Secretary of the United States Department of Education. The department of education will annually inform the public agency of the child count procedures and categorical criteria required for the December 1 count.

(d) With regard to the child count data collected, the department of education must annually examine the data collected and report to the state advisory council on the education of children with disabilities on whether there is a significant disproportionality based on race with respect to the:
(1) identification of students as students with disabilities;
(2) identification of students as students with disabilities in accordance with a particular disability described in 511 IAC 7-41;
(3) placement of students in a particular educational setting; and
(4) incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(e) The department of education must require any public agency identified under subsection (d) to do the following:
(1) Review and, if appropriate, revise the:
(A) policies;
(B) procedures; and
(C) practices;
used in the identification or placement of students with disabilities.
(2) Reserve the maximum amount of funds under 511 IAC 7-40-2(a) to provide comprehensive coordinated early intervening services to serve students in the public agency, particularly, but not exclusively, students in those groups that were significantly overidentified under subsection (d).
(3) Publicly report on the revision of:
(A) policies;
(B) practices; and
(C) procedures;
described under subdivision (1).

RULE 47. STATE FUNDING OF EXCESS COSTS

511 IAC 7-47-1 Application from school corporation of legal settlement or charter school

Sec. 1. (a) To the extent that state funds are appropriated, the state superintendent of public instruction 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 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.

511 IAC 7-47-2 Appeal from denial of application

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:
(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 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 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. 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.

TOPIC	RULE
Academic achievement	
definition	7-32-2
Accessible format	7-36-7(d)
Accommodations	
IEP component	7-42-6(f)(6)(A)
service plan component	7-34-5(e)(4)
state and local assessments	7-36-10
teacher of record	
responsibility for	7-32-97(8) and 7-42-8(c)(2)(C)
transition IEP component	7-43-4(h)(10)(A)
Adaptive behavior	
definition	7-32-3
evaluation of (in determining eligibility for)	
Autism spectrum disorder	7-41-1(c)(1)(B)
Blind or low vision	7-41-2(b)(1)(B)
Cognitive disability	7-41-3(e)(1)(C)
Deaf or hard of hearing	7-41-4(b)(1)(B)
Deaf-blind	7-41-5(d)(1)(B)
Multiple disability	7-41-9(b)(1)(C)
Other health impairment	7-41-10(b)(1)(B)
Orthopedic impairment	7-41-11(b)(1)(B)
Traumatic brain injury	7-41-13(c)(1)(C)
summary of performance (information for)	7-43-7(d)(3)(C)
Adequate notice	
definition	7-32-4
of CCC meeting	7-42-2(c)
to Vocational Rehabilitation	7-43-3(2)
Adversely affects educational performance	
definition	7-32-5
Age appropriate transition assessment – see transition assessment	
Alternate assessment - see Assessments	
Alternative school/educational program	
representative must be present at CCC meeting	7-42-3(c)(2)
Annual goals	
IEP component	7-42-6(f)(2)(A)
IEP progress report	7-42-6(f)((3)
service plan component	7-34-5(e)(2)
service plan progress report	7-34-5(e)(6)
transition IEP component	7-43-4(h)(6)
transition IEP progress report	7-43-4(h)(7)

TOPIC	RULE
Appeal of hearing officer's decision	
board of special education appeals	7-45-9(a)
cost paid by department of education	7-45-9(p)
expedited appeal	7-45-10(d)
oral argument	7-45-9(j), (k)
requesting an appeal	7-45-9(d)
timeline to request an appeal	7-45-9(d)(5)
for board's decision	7-45-9(i)
written decision	7-45-9(m)
see also - Due process hearing	
Appointment of educational representative – see educational representative	
Assessments	
alternate assessment	
CCC decision	7-36-10(g), (h)
IEP component	7-42-6(f)(6)(B)
definition	7-32-6
state and local assessments	
accommodations	7-36-10(e)
IEP component	7-42-6(f)(6)
participation in	7-36-10(a)
service plan component	7-34-5(e)(4)
transition IEP component	7-43-4(h)(10)
Assistive technology device	
case conference	
consideration	7-42-6(c)(6)
definition	7-32-7
evaluation of student's needs	7-32-8(1)
maintenance	7-36-7(m), (n)
provision	7-36-7(k)
use at home	7-36-7(k), (l)
Assistive technology service	
case conference	
consideration	7-42-6(c)(6)
definition	7-32-8
provision	7-36-7(k)
selection, customization	7-32-8(3)
training	7-32-8(5)
At no cost	
as part of free appropriate public education	7-32-40(1)
as part of special education	7-32-86
copy of education evaluation report	7-40-4(h)(1)
copy of IEP	7-42-6(i)
definition	7-32-9
extended school year services	7-32-39(1)(C)

TOPIC	RULE
At no cost (continued)	
independent educational evaluation	7-40-7(b)
medical services for the purpose of diagnosis and evaluation	7-43-1(j)
textbook fees permitted	7-36-7(j)
use of public or private insurance	7-33-4(a)(2)(B)
Attorneys' fees	
civil action	7-45-11(a)
for prevailing parent	7-45-11(b)(1)
timeline for filing with court	7-45-11(a)
use of Part B funds	7-45-11(h)
Audiological services (related service)	7-43-1(f)
Autism spectrum disorder	
criteria for eligibility	7-41-1
educational evaluation report requirement	7-40-5(f)
Basis of knowledge for student not yet determined eligible (discipline)	7-44-9(b)
Behavioral intervention plan	
definition	7-32-10
when required (disciplinary action)	7-44-5(e)
Benchmarks	
IEP component	7-42-6(f)(2)(B)
definition	7-32-11
transition IEP component	7-43-4(h)(6)(B)
Blind	
blind or low vision eligibility criteria	7-41-2
deaf-blind eligibility criteria	7-41-5
Board of Special Education Appeals	7-45-9
see also - Appeal of hearing officer's decision	
see also - Due process hearing	
Braille	
accessible format	7-36-7(d)(1)
consideration of need by CCC	7-42-6(c)(5)
mode of communication	7-32-64
native language	7-32-66
Business day	
definition	7-32-22(b)

TOPIC	RULE
Calendar day	
Definition	7-32-22(a)
Case conference committee (CCC)	
Definition	7-32-12
local procedures required	7-42-1
mutually agreed date, time, and place	7-42-2(a),(b)
must convene	7-42-5(a)
notice of	7-42-2(c),(d)
parent request for	7-42-5(a)(3)
participants every meeting	7-42-3(b)
excusal provisions	7-42-3(g),(h)
must participate in certain circumstances	7-42-3(c)
public agency must invite	7-42-3(d)
special knowledge or expertise	7-42-3(e)
student may participate	7-42-3(f)
without parent in attendance	7-42-2(b)
Caseload	7-32-13
Certificate of completion	
documentation of student pursuing	7-43-4(h)(3)(B)
does not extinguish eligibility	7-43-7(c)
summary of performance prepared	7-40-3(h)(2) and 7-43-7(a)(2)
Change of educational placement	
definition	7-32-14
written notice	7-42-7(a)
procedural safeguard notice	7-37-1(f)(1)(A)
Charter school	
Article 7 applicable to	7-33-1
definition	7-32-15
is a public agency (school)	7-32-77
Child find	
in general	7-40-1
nonpublic schools and facilities	7-34-2
nonpublic school consultation meetings	7-34-4(c)(1),(3)
nonpublic school due process	7-34-6(a)(1)
not included in proportionate share	7-34-7(i)
Child count	
data collection	7-46-4

TOPIC	RULE
Child count (continued)	
federal procedures	7-46-1
preschool child count	7-46-3
state procedures	7-46-2
Civil action	7-45-9(n)
Cochlear implant	
not a related service	
maintenance of	7-43-1(d)(3)
mapping of	7-43-1(d)(2)
replacement of	7-43-1(d)(4)
surgically implanting	7-43-1(d)(1)
nothing limits right to special services	7-43-1(e)
Cognitive disability	
criteria for eligibility	7-41-3
mild cognitive disability	7-41-3(b)
moderate mental disability	7-41-3(c)
severe mental disability	7-41-3(d)
Communication disorder – see Language or speech impairment	
Complaint	
Definition	7-32-16
filing a complaint	7-45-1(a)-(c)
nonpublic school official	7-34-4(f)-(h)
public agency can resolve	7-45-1(g)-(k)
reconsideration	7-45-1(m)-(n)
students in nonpublic schools	7-34-6(d)
timelines	7-45-1(g)-(n)
violation within one year of complaint	7-45-1(c)
written complaint report	7-45-1(l)
Confidentiality of educational records	
access to educational records	7-38-1
timeline	7-38-1(g)
annual notice of rights	7-38-1(a)-(c)
destruction of educational records	7-38-3
disclosure of educational records	7-38-1
procedures to protect	7-38-3
Consent	
definition	7-32-17
excuse member of CCC	7-42-3(g),(h)
initial special education services	7-42-7(f)
inviting transition agency	

TOPIC	RULE
Consent (continued)	
to CCC	7-42-3(d)
nonpublic school student records	7-38-1(q)(2)
not required if activity is not evaluation	7-40-4(i)
prior to initial evaluation	7-40-4(h)
prior to reevaluation	7-40-8(i)
procedural safeguard notice	7-37-1(f)(2)
public agency access to public benefits	7-33-4
release of records to transition agency	7-43-3
revocation of consent	7-32-17(3)
Consultation	
definition	7-32-18
Consultation and Collaboration	
Definition	7-32-19
Consultation with nonpublic schools	
complaint regarding	7-34-4(f)-(h)
during design/development of services	7-34-4(a)
subjects that must be discussed	7-34-4(c)
timely and meaningful	7-34-4(b)
written affirmation	7-34-4(d),(e)
Continuum of placement options/services	
early childhood programs	7-42-10(b)(5)
elementary and secondary programs	7-42-10(b)(4)
Controlled substance	
definition	7-32-20
interim alternative educational setting	7-44-6
Core academic subjects	
definition	7-32-21
teachers who do not teach	7-36-3(c)
teachers who teach	7-36-3(d)
see also – Highly qualified (HQ)	
Counseling services	
(related service)	7-43-1(g)
Day	
business day	7-32-22(b)
calendar day	7-32-22(a)
definition	7-32-22
instructional day	7-32-22(c)

TOPIC	RULE
Deaf or hard of hearing	
criteria for eligibility	7-41-4
IEP special factor to consider	7-42-6(c)(4)
interpreting services	7-43-1(i)
parent at CCC meeting who is	7-42-5(c)
relationship to language or speech impairment	7-41-8(c)
representative from state operated school as part of multidisciplinary team	7-40-5(b)(4)(B)
Deaf-blind	
criteria for eligibility	7-41-5
Definitions	7-32-1 thru 106
Destruction of information	
definition	7-32-23
educational records	7-38-3
timeline for	7-38-3(a)(4)
Developmental delay	
criteria for eligibility	7-41-6
multidisciplinary team	7-40-5(b)(2)(A)
Directory information	
definition	7-32-24
disclosure of (without consent)	7-38-1(r)(11)
Disciplinary change of placements	
Disciplinary action or proceeding	
behavioral intervention plan	7-44-5(e)(1)
definition	7-32-25
disciplinary change of placement	7-44-2
functional behavioral assessment	7-44-5(e)(1)(A)
interim alternative educational setting substantial likelihood of injury	7-44-7
weapons, drugs, serious injury	7-44-6
manifestation determinations	7-44-5
protections for students not yet eligible	
expedited evaluations	7-44-9(e)
school deemed to have knowledge	7-44-9(b)
school not deemed with knowledge	7-44-9(c)
referral to law enforcement	7-44-10
removals in general	7-44-1
removals not a change of placement	7-44-3

TOPIC	RULE
Disclosure of educational records	
consent not required	7-38-1(q), (r)
consent required	7-38-1(p)
definition	7-32-26
Disproportionality	7-46-4(d)
Drugs - see Controlled substance; Illegal drug	
interim alternative educational setting	7-44-6
Due process hearing	
appeal of written decision	7-45-9
attorney's fees	7-45-11
board of special education appeals	7-45-9(a)
costs of	7-45-7(q)
definition	7-32-27
expedited due process hearing	7-45-10
independent hearing officer	
appointment of	7-45-3(d)
authority	7-45-7(f)
qualifications	7-45-8
issues for a hearing	7-45-7(g)
parental rights	7-45-7(e)
record of hearing	7-45-7(o)
requesting a hearing	7-45-3
resolution meeting	7-45-6
response to hearing request	7-45-5
stay put status	7-45-7(s)-(u)
students in private schools	7-34-6
sufficiency of request for hearing	7-45-4
timeline	
allegation of insufficiency	7-45-4(b)
appeal of hearing officer decision	7-45-9(d)
attorney's fees	7-45-11(a)
civil court appeal	7-45-9(n)
conducting the hearing	7-45-7(a)-(c)
hearing officer's decision	7-45-7(a)-(c)
resolution meeting	7-45-6
responding to hearing request	7-45-5(a)
see also - Appeal of due process hearing	
Duration of services	
definition	7-32-28
IEP component	7-42-6(f)(7)
service plan component	7-34-5(e)(5)
transition IEP component	7-43-4(h)(11)
Early childhood programs	
consideration of IFSP	7-42-6(c)(7)
general education teacher	

TOPIC	RULE
Early childhood programs (continued)	
at CCC	7-42-3(b)(3)
invitation of Part C service coordinator	7-42-3(d)(1)
length/frequency of instructional day	7-36-5(a)
services by third birthday	7-43-2(d)
teacher/student ratio	7-36-5(b)
transition from Part C	7-43-2
Early intervening services	
data collection	7-46-4(b)(1)
definition	7-32-29
disproportionality	7-46-4(e)(2)
in general	7-40-2
proportionate share calculation	7-34-7(f)
response to scientific, research-based interventions notice of	7-40-2(f)
educational evaluation report	7-40-5(g)(2)(A)(ii)
scientifically based research	7-32-81
Educational evaluations	
in general	7-40-3
independent educational evaluation	7-40-7
due process hearing	7-40-7(c)(1)
parent entitled to one	7-40-7(e)
parent request for	7-40-7(a),(b)
reimbursement for	7-40-7(h)
school's response	7-40-7(c)
initial educational evaluation	
by multidisciplinary team	7-40-5(b)
copy of report	7-40-5(h),(j)
meeting regarding report	7-40-5(i)
parent consent required	7-40-4(h)-(j)
parent request to licensed personnel	7-40-4(d)
purpose	7-40-5(a)
written notice regarding	7-40-4(e)
not an evaluation	7-40-3(b)
review of existing data by CCC	
consent not required	7-40-4(i)(1)
initial evaluation	7-40-5(c)
reevaluation	7-40-8(c)(3) and 7-40-8(l)(1)
reevaluation	7-40-8
timeline	
for written notice	7-40-4(d)
for initial evaluation	7-40-5(d)
for reevaluation	7-40-8(d),(e)
to determine no longer eligible	7-40-3(g)
variety of assessments/ sources	7-40-3(f)
Educational evaluation report	
content of report	7-40-5(e)-(g)

TOPIC	RULE
Educational evaluation report (continued)	
copy at no cost to nonpublic school representative	7-40-5(j)
parent	7-40-5(j)
parent may request copy	7-40-4(h)(1)
when copy must be available	7-40-5(h)
Educational records	
charging for copies	7-38-1(h)
confidentiality of	7-38-1
definition	7-32-31
access to	7-38-1
amending	7-38-2
consent	7-38-1(p)
disclosure without consent	7-23-1(o),(q),(r)
destruction of	7-38-3
nonpublic school students	7-38-1(q)(2)
parent access to	7-38-1(e)
timeline for access	7-38-1(g)
transfer to new school	7-38-1(r)(2)
transition agency officials	7-38-1(q)(1)
Educational representative	
60 days prior to 18th birthday	7-43-6(c)
certification in writing	7-43-6(a)(2),(f)
parent appointed	7-43-6(b)
persons who can certify	7-43-6(g)-(i)
public agency not responsible for cost	7-43-6(d)
student requests	7-43-6(a)(1),(e)
Educational surrogate parent (ESP)	
definition	7-32-32
determining need for	7-39-1
homeless student	7-39-2(d)
method of assigning	7-39-2
responsibilities of	7-39-2(e),(f)
ward of the state	7-39-1(b)(3),(e)
Elementary school	
definition	7-32-33
Eligibility	
criteria	7-41-1 to 13
determination of graduation	7-40-6
(effect on eligibility)	7-40-3(g)(1)
termination of	7-40-3(g)
written notice of initial CCC meeting	7-42-4
Emergency preparedness plans	7-36-6(b)
Emotional disability	
criteria for eligibility	7-41-7
relationship to autism	7-41-1(b)(1)
relationship to a learning disability	7-41-12(a)(3)(c)

TOPIC	RULE
Essential components of reading instruction	
definition	7-32-36
determination of eligibility	7-40-6(b)
Evaluation – see Educational evaluation	
Expedited due process hearing	
Appeal of written decision	7-45-10(d)
definition	7-32-37
parent request	7-45-10(a)(1)
school request	7-45-10(a)(2)
timelines	
for hearing officer's decision	7-45-10(b)(1)
to request an appeal	7-45-10(d)(1)
for board's decision	7-45-10(d)(3)
Expedited due process hearing (continued)	
waiver of expedited timelines	7-45-10(e)
Expedited evaluation	
definition	7-32-38
student not yet determined eligible	7-44-9(e),(f)
Expulsion	
data collection	746-4(a)(5) and 7-46-4(d)(4)
student not yet determined eligible	7-44-9(e)
transfer of educational records	7-38-1(n)(2)
Extended school year services (ESY)	
Definition	7-32-39
IEP component	7-42-6(f)(8)
required to be available as necessary	7-36-4(c),(d)
transition IEP component	7-43-4(h)(13)
transition to early childhood services	7-43-2(e)
Extracurricular activities	
access/supplementary aids, services	7-42-10(b)(2)
transportation	7-43-1(u)(1)(A)
Facilities	
comparable instructional environment	7-36-6(a)
written emergency preparedness plans	7-36-6(b)
Field trips, access to	7-42-10(b)(1)(F)
Foster parent – see definition of parent	
Free appropriate public education (FAPE)	
definition	7-32-40

TOPIC	RULE
FAPE (continued)	
early childhood (3rd birthday)	7-43-2(a)
placement in nonpublic school when disagreement about FAPE	7-34-10
requirement to provide	7-33-2(a), (b)
other public agencies	7-33-3(a)
Functional behavioral assessment	
definition	7-32-41
conduct is a manifestation of disability	7-44-5(e)(1)(A)
conduct not a manifestation of disability	7-44-5(f)(3)
eligibility criteria for emotional disability	7-41-7(b)(3)
interim alternative education setting for weapons, drugs, and bodily injury	7-44-6(d)(3)
Functional performance	
definition	7-32-42
General education	
definition	7-32-43
Graduation, participation	
in ceremony	7-42-10(b)(2)(e)
Guns – see Weapon; Interim alternative educational setting	
Hearing - see Due process hearing	
Hearing impairment – see Deaf or hard of hearing	
Homebound instruction	
definition	7-32-45
for student at home/ alternative setting	7-42-11
as least restrictive environment	7-42-11(a)
CCC convene each 60 instructional days	7-42-11(b)
for student with injuries and temporary or chronic illness	7-42-12
Homeless student	
child find responsibility	7-40-1(a)(3)
complaint involving	7-45-1(b)(1)(B)
definition	7-32-46
due process request involving	7-45-3(b)(2)(B)
need for ESP if not in parent's physical custody	7-39-1(b)

TOPIC	RULE
Highly qualified (HQ)	
core academic subject (CAS)	
definition	7-32-21
teachers who do not teach CASs	7-36-3(c)
teachers who teach CASs	7-36-3(d)
definition of HQ teacher	7-32-44
due process/complaints	7-36-2(j)
high objective uniform state standard of evaluation (HOUSSE)	7-32-44(b)(3)(B), 7-36-3(f)
HQ special education teacher	7-36-3
new teacher definition	7-32-67
new elementary teacher	7-32-44(b)(2)(A)
new middle/secondary teacher	7-32-44(b)(2)(B)
nonpublic school students	7-34-5(f)
nonpublic facility placements by CCC	7-42-13(d)
not applicable to preschool teachers	7-36-2(b)(2)
title I paraprofessionals	7-36-2(g)-(j)
veteran teacher definition	7-32-103
veteran elementary/middle/ secondary	7-32-44(b)(3)
Illegal drug	
definition	7-32-47
interim alternative educational setting for drug offense	7-44-6
Incarcerated students (adult facilities)	
least restrictive environment	7-42-10(d)
modifying the IEP	7-42-6(g)(2)
no state assessment participation	7-42-6(g)(1)
transfer of rights at legal age	7-43-5(c)
transition IEP applicability	7-43-4(b)
Independent educational evaluation - see Educational evaluation	
Individualized education program (IEP)	
case conference committee (CCC)	7-42-3
components of IEP	7-42-6(f)
consideration of general factors	7-42-6(b)
consideration of special factors	7-42-6(c)
copy at not cost to parent	7-42-6(i)

TOPIC	RULE
IEP (continued)	
definition	7-32-48
development of IEP	7-42-6
disability category does not determine services	7-42-6(d)
implementation of IEP	
timelines	7-42-8(a)
new student from within state	7-42-8(e)
new student from out of state	7-42-8(f)
least restrictive environment	7-42-10
parent challenge to proposed IEP	7-42-7(j)
parent consent to initial IEP	7-42-7(f)-(i)
review and revision of IEP	7-42-9
revising IEP without a CCC meeting	7-42-9(e)-(g)
role of the general education teacher	7-42-6(e)
transition IEP	7-43-4
written notice regarding proposed IEP	7-42-7
written opinion regarding	7-42-6(j)
Individualized family service plan (IFSP)	
definition	7-32-49
special factor for CCC to consider	7-42-6(c)(7)
transition from Part C to Part B	7-43-2(c)(1)
Infant or toddler with a disability	
definition	7-32-50
Initiation of services or program modifications	
definition	7-32-51
IEP component	7-42-6(f)(7)
service plan component	7-34-5(e)(5)
transition IEP component	7-43-4(h)(11)
Initial educational evaluation - see Educational evaluation	
In-school suspension	7-44-1(d)
Instructional day (length of)	
definition	7-32-22(c)
early childhood programs	7-36-5(a)
elementary and secondary programs	7-36-4(a)
relationship to ESY	7-36-4(c)
Instructional materials	7-36-7(b)-(e)

TOPIC	RULE
Insurance	
use by school	7-33-4
Interagency agreements	7-33-3
Interim alternative educational setting (IAES)	
definition	7-32-53
conduct not a manifestation of disability	7-44-5(f),(g)
cumulative removals not a pattern	7-44-3(b)
weapons, drugs, serious bodily injury 45 instructional day limit	7-44-6(a)
CCC determines setting/services	7-44-6(d
manifestation determination	7-44-6(c)
notification of parent	7-44-6(b)
student remains in IAES	7-44-6(c)
parent may challenge removal	7-44-6(e)
substantial likelihood of injury	
school request expedited hearing	7-44-7(a)
hearing officer IAES placement	7-44-7(c)
school may seek injunction	7-44-7(d)
Interpreter	
as a related service	7-43-1(i)
qualifications	7-36-2(d)
Intervener	
definition	7-32-54
as a related service	7-43-1(i)(1)(B)
Job coach	
definition	7-32-55
paraprofessional	7-32-69(5)
Language or speech impairment	
eligibility criteria	7-41-8
language impairment	7-41-8(e)
speech impairment	7-41-8(f)
multidisciplinary team	
language impairment	7-40-5(b)(2)(B)
speech impairment	7-40-5(b)(2)(C)
Learning disability – see Specific learning disability	
Least restrictive environment	7-42-10
access to programs/services	7-42-10(b)(1)
access to extracurricular activities	7-42-10(b)(2)
continuum of placement options	7-42-10(b)(4)
early childhood continuum	7-42-10(b)(5)

TOPIC	RULE
Least restrictive environment (continued)	
component of	
IEP	7-42-6(f)(9)
transition IEP	7-43-4(h)(14)
placement in home school	7-42-10(a)(3)(C)
physical education	7-42-10(b)(3)
students with chronological peers	7-42-10(a)(9)
Legal settlement (school corporation of)	
definition	7-32-56
evaluation of nonpublic school student	7-34-3
responsibility to assign educational surrogate parent	7-39-2(i)
responsibility for transportation	7-36-4(b) 7-36-8(b) 7-42-14
Length and frequency of services	
definition	7-32-57
early childhood instructional day	7-36-5(a)
IEP component	7-42-6(f)(7)(B)
service plan component	7-34-5(e)(5)
transition IEP component	7-43-4(h)(11)
Licensed personnel	
definition	7-32-58
parent request for evaluation to	7-40-4(d)
parent gives consent for evaluation to	7-40-4(h)
parent gives consent for reevaluation to	7-40-8(i)
Limited English proficiency	
definition	7-32-59
eligibility determination	7-40-6(b)(1)(C)
IEP special factor	7-42-6(c)(3)
paraprofessional	7-36-2(h)(1)
specific learning disability, on student achievement	7-40-5(g)(2)(B)(vi)
learning problem is not result of	7-41-12(a)(3)(F)
Local educational agency	7-32-60
Manifestation determination	
CCC reviews relevant information	7-44-5(b)
conduct in question	
is a manifestation of disability	7-44-5(e)
is not a manifestation of disability	7-44-5(f)
definition	7-32-61
failure to implement IEP	7-44-5(d)
occurs after disciplinary	

TOPIC	RULE
Manifestation determination (continued)	
change of placement	7-44-4(d)
parent can challenge determination	7-44-5(h)-(j)
two conditions determined by CCC	7-44-5(b)(1),(2)
Mediation	
at no cost to parent or school	7-45-2(c)
definition	7-32-62
enforcing mediation agreement via the complaint process	7-45-2(i)
issues that may be mediated	7-45-2(a)
mediation agreements	7-45-2(g),(h)
mediation process	7-45-2
mediator requirements	7-45-2(d)
request for mediation	7-45-2(a)
students in nonpublic schools	7-34-6
Medication administration	7-36-9
Medical services	
definition	7-32-63
for diagnosis and evaluation (related service)	7-43-1(j)
Mental disability – see Cognitive disability	
Mode of communication	7-32-64
Move-in student	
CCC meeting required	7-42-5(a)(4)
implementing IEP	
from another district	7-42-8(e)
from another state	7-42-8(f)
Multi-categorical class permitted	7-42-10(a)(8)
Multidisciplinary team	
conducting an evaluation	7-40-5
educational evaluation report	7-40-5(e)-(g)
definition	7-32-65
Multiple disabilities	
eligibility category	7-41-9
representatives from state operated school as part of Mteam	7-40-5(b)(4)
National instructional materials access center (NIMAC)	7-36-7(h)
National instructional materials accessibility standard (NIMAS)	7-37-7(h), (i)
Native language	7-32-66

TOPIC	RULE
New teacher – see Highly qualified	
Nonpublic school or facility placements by public agencies	
CCC decision	7-42-13(a)
meetings to review/revise IEP may be initiated by nonpublic school/facility	7-42-13(c)
public agency remains responsible	7-42-13(d), (e)
Nonpublic schools	
annual consultation meetings	
complaint regarding	7-34-4(f)-(h)
during design of services	7-34-4(a)
subjects that must be discussed	7-34-4(c)
timely and meaningful	7-34-4(b)
written affirmation	7-34-4(d), (e)
application of rule 34	7-34-1
child find	7-34-2
consultation and collaboration	7-32-19
due process hearings and complaints	7-34-6
evaluations for students living outside of the district	7-34-3
final decision regarding services	7-34-5(a), (b)
Part B fund requirements	
child count	7-34-7(a)(3)
carryover period	7-34-7(h)
supplement but not supplant	7-34-7(g)
property, equipment, supplies	7-34-9
proportionate share	
age 3 to 5	7-34-7(d), (e)
before designating funds for early intervening services	7-34-7(f)
cost of evaluations/reevaluations not counted in	7-34-7(i)
school age	7-34-7(b), (c)
reimbursement for failure to provide FAPE	7-34-10
service plans	7-34-5(d), (e)
services, location, transportation	7-34-8
Occupational therapy (related service)	7-43-1(k)
Orientation and mobility	
definition	7-32-68
as a related service	7-43-1(l)
Orthopedic impairment	7-41-11

TOPIC	RULE
Other health impairment	7-41-10
Paraprofessional	
as a related service	7-43-1(c)(17)
definition	7-32-69
pre-service and in-service required	7-36-2(f)
title I highly qualified requirements	7-36-2(g)-(i)
under supervision of	7-36-2(e)
Parent	
counseling (related service)	7-43-1(m)
definition	7-32-70
educational surrogate parent (ESP)	7-39-1 and 2
participation with public agency	7-36-1
Personally identifiable information	
definition	7-32-73
Personnel	
definition of licensed	7-32-58
highly qualified teachers	7-36-3
must be licensed/certified	7-36-2
paraprofessionals under supervision	7-36-2(e)
Physical education	
definition	7-32-74
participation with non-disabled students	7-42-10(b)(3)
Physical therapy (related service)	7-43-1(n)
Print instructional materials	
accessible format	7-36-7(d)
CCC determines need for	7-36-7(c)
definition	7-32-75
timely manner	7-36-7(h)
Private schools – see Nonpublic schools	
Procedural safeguards, notice of	
contents	7-37-1(f)
native language/mode of communication	7-37-1(b), (c)
notice by electronic mail	7-37-2
parent consent required	7-37-1(f)(2)
required to be given to parent	7-37-1(d)
Program monitoring	7-35-1
Progress report	
IEP component	7-42-6(f)(3)
service plan component	7-34-5(e)(6)

TOPIC	RULE
Progress report (continued)	
transition IEP component	7-43-4(h)(7)
Protections for students not yet eligible for special education and related services	7-44-9
Psychological services	
(related service)	7-43-1(o)
Public agency	
definition	7-32-77
responsibility for FAPE	7-33-2 and 3
Qualified professionals – see Multidisciplinary team	
Recreation services	
(related service)	7-43-1(p)
Reevaluation – see Educational evaluation	
Referral	
request for educational evaluation parent or public agency request	7-40-4(a)
public agency must initiate after comprehensive and coordinated early intervening services	7-40-2(f)(4)
public agency must initiate when suspected learning disability due to lack of adequate progress	7-40-4(b)
to state-operated school	7-40-3(d)
Rehabilitation counseling	
(related service)	7-43-1(q)
Related services	
definition	7-32-79
services included	7-43-1
Request for an educational evaluation – see Referral	
Residential services – see State funding of excess costs	
Response to scientific, research-based interventions	
collection of progress monitoring data	7-40-3(b)(4), 7-40-4(i)(4) 7-40-8(c)(4)
definition	7-32-81
notice of interventions	7-40-2(f)
specific learning disability educational evaluation report	7-40-5(g)(2)(A)(ii)

TOPIC	RULE
Response to scientific, research-based interventions (continued)	
eligibility criteria	7-41-12(a)(2)(A)
School calendar	7-36-4
School health services (related service)	7-43-1(r)
School nurse services (related service)	7-43-1(s)
School social work services (related service)	7-43-1(t)
Serious bodily injury	
definition	7-32-83
interim alternative education setting	7-44-6
Special education	
definition	7-32-86
Special education planning district	
definition	7-32-87
Special education programs	7-33-2
Specially designed instruction	
definition	7-32-88
Specific learning disability	
criteria for eligibility	7-41-12
multidisciplinary team	7-40-5(b)(3)
written educational evaluation report	7-40-5(g)
State educational agency	
definition	7-32-89
may initiate a due process hearing	7-45-3(a)
responsible for general supervision	7-33-1(b)
State funding of excess costs	
appeal for denial of application	7-47-2
application for	7-47-1
"Stay put" during due process hearing or appeal of disciplinary action (IAES)	7-44-8
"Stay put" during due process hearing	7-45-7(s)-(u)
Student	
definition	7-32-90
Student of legal age	
definition	7-32-91

TOPIC	RULE
Student with a disability	
definition	7-32-92
Student with a print disability	
definition	7-32-93
determination of	7-36-7(g)
Summary of performance	
components of	7-43-7(d)
definition	7-32-94
when schools may provide	7-40-3(i) and 7-43-7(b)
when schools must provide	7-40-3(h) and 7-43-7(a)
Supplementary aids and services	
definition	7-32-95
IEP component	7-42-6(a)(12)
relation to nonacademic and extracurricular activities	7-42-10(b)(2)
service plan component	7-34-5(e)(3)
transition IEP component	7-43-4(h)(8)
Supportive services (related service)	7-43-1(c)(17)
Surrogate parent - see Educational surrogate parent	
Suspension	
data collection	7-46-4(a), (b), (d)
evaluation during suspension	7-44-9(e)
in-school suspension	7-44-1(d)
removal is a suspension	7-44-1(f)
suspension from the bus	7-44-1(e)
suspension is a removal	7-44-1(d)
transfer of student records related to	7-38-1(n)(2)
Teacher of record	
appropriate license	7-36-2(a)
CCC participation	7-42-3(b)
communication with nonpublic school	7-32-19(2)
definition	7-32-97
responsibilities	7-42-8(c)
revision of IEP without CCC meeting	7-42-9(g)
Teacher of service	
definition	7-32-98
Textbook rental fees	
no violation of "at no cost" requirement	7-36-7(j)
definition of "at no cost"	7-32-9

TOPIC	RULE
Transfer of rights	
at legal age (age 18)	7-43-5
transition IEP component	7-43-4(h)(15)
public agency informs by age 17	7-43-5(d)
written notice required at age 18	7-43-5(e)
Transition assessment	
transition IEP	7-43-4(h)(1), (2)
Transition IEP	
definition	7-32-48(b)
components of	7-43-4(h)
not applicable to	7-43-4(b)
when to develop	7-43-4(a) and 7-42-6(a)
Transition planning (early childhood)	
definition	7-32-99
from Part C to Part B	7-43-2
Transition services (post-secondary)	
definition	7-32-100
review of transition age students	7-43-3
transition IEP component	7-43-4(h)(4)
Transportation	
as related service	7-43-1(u)
excessive transit time	7-36-8(c)
extracurricular activities	7-43-1(u)(1)(A)(iv)
for student in nonpublic school	7-34-8(d)-(f)
for student in residential placement	7-42-14
parent not required to provide	7-36-8(d)
responsibility for	7-36-8(b)
when student attends school outside corporation of legal settlement	7-36-4(b)
with non-disabled students	7-36-8(a)
Traumatic brain injury	
eligibility criteria	7-41-13
Travel training	
definition	7-32-101
Veteran teacher – see Highly qualified	
Visual impairment – see Blind or low vision	
Vocational education	
access to	7-42-10(b)(1)(A)
definition	7-32-104

TOPIC	RULE
Vocational rehabilitation services	
adult services include	7-43-4(h)(5)
counseling services provided by	7-43-1(g)(3)(E)
rehabilitation counseling provided by	7-43-1(q)(2)
review of transition age students	7-43-3
Ward of the state	
definition	7-32-105
consent for initial evaluation	7-40-4(l)
educational surrogate parent	
appointed by judge	7-39-1(e)
appointed by public agency	7-39-1(b)(3)
Weapon	
definition	7-32-106
interim alternative educational setting for weapon offense	7-44-6
Written notice	
CCC meeting	7-42-2
confidentiality of student records	7-38-1(a)-(c)
disciplinary change of placement	7-44-4(a)-(c)
initial educational evaluation	7-40-4(e),(f)
initial findings and proposed action	7-42-4
procedural safeguards	7-37-1
proposed/refused action (proposed IEP)	7-42-7(a)-(e)
reevaluation	
propose/refuse to conduct	7-40-8(f),(g)
sufficient data	7-40-8(n)
response to intervention	7-40-2(f)
transfer of rights	7-43-5(e)

Policy Notification Statement

It is the policy of the Indiana Department of Education not to discriminate on the basis of race, color, religion, sex, national origin, age, or disability, in its programs, activities, or employment policies as required by the Indiana Civil Rights Law (I.C. 22-9-1), Title VI and VII (Civil Rights Act of 1964), the Equal Pay Act of 1973, Title IX (Educational Amendments), Section 504 (Rehabilitation Act of 1973), and the Americans with Disabilities Act (42 USC §12101 *et. seq.*).

Inquiries regarding compliance by the Indiana Department of Education with Title IX and other civil rights laws may be directed to the Human Resources Director, Indiana Department of Education, Room 229, State House, Indianapolis, IN 46204-2798, or by telephone to 317-232-6610, or the Director of the Office for Civil Rights, U.S. Department of Education, 500 West Madison Street, Suite 1475, Chicago, IL 60661, or by telephone to 312-730-1560.

—Dr. Tony Bennett, State Superintendent of Public Instruction