

To: Charter School Administrators, Charter School Special Education Staff, and Charter School Authorizers

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Subject: Virtual Charter School Engagement Policy Guidance for Students with IEPs

In July 2017, several amendments to Indiana's education laws went into effect, including a new measure that requires virtual charter schools to adopt a student engagement policy. Under such a policy, a virtual charter school is given the authority to unilaterally withdraw a student who is regularly failing to participate in courses, subject to adequate notice and an opportunity for the student or parent to be heard. IC 20-24-7-13(g) now states:

A virtual charter school shall adopt a student engagement policy. A student who regularly fails to participate in courses may be withdrawn from enrollment under policies adopted by the virtual charter school. The policies adopted by the virtual charter school must ensure that:

- (1) adequate notice of the withdrawal is provided to the parent and the student; and
- (2) an opportunity is provided, before the withdrawal of the student by the virtual charter school, for the student or the parent to demonstrate that failure to participate in the course is due to an event that would be considered an excused absence under IC 20-33-2.

ADDITIONAL CONSIDERATIONS FOR STUDENTS WITH DISABILITIES

If a student with a disability (SWD) regularly fails to participate in courses, he or she could be subject to withdrawal by the school under a duly developed student engagement policy. However, the student engagement policy would NOT override the additional procedural safeguards required to be provided to a SWD, including the procedural requirement that written notice "must be given to the parent of a student with a disability before the public agency proposes to . . . change the . . . educational placement of the student or the provision of a free appropriate public education to the student." 511 IAC 7-42-7(a). **The withdrawal of a student from school would be considered a change of educational placement.**

Not only is the unilateral withdrawal of a SWD for failure to participate a change of placement, but it is **also analogous to a disciplinary removal for truancy and as such, the CCC should conduct a manifestation determination prior to withdrawing the student.**

BEST PRACTICE RECOMMENDATION: ADDITIONAL SAFEGUARDS FOR APPLYING THE ENGAGEMENT POLICY TO SWDs

In addition to requirements listed in IC 20-24-7-13(g), the virtual charter school's student engagement policy should also address the following Article 7 procedural safeguard considerations for SWDs:

1. Adequate written notice of a case conference committee (CCC) meeting to be convened for the purpose of changing the educational placement and conducting a manifestation determination prior to the withdrawal;
2. An opportunity for parental participation in the CCC meeting by scheduling the CCC meeting at a mutually agreed upon date, time, and place; and by providing an opportunity for the parent to participate by other means if the parent cannot attend in person;
3. Conducting the CCC meeting without a parent in attendance if the parent chooses not to participate in person or by other means; and keeping records of the school's attempts to arrange a mutually agreed upon date, time, and place for the CCC;
4. Determining whether the failure to participate was a manifestation of the student's disability:

During the CCC meeting convened to discuss the change of placement, i.e., the withdrawal, the reasons for the student's failure to participate should be addressed. The same two-prong analysis used in all manifestation determinations should be applied. Specifically, the school should consider whether the failure to participate was:

- (1) caused by, or had a direct and substantial relationship to, the student's disability; or
- (2) the direct result of the school's failure to implement the student's individualized education program (IEP).

If the CCC determines that the answer to either of these questions is "yes," then school personnel should take immediate steps, consistent with 511 IAC 7-44-5, to address the reasons why the student failed to engage. Specifically, the school must either: (1) review and revise the special education and related services in order to facilitate student participation; or (2) take immediate steps to remedy any identified IEP implementation deficiencies.

Alternately, if the CCC determines that the failure to participate is NOT a manifest of the student's disability, school personnel may apply the procedures identified in the student engagement policy to SWDs in the same manner as those procedures would be applied to students without disabilities. However, the unilateral withdrawal by the school is an ordered removal, **during which the SWD must**

continue to receive services until either enrolling in another LEA or aging out, consistent with the requirements of 511 IAC 7-44-5(f).

5. Revision of the IEP that specifically details: the student's record of nonparticipation as a basis to consider a change of educational placement, the provision of notice, the opportunity to be heard, a summary of the two-prong manifestation determination analysis; a description of the services to be provided if the student is not enrolling elsewhere; and information related to the student enrolling elsewhere, if applicable.