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**TITLE 511 INDIANA STATE BOARD OF
EDUCATION**

Proposed Rule
LSA Document #01-433

DIGEST

Amends 511 IAC 7-17-10, 511 IAC 7-18-3, 511 IAC 7-19-1, 511 IAC 7-19-2, 511 IAC 7-22-1, 511 IAC 7-23-2, 511 IAC 7-25-3, 511 IAC 7-25-4, 511 IAC 7-25-5, 511 IAC 7-25-6, 511 IAC 7-25-7, 511 IAC 7-27-4, 511 IAC 7-27-5, 511 IAC 7-27-7, 511 IAC 7-27-9, 511 IAC 7-27-12, 511 IAC 7-28-3, 511 IAC 7-29-5, 511 IAC 7-29-6, 511 IAC 7-29-8, 511 IAC 7-30-1, 511 IAC 7-30-3, 511 IAC 7-30-4, and 511 IAC 7-30-6 to conform to the federal requirements for special education. Effective 30 days after filing with the secretary of state.

511 IAC 7-17-10	511 IAC 7-27-5
511 IAC 7-18-3	511 IAC 7-27-7
511 IAC 7-19-1	511 IAC 7-27-9
511 IAC 7-19-2	511 IAC 7-27-12
511 IAC 7-22-1	511 IAC 7-28-3
511 IAC 7-23-2	511 IAC 7-29-5
511 IAC 7-25-3	511 IAC 7-29-6
511 IAC 7-25-4	511 IAC 7-29-8
511 IAC 7-25-5	511 IAC 7-30-1
511 IAC 7-25-6	511 IAC 7-30-3
511 IAC 7-25-7	511 IAC 7-30-4
511 IAC 7-27-4	511 IAC 7-30-6

SECTION 1. 511 IAC 7-17-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-17-10 “Case conference committee” defined

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 10. “Case conference committee” means the group of persons described in 511 IAC 7-27-3, including parents and public agency personnel, who are responsible for the following:

- (1) **Reviewing evaluation data, identifying the existence of a disability, and** determining a student’s eligibility for special education and related services.
- (2) Developing, reviewing, and revising a student’s individualized education program.
- (3) Determining the appropriate special ~~educational~~ **education, related** services, and placement for a student and the setting or settings in which those services will be provided.
- (4) Determining other matters, **including the provision of a free appropriate public education**, that are assigned to an IEP team by federal law or to a case conference committee by state law or any rule of the Indiana state board of education, including this article.

(Indiana State Board of Education; 511 IAC 7-17-10; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)

SECTION 2. 511 IAC 7-18-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-18-3 Other public agencies’ special education programs; state-level interagency agreements

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 3. (a) The provisions of this article pertaining to identification, eligibility, evaluation, and placement procedures as well as the provision of a free appropriate public education, including all due process and procedural safeguards, for students at least three (3) years of age, but less than twenty-two (22) years of age, 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 division of disability, aging, and rehabilitative services and the division of mental health.
- (3) The department of correction.
- (4) The Indiana School for the Blind.
- (5) The Indiana School for the Deaf.
- (6) Any public or private agency providing special education programs for students referred by a public school corporation, the division of special education, or any other public agency.
- (7) Any other public agency that contracts with any of the agencies in subdivisions (1) through (5) to provide special education.

(b) The division of special education shall, in conjunction with each public agency in subsection (a), develop an interagency agreement. Interagency agreements may address educational programs or noneducational programs that provide or pay for services that are considered special education, or both. Interagency agreements shall include the following as appropriate:

- (1) Compliance with state and federal special education laws and regulations, including data collection and submission, program monitoring, state complaint investigation procedures, and 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) An agreement described in subsection (b) shall meet the following criteria:

- (1) Be signed by the state superintendent of public instruction and the chief administrator of the public agency.
- (2) Be valid for a period not to exceed four (4) years.
- (3) Relate specifically to special education or related services, or both.
- (4) Not supersede the administrative jurisdiction of the agency to develop eligibility or admission criteria or other administrative aspects of the program or facility.
- (5) Be binding on any successor in interest, including a consolidation with other agencies.

(d) If a **noneducational public 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 to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility either directly, through contract, or through other arrangement.

(e) A public agency described in subsection (d) 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.

(f) If a public agency described in subsection (d) 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 shall provide or pay for these services in a timely manner. The local educational agency may then claim reimbursement for the services from the public agency that failed to provide or pay for these services and the public agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subsection (b).
(Indiana State Board of Education; 511 IAC 7-18-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2443)

SECTION 3. 511 IAC 7-19-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-19-1 Special education for students in private schools or facilities

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 1. (a) This rule applies to students with disabilities who have been unilaterally enrolled by the parent in a private school or facility. This rule does not apply to students with disabilities who have been placed in or referred to a private school or facility by a public agency.

(b) **The activities undertaken to carry out child find responsibilities for private school students with disabilities must be comparable to activities undertaken for students with disabilities in public schools.** Each public agency shall, with regard to any private 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 7-25;
- (2) consult with appropriate representatives of private school students with disabilities on how to carry out the location, identification, and evaluation and December 1 child count activities; and
- (3) make available special education and related services to any such student **who is participating in any program assisted or carried out under this article.**

(c) The December 1 child count shall be used to determine the amount of subgrant funds from 20 U.S.C. 1411(g) and 20 U.S.C. 1419(g) that the public agency must spend on providing special education and related services to students in private schools and facilities in the subsequent fiscal year.

(d) Each public agency shall consult, in a timely and meaningful way, but at least annually, with appropriate representatives of private school students to determine the following:

- (1) Which students require services from the public agency.
- (2) What services will be provided.
- (3) How and where the services will be provided.
- (4) How the services provided will be evaluated.

(e) The public agency shall afford the representatives of the private school students a genuine opportunity to express their views in the consultation required in subsection (d). The consultation shall occur before the public agency makes any decision that affects the opportunities of students with disabilities enrolled in private schools or facilities, and the consultation shall include consideration of the following:

- (1) The funding requirements.
- (2) The number of private school students with disabilities.
- (3) The needs of private school students with disabilities.
- (4) The location of the private school students with disabilities.

(f) The case conference committee, in accordance with 511 IAC 7-27-4, shall make decisions with respect to the special education and related services to be provided to students enrolled in private schools or facilities.

(g) For each student in a private school or facility that has been determined eligible to receive special education and related services from the public agency, the public agency shall do the following:

- (1) Initiate and conduct case conference committee meetings to develop, review, and revise an individualized education program in accordance with 511 IAC 7-27-4 and 511 IAC 7-27-6.
- (2) Ensure that a representative of the private school or facility attends each case conference committee meeting, either in person or by telephone.
- (3) Implement the individualized education program in accordance with 511 IAC 7-27-7.

(h) At the election of the public agency, services to students in private schools or facilities may be provided at:

- (1) the private school or facility, including a religious school;
- (2) the public school; or
- (3) a neutral site.

(i) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the private school or the student's home to a site other than the private school or facility and from the service site to the private school or the student's home, depending on the timing of the services. The public agency is not required, under this article, to transport the student from the student's home to the private school. The cost of transportation may be included in the calculation of the public agency's required expenditure described in subsections (j) and (k).

(j) For students who are three (3) years of age, but less than twenty-two (22) years of age, the public agency, in providing special education and related services to students in private 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(g) as the number of private school students with disabilities who are three (3) years of age, but less than twenty-two (22) years of age residing in its boundaries is to the total number of students with disabilities of the same age range.

(k) 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 private 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 private school students with disabilities three (3) years of age through five (5) years of age residing in its boundaries is to the total number of students with disabilities three (3) years of age through five (5) years of age.

(l) Expenditures for child find activities shall not be considered in determining whether the public agency has met the expenditure of federal funds requirement of this article.

(m) The public agency shall not use the funds described in subsections (j) and (k) to do the following:

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

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

(3) Meet the general needs of the students enrolled in the private 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 private schools.

(n) The public agency may use the funds described in subsections (j) and (k) to make public school personnel available in the private school or facility to the extent necessary to provide special education and related services to students with disabilities in private schools or facilities, if those services are not normally provided by the private school or facility.

(o) The public agency may use funds described in subsections (j) and (k) to pay for the services of an employee of the private school or facility if the employee performs the services:

(1) outside of the employee's regular hours of duty; and

(2) under public supervision and control.

(p) The services provided to students in private schools or facilities must be provided by personnel meeting the same standards as personnel providing services in the public agency.

(q) A complaint that a public agency has failed to meet the requirements of this rule may be filed pursuant to the procedures described in 511 IAC 7-30-2.

(r) The procedures for mediation under 511 IAC 7-30-1 and for a due process hearing and appeal under 511 IAC 7-30-3 and 511 IAC 7-30-4 are not applicable to students under this rule, except to resolve disputes on 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.

(Indiana State Board of Education; 511 IAC 7-19-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2444)

SECTION 4. 511 IAC 7-19-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-19-2 Reimbursement for parent's unilateral enrollment of student in private schools or facilities when the public agency's provision of a free appropriate public education is in dispute

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 2. (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 private school or facility if the public agency made a free appropriate public education available to the student, and the parent elected to place the student in a private school or facility. If, as a result of a disagreement between the parent and the public agency, regarding the availability of a free appropriate public education for a student who previously received special education and related services under the authority of the public agency, the parent of a student with a disability enrolls the student in a private preschool, elementary school, or secondary school without the consent or referral by the public agency, the parent may seek reimbursement for the costs of the private school or facility from the public agency.

(b) If the parent and the public agency cannot reach agreement on the issue of reimbursement, either may request a due process hearing pursuant to 511 IAC 7-30-3 to resolve the issue.

(c) The independent hearing officer or the court may require the public agency to reimburse the parent for the cost of the private school enrollment if the hearing officer 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 private school or facility.
- (2) The private placement is appropriate.

(d) The hearing officer **or the court** may reduce or deny reimbursement to the parents if the hearing officer **or the court** finds any of the following:

- (1) At the most recent case conference committee meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the case conference committee 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 private school at public expense.
- (2) The parent failed to provide written notice to the public agency, 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, of the information required by subdivision (1).
- (3) 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 7-22-2, 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.
- ~~(4) The action taken by the parent was unreasonable.~~

(e) The hearing officer **or the court** may not reduce or deny the reimbursement if the parent failed to provide the written notice described in subsection (d)(2) if the hearing officer **or the court** finds any of the following:

- (1) The parent cannot read or write in English.
- (2) Compliance with subsection (d)(2) would likely result in physical or serious emotional harm to the student.
- (3) The public agency prevented the parent from providing the notice.
- (4) The parent had not received notice of procedural safeguards, pursuant to 511 IAC 7-22-1, containing the notice requirement of subsection (d)(2).

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

(g) The cost of reimbursement may be reduced or denied upon a judicial finding of unreasonableness with respect

to the actions taken by the parents. (*Indiana State Board of Education; 511 IAC 7-19-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2446*)

SECTION 5. 511 IAC 7-22-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-22-1 Notice of procedural safeguards

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

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 a standard notice and shall be:

- (1) written in language understandable to the general public;
- (2) provided in the native language or other mode of communication used by the parent unless it clearly is not feasible to do so; and
- (3) 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 section are met.

(d) A copy of the notice of procedural safeguards shall be given to the parents, at a minimum, at the time of:

- (1) initial referral for evaluation;
- (2) notification of a case conference committee meeting;
- (3) reevaluation of the student;
- (4) filing of a due process hearing;
- (5) the date of the decision to place a student in an interim alternative educational setting for up to forty-five (45) days or the date expulsion charges have been filed; and
- (6) notification of a proposed placement or denial of placement.

(e) The written notice of procedural safeguards shall include a full explanation of the following:

- (1) The parent's right to contact and meet with public agency personnel or the agency's governing body to do the following:
 - (A) Obtain an explanation or clarification of the procedural safeguards or due process procedures.
 - (B) Discuss any questions or issues.
 - (C) Obtain local access in a convenient place to:
 - (i) federal and state laws pertaining to special education;
 - (ii) the public agency's standards, policies, and procedures pertaining to special education;
 - (iii) the public agency's approved comprehensive plan;
 - (iv) approved applications; and
 - (v) final monitoring reports of the public agency.
- (2) The prerequisite of written parental consent for:
 - (A) An initial evaluation.
 - (B) A reevaluation.
 - (C) An additional evaluation.
 - (D) Initial special education services.
 - (E) A change of placement.
- (3) The parent's right to participate as a member of the case conference committee and the requirements of 511 IAC 7-27-4.

- (4) The parent's right to obtain a copy of the initial educational evaluation report, in accordance with 511 IAC 7-25-4(k) and ~~(t)~~, **511 IAC 7-25-4(i)**, prior to the case conference committee meeting.
- (5) The parent's right to request that a case conference committee be convened at any time.
- (6) The parent's right to request an evaluation and the protections contained in 511 IAC 7-25-4.
- (7) The parent's right to prior written notice consistent with the requirements of section 2 of this rule.
- (8) The parent's right to obtain an independent educational evaluation, including the following:
 - (A) The right to have the results of the independent educational evaluation considered by the case conference committee or the independent hearing officer in a due process hearing.
 - (B) The circumstances under which an independent educational evaluation may be obtained at public expense.
 - (C) The criteria that must be met when an independent educational evaluation is conducted at public expense.
- (9) The requirement that a student with a disability be placed in the least restrictive environment, as determined by the case conference committee, that is appropriate to meet the student's individual needs, including the continuum of services to be considered under 511 IAC 7-27-9.
- (10) The parent's rights with regard to the student's educational record, 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 pursuant to 511 IAC 7-23-1.
 - (F) Any fees associated with copying record.
- (11) The availability of mediation as a means of dispute resolution and the mediation process pursuant to 511 IAC 7-30-1.
- (12) The right of the parent, or any interested party, to file a complaint, including the process for filing a complaint and the timelines under 511 IAC 7-30-2.
- (13) The parent's right to request a due process hearing to challenge the public agency's proposed or refused action regarding a student with a disability, including the following:
 - (A) The process for requesting a due process hearing.
 - (B) The student's **placement**, special education, **and related** services during the pendency of a due process hearing.
 - (C) The requirement to disclose evaluation results and recommendations.
 - (D) The rights of the parent and the public agency before, during, and after a due process hearing conducted pursuant to 511 IAC 7-30-3, including an administrative appeal, a civil action, and attorneys' fees.
- (14) The procedures under 511 IAC 7-24 for appointing an educational surrogate parent and the circumstances in which an educational surrogate parent must be appointed.
- (15) The requirements under 511 IAC 7-19-2 for a parent's unilateral placement of a student with a disability in a private school at public expense.
- (16) The protections for students who have not been determined eligible for special education and related services pursuant to 511 IAC 7-29-8.
- (17) The protections and procedures for students who are subject to placement in an interim alternative educational setting.
- (18) The transfer of rights to the student at eighteen (18) years of age under 511 IAC 7-28-4.
- (19) The names and addresses of agencies and organizations that provide assistance to parents in understanding this rule.

(Indiana State Board of Education; 511 IAC 7-22-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2451)

SECTION 6. 511 IAC 7-23-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-23-2 Procedures for amending educational records

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 2. (a) A parent or eligible student 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 shall:

- (1) be in writing;

- (2) be dated; and
- (3) specify the information that the parent or eligible student believes is inaccurate, misleading, or violates the student's privacy or other rights.

(b) If the public agency agrees to amend the information as requested, the public agency shall:

- (1) amend the information within ten (10) business days after the request is received; and
- (2) notify the parent or eligible student, 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 shall notify the parent or eligible student of the refusal, in writing, within ten (10) business days after the request is received. The written notice shall include a statement of the parent's or eligible student's right 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 eligible student shall submit to the public agency a written request for a hearing, specifying the information challenged and the reasons the parent or eligible student believes the information to be inaccurate, misleading, or in violation of the student's privacy or other rights.
- (2) The public agency shall convene a hearing within fifteen (15) business days after the request for the hearing is received.
- (3) The public agency shall notify the parent or eligible student, in writing, of the hearing date, time, and location, not less than five (5) business days in advance of the hearing.
- (4) 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.
- (5) The parent or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues. The parent or eligible student may, at their own expense, be assisted or represented by one (1) or more persons, including an attorney.
- (6) The hearing officer shall notify the parent or eligible student of the hearing decision in writing within ten (10) business days after the hearing. The decision shall be based solely on evidence and testimony presented at the hearing and shall include a summary of the evidence and the reasons for the decision.
- (7) 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 shall amend the information accordingly, and inform the parent or eligible student in writing of the amendment.
- (8) 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 shall inform the parent or eligible student 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.
- (9) A statement placed in the record by the parent or eligible student under subdivision (8) shall 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 shall disclose the statement whenever it discloses the record or the contested portion of the record to which the statement relates.

(d) If the public agency refuses to amend the information as requested, **the public agency shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.568.** The public agency shall conduct a hearing **upon the parent's request.** A hearing conducted under this section must be conducted according to the procedures under 34 CFR 99.22. (*Indiana State Board of Education; 511 IAC 7-23-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2455*)

SECTION 7. 511 IAC 7-25-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-3 Educational evaluations; in general

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 3. (a) This rule applies only to evaluation procedures for an individual student to determine the existence, nature, and extent of a disability, if any, and the special education and related services the student may need. These procedures

do not apply to basic tests administered to, or procedures used with, all students in a building, grade, or class, or those required by state law.

(b) Each public agency shall establish, maintain, and implement a general education intervention procedure, implemented at the building level, for students whose classroom performance is adversely affecting educational outcomes. General education intervention shall not be a prerequisite to an educational evaluation.

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

- (1) A description of the way in which parents, teachers, school administrators, specialists, or the student may pursue or initiate an initial evaluation.
- (2) A description of the methods used to assign a team of qualified professionals to conduct educational evaluations.
- (3) A description of the procedures used for the required three (3) year reevaluations and additional evaluations.

(d) When referrals for any student from birth, but less than twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind, Silvercrest Children's Development Center, 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 case conference committee meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

(e) The public agency shall establish, maintain, and implement procedures to assure that the tests and other evaluation materials:

- (1) are provided and administered in the student's native language or other mode of communication unless it is clearly not feasible to do so;
- (2) are selected and administered so as not to be racially or culturally discriminatory;
- (3) include materials designed to assess specific areas of educational need and not just those designed to provide a single general intelligence quotient;
- (4) when administered to a student with impaired sensory, manual, or speaking skills, are capable of yielding results that 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, except where these skills are the factors the test purports to measure;
- (5) are technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors;
- (6) provide relevant information that directly assists in determining the educational needs of the student; and
- (7) 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) Materials and procedures used to evaluate a student with limited English proficiency shall be selected and administered to ensure they measure the extent to which the student has a disability and needs special education rather than measuring the student's English language skills.

(g) The public agency shall assure that any standardized tests given to a student:

- (1) have been validated for the specific purpose for which they are used; and
- (2) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(h) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(i) The determination of eligibility for special education and appropriate special education services and placement must be made on the basis of more than a single test or procedure or sole criterion. Specific information and procedures

required to determine a disability and eligibility are described in 511 IAC 7-26. A comprehensive educational evaluation conducted by a team of qualified professionals shall include a variety of assessments and information gathering procedures designed to provide relevant functional and developmental information in all areas that may be related to the suspected disability, including, where appropriate, information on the student's:

- (1) health;
- (2) vision;
- (3) hearing;
- (4) social and emotional status;
- (5) general intelligence;
- (6) academic performance;
- (7) communication status; and
- (8) motor abilities.

(j) The public agency shall ensure that information obtained from various sources, including information provided by the parent, **aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior**, is documented and carefully considered by the case conference committee in determining the following:

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

(k) The public agency must evaluate a student with a disability in accordance with the requirements of this rule before determining that the student is no longer a student with a disability, except when termination of the student's eligibility is due to graduation with a regular high school diploma or exceeding the age eligibility under this article. (*Indiana State Board of Education; 511 IAC 7-25-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2458*)

SECTION 8. 511 IAC 7-25-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-4 Initial educational evaluation

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 4. (a) If the public agency intends to pursue an initial evaluation, the public agency shall hold a personal meeting with the parent to inform the parent of the public agency's intent. If the parent is unwilling or unable to attend a personal meeting, a notice shall be mailed to the parent. The information presented verbally and in writing at the personal meeting or in the mailed notice must include the following:

- (1) A description of the student's learning difficulties and the reasons an educational evaluation is needed.
- (2) A description of the review process to determine what data exists and what, if any, additional data is needed.
- (3) A description of the evaluation process, if additional data is needed, including proposed assessment techniques and what the tests or evaluation procedures will measure.
- (4) When general education intervention strategies have been used, a description of attempts to remediate the learning difficulties through general education intervention strategies and why those attempts were unsuccessful.
- (5) The timeline for conducting the educational evaluation and convening the case conference committee meeting.
- (6) An explanation of how to obtain a copy of the report of the initial educational evaluation prior to the case conference committee meeting, including asking the parent if the parent wishes to have a meeting with an individual who can explain the results of the evaluation prior to the case conference committee meeting.
- (7) Written notice of procedural safeguards described in 511 IAC 7-22-1.
- (8) A list of sources for parents to contact to obtain assistance with understanding the provisions of this section.

(b) ~~A parent who wishes to initiate an~~ **Informed parental consent must be obtained prior to conducting an initial educational evaluation.** ~~must provide written consent.~~ A written request for an evaluation, signed by the parent and submitted to certified personnel, shall constitute written consent for an evaluation. When the referral for an evaluation

is made by public agency personnel or if the parent makes a verbal request for an evaluation, the public agency's consent form, when signed by the parent and received by certified personnel, constitutes the parent's written consent. The public agency shall follow the procedures in subsection (a) to assure the parent is fully informed and to obtain information on the parent's reasons for requesting the educational evaluation. The initial educational evaluation must be conducted and the case conference committee convened within sixty (60) instructional days of the date the written parental consent is received by certified personnel.

(c) Parental consent is not required to review existing data as part of an initial evaluation. Parental consent for evaluation shall not be construed as consent for any services other than the evaluation of the student.

(d) As part of an initial educational evaluation, if appropriate, the case conference committee and other qualified professionals, as appropriate, shall do the following:

(1) Review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current observations, and classroom-based assessments, and observations by teachers and related service providers.

(2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(A) whether the student has a particular category of disability as described in 511 IAC 7-26;

(B) the present levels of performance and educational needs of the student; and

(C) whether the student needs special education and related services.

(e) The case conference committee members may conduct the review described in subsection (d) without a meeting.

(f) The public agency shall administer tests and evaluation materials as may be needed to produce the data identified in subsection (d).

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines no additional data are needed to determine the student's eligibility for special education, the public agency shall:

(1) notify the parent of that determination and the reasons for the determination;

(2) notify the parent of the right to request an assessment to determine whether the student is eligible for special education; and

(3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) A comprehensive individual evaluation to determine the existence of a disability and the student's educational needs that fulfills the requirements of this rule and 511 IAC 7-26 shall precede any action with regard to the initial identification and provision of special education and related services. The educational evaluation of a student shall be conducted by a team of qualified professionals, including at least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability, and a school psychologist, except in the following situations:

(1) For a student with suspected communication disability only, such as a speech disorder, the speech-language pathologist may serve as the sole evaluator.

(2) For a student with a suspected learning disability, the evaluation team of qualified professionals shall also include 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.

(i) For a student with a visual or hearing impairment, or suspected multiple disabilities, the public agency may request that representatives of the state-operated schools serve as part of the team of qualified professionals only if the parent has provided written consent, in addition to the written consent to conduct the initial evaluation, for the representative's participation in the evaluation.

(j) For a student with a suspected developmental delay, the evaluation team shall include the parent and at least two (2) qualified professionals from different disciplines based upon the evaluation needs of the student.

(k) The public agency shall ensure that a copy of the evaluation report is made available at the school the student

attends no less than five (5) instructional days prior to the scheduled case conference committee meeting. The parent may go to the school during the five (5) instructional days prior to the case conference meeting to obtain a copy of the report. The public agency shall provide a copy of the evaluation report to the parent at that time. At the time of the meeting described in subsection (a) the public agency shall ensure that the parent is informed of the procedure to obtain a copy of the evaluation report prior to the case conference committee meeting.

(l) A parent who wishes to have the results of the evaluation explained prior to the scheduled case conference committee meeting may request that a meeting to discuss the evaluation be arranged. The request for such a meeting shall be made by the parent at the time of the meeting to discuss the referral for an educational evaluation as described in subsection (a). In accordance with ~~subdivision (6) of subsection (a); (a)(6)~~, the public agency shall ask the parent if the parent wishes to have a meeting with an individual who can explain the evaluation results prior to the case conference committee meeting. The public agency shall arrange a meeting with the parent and an individual who can explain the evaluation results within five (5) instructional days prior to the case conference committee. The meeting shall be scheduled at a mutually agreed upon date, time, and place. A copy of the evaluation report shall be provided to and reviewed with the parent at this meeting.

(m) If the parent does not obtain a copy of the evaluation report prior to the case conference committee convened to consider the student's identification and eligibility for special education services, the public agency shall provide a copy of the evaluation report to the parent at the case conference committee meeting. (*Indiana State Board of Education; 511 IAC 7-25-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2460*)

SECTION 9. 511 IAC 7-25-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-5 Independent educational evaluation

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 5. (a) The public agency shall provide to parents, upon request, information about where an independent educational evaluation may be obtained and the public agency's criteria applicable to independent educational evaluations as described in subsection (h). An 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 pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The public agency may ask the parent why the parent believes an independent educational evaluation is necessary, but the public agency cannot require such response, nor can it delay providing the evaluation or initiating the due process hearing as a result of the parent's response or lack of response.

(c) Upon a parent's request for an independent educational evaluation, **or upon the parent's request for reimbursement for an independent educational evaluation obtained at the parent's 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) If the public agency initiates a hearing to determine the appropriateness of its educational evaluation, and the 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.

- (e) If the parent obtains an independent evaluation at the parent's expense, the results of the evaluation:
- (1) shall be considered in any decisions made with respect to the provision of a free appropriate public education to the student if the independent educational evaluation complies with agency criteria for an evaluation; and
 - (2) may be presented by the parent as evidence at a due process hearing.

(f) ~~If the parent obtains an independent educational evaluation, at the parent's expense, and requests a due process hearing to obtain reimbursement for the cost of the evaluation,~~ **In a hearing on the issue of the public agency's reimbursement of the parent's expense of an independent educational evaluation, at the parent's expense, and requests a due process hearing to obtain reimbursement for the cost of the evaluation,** the hearing officer may not order reimbursement if the hearing officer determines that the independent educational evaluation did not meet the public agency's criteria ~~described in~~ **under subsection (h), unless applying those criteria would deny a parent's right to any independent educational evaluation as identified in 34 CFR 300.502(e).**

(g) If an independent hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be borne by the public agency.

(h) If all or any part of an independent educational evaluation is paid for by the public agency, the criteria under which the evaluation is obtained must be the same that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation, including the following:

- (1) The location of the evaluation.
- (2) The qualifications of the evaluator.

(i) Except for the criteria described in subsection (h), the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (*Indiana State Board of Education; 511 IAC 7-25-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2461*)

SECTION 10. 511 IAC 7-25-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-6 Reevaluation

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 6. (a) For each student receiving special education and related services, a reevaluation shall be conducted every thirty-six (36) calendar months.

(b) The public agency shall obtain informed parental consent prior to conducting a reevaluation of a student, except that such informed consent need not be obtained if the public agency can demonstrate that reasonable measures were taken to obtain such consent and the student's parent failed to respond. The informed parental consent shall contain a description of the proposed reevaluation procedures. To satisfy the reasonable measures requirement of this section, the public agency shall keep a record of attempts to obtain parental consent, such as the following:

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

(c) The public agency may pursue mediation or a due process hearing in order to obtain parental consent for a reevaluation.

(d) In determining what shall be included in the triennial reevaluation, the case conference committee and other qualified professionals, as appropriate, shall do the following:

- (1) Review any existing evaluation data on the student, including evaluations and information provided by the parents, current classroom-based assessments and observations, and observations of teachers and related services providers.
- (2) On the basis of that review, and input from the student's parents, 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 7-26.
 - (B) The present levels of performance and educational 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 enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general curriculum.

(e) Parental consent is not required to review existing data as part of a reevaluation.

(f) The case conference committee may conduct the review described in subsection (d) without a meeting.

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that no additional data are needed to determine whether the student continues to be eligible for special education, the public agency shall:

- (1) notify the parent of that determination and the reasons for the determination;
- (2) notify the parent of the right to request an assessment to determine whether the student continues to be eligible for special education; and
- (3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that additional data are needed, the public agency shall administer tests and other evaluation materials as may be needed to produce the data identified pursuant to subsection (d). **The public agency shall also conduct a reevaluation upon the request of the parent or a teacher in accordance with the requirements of subsection (b).**

(i) The public agency shall provide the parent with adequate notice of its intent to conduct the reevaluation. The notice shall be:

- (1) given verbally at the student's case conference committee meeting and included in the case conference committee report the year before the reevaluation will be conducted; and
- (2) provided again, in writing, no less than twenty (20) instructional days prior to the projected date of reevaluation.

(j) Within twenty (20) instructional days after the reevaluation, the public agency shall provide the parent with written notice that the reevaluation has been conducted and shall include a copy of the reevaluation report with the written notice. Contingent upon the results of the reevaluation, the notice shall contain one (1) of the following:

- (1) The public agency will convene a case conference committee to discuss the results of the reevaluation and review the student's eligibility for special education and the appropriateness of the student's individualized education program.
- (2) The public agency does not plan to convene a case conference committee, but the parent may request that a case conference committee be convened, and the parent may request to meet with a representative of the public agency.
- (3) Unless otherwise requested by the parent or the public agency, the reevaluation results will be reviewed at the next case conference committee meeting.

(k) A reevaluation is subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. (*Indiana State Board of Education; 511 IAC 7-25-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2462*)

SECTION 11. 511 IAC 7-25-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-7 Additional evaluations

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 7. (a) A request for an evaluation, subsequent to an initial evaluation and at a time other than the time scheduled for the triennial reevaluation, shall be considered a request for an additional evaluation. An additional evaluation may be:

- (1) an assessment of an area or areas not previously evaluated; or
- (2) a reassessment of an area or areas previously evaluated.

(b) An additional evaluation may be requested by the parent or the public agency, **including a teacher**, at any time. **An additional evaluation shall be conducted upon request or when conditions warrant such an evaluation.** Section 4 of this rule, including timelines for conducting the evaluation and convening the case conference committee, is applicable to a request for an additional evaluation.

(c) Additional evaluations are subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. (*Indiana State Board of Education; 511 IAC 7-25-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2463*)

SECTION 12. 511 IAC 7-27-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-4 Case conference committee meetings

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6; IC 20-1-6.3; IC 20-8.1-5.1

Sec. 4. (a) A case conference committee shall convene in the following circumstances:

- (1) In accordance with the timelines in 511 IAC 7-25-4(b) after an initial evaluation is conducted and in accordance with 511 IAC 7-25-7 after an additional evaluation is conducted.
- (2) Within twelve (12) months of the preceding case conference committee meeting for a student previously determined eligible for special education to determine whether the annual goals for the student are being achieved.
- (3) Upon request of a teacher, parent, or administrator.
- (4) When a change of placement is proposed or to be considered.
- (5) 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.
- (6) To determine whether the behavior is a manifestation of the disability in the event of disciplinary action proposed or taken in accordance with 511 IAC 7-29-6 or IC 20-8.1-5.1, or both.
- (7) To determine the setting when school personnel order a change to an interim alternative educational setting in accordance with 511 IAC 7-29-3 or IC 20-8.1-5.1 or both, unless the setting has been included in the student's individualized education program or behavioral intervention plan.
- (8) To develop a plan for assessing functional behavior, or to review and modify an existing behavioral intervention plan, to address behavior for which disciplinary action was proposed or taken in accordance with 511 IAC 7-29-5 or IC 20-8.1-5.1, or both.
- (9) 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 10 of this rule.

(b) The public agency shall take whatever action is necessary to ensure the parent understands the proceedings of the case conference committee meeting, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

(c) A case conference committee shall develop, review, or revise an individualized education program for each student who is eligible for special education and related services under this article, taking into consideration the following general and special factors:

- (1) The strengths of the student and the concerns of the parent for enhancing the education of the student.
- (2) The results and instructional implications of the initial or most recent educational evaluation and other assessments of the student.
- (3) Strategies, including positive behavioral interventions and supports, to address a student's behavior that impedes his or her learning or that of others.
- (4) The language needs of a student with limited English proficiency, as those needs relate to the student's individualized education program.
- (5) The communication needs of the student, and in the case of a student who is hearing impaired, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
- (6) The student's need for assistive technology devices and services.
- (7) As appropriate, the results of the student's performance on any general statewide or local assessments.
- (8) Any lack of expected progress toward the annual goals described in section 6(a)(2) of this rule and in the general curriculum, if appropriate.**

(d) Instruction in Braille and the use of Braille for a student who is blind or visually impaired shall be provided unless the case conference committee determines, after a functional literacy 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.

(e) It is not necessary for a case conference committee to be convened in order for public agency personnel to discuss issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's individualized education program. Public agency personnel may engage in preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later case conference committee meeting. *(Indiana State Board of Education; 511 IAC 7-27-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2471)*

SECTION 13. 511 IAC 7-27-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-5 Report of case conference committee meeting; notice and parental consent

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 5. (a) The public agency shall prepare a written report of the case conference committee meeting that shall include, but is not limited to, the following:

- (1) The date and purpose of the meeting, and the names and titles of the participants.
- (2) A description of each evaluation procedure, test, record, or report used as a basis for the determination of special education services and placement.
- (3) A statement of eligibility for special education services.
- (4) If a student is eligible for special education and related services, an individualized education program, including all components specified in section 6 of this rule, which may be attached to the case conference committee report rather than in the body of the report and must be provided at no cost to the parent.
- (5) The reasons for the placement determination, including a description of any options considered and why those options were rejected.
- (6) Other factors relevant to the proposed placement or denial of placement, such as information and justification if the amount of daily instructional time is less than that provided to nondisabled students of the same age.
- (7) Written opinions, if any, that may be attached to the case conference committee report rather than included in the body of the report.
- (8) A description of the action proposed, such as a recommendation for placement or denial of placement.

(b) The public agency shall provide the parent with written notice of the proposed placement or denial of placement in accordance with 511 IAC 7-22-2(d).

~~(b)~~ (c) **The public agency shall provide the parent with a copy of the written report.** The written report and notice may be provided to the parent at the conclusion of the case conference committee meeting or may be mailed to the parent at a later date. If mailed, the report and the notice must be received by the parent no later than ten (10) business days after the date of the case conference committee meeting.

~~(c)~~ (d) The public agency shall obtain written consent from a parent when the public agency proposes:

- (1) the initial determination of the student's eligibility for special education and related services, including the student's classification under 511 IAC 7-26;
- (2) the initial individualized education program and placement;
- (3) a revised individualized education program that involves a change of placement as defined in 511 IAC 7-17-13;
- (4) a change in the student's identified disability under 511 IAC 7-26;
- (5) that additional evaluations be conducted pursuant to 511 IAC 7-25-7; or
- (6) the termination of the student's eligibility for special education and related services.

~~(d)~~ (e) If the notice required under subsection (b) relates to an action proposed by the public agency that also requires parental consent, the public agency may give notice at the same time it requests parental consent.

~~(e)~~ (f) Whenever consent of a parent is required by subsection (d), the proposed services or placement or change of

services or placement shall not be implemented until consent of a parent is obtained, except as otherwise provided in 511 IAC 7-29-2. A public agency may not use a parent's refusal to consent to one (1) service or activity to deny the parent or student any other service, benefit, or activity of the public agency, except as permitted by this article. Parental consent for evaluation under 511 IAC 7-25 shall not be construed as consent for any services other than the evaluation.

(f) (g) When a parent provides written consent for the implementation of an individualized education program developed by the case conference committee, the individualized education program is considered an agreed-upon individualized education program. (*Indiana State Board of Education; 511 IAC 7-27-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2472*)

SECTION 14. 511 IAC 7-27-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-7 Individualized education program; implementation

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 7. (a) An agreed-upon individualized education program, pursuant to section 5(f) 5(g) of this rule, shall be implemented as written.

(b) The student's teacher of record shall do the following:

- (1) Monitor the implementation of the student's individualized education program.
- (2) Provide technical assistance and consultation to the student's general education teachers, related services providers, paraprofessionals, and other school personnel interacting with the student.
- (3) Be responsible for all other activities identified in 511 IAC 7-17-72.

(c) The services identified in the agreed-upon individualized education program shall be provided as soon as the necessary arrangements are completed, but no later than the following:

- (1) Ten (10) instructional days after parental consent to the student's initial individualized education program is received. ~~unless~~ **However, if** that date ~~is~~ **falls** within the last twenty (20) instructional days of **the end of** the spring semester ~~in which case and the individualized education program does not require extended school year services to be provided during the summer, the~~ services need not be provided until the first day of the following semester.
- (2) Ten (10) instructional days after the case conference committee meeting for a newly-enrolled student who had received special education services in another state.
- (3) Immediately upon enrollment from another district within the state.
- (4) The initiation date stated in the student's individualized education program in all other circumstances.

(d) No public agency shall continue to implement an individualized education program for a period of more than twelve (12) months unless the duration has been extended by operation of the stay-put provision of 511 IAC 7-30-3(j).

(e) At the beginning of each school year, each public agency shall have an individualized education program in effect for each student with a disability within its jurisdiction. (*Indiana State Board of Education; 511 IAC 7-27-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2474*)

SECTION 15. 511 IAC 7-27-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-9 Least restrictive environment and delivery of special education and related services

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 9. (a) Each public agency shall have in place written policies and procedures to ensure the following:

- (1) To the maximum extent appropriate, students with disabilities, including those **students placed in public or private institutions by the public agency outside the public agency's jurisdiction and those students placed in public or private institutions and other care facilities in the public agency's jurisdiction**, are educated with nondisabled students.
- (2) Special classes, separate schooling, or other removal of students from the general education environment to ~~special~~

classes or separate facilities occurs only when it is documented that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

(3) Unless the individualized education program requires some other arrangement, ~~a student with disabilities is educated~~ **the student's placement is as close as possible to the student's home school and is** in the school the student would attend if not disabled.

(4) The case conference committee determines the placement in which a student will receive services on the basis of the student's individualized education program, regardless of the identified disability, and the individualized education program shall be developed prior to the determination and reviewed at least annually.

(5) The services provided for each student are based on the goals and benchmarks or short term objectives in the student's individualized education program.

(6) A continuum of services is available to meet the individual needs of students with disabilities, including, but not limited to:

- (A) instruction in general education classes;
- (B) special classes;
- (C) special schools;
- (D) home instruction; and
- (E) instruction in hospitals and institutions;

and makes provision for supplementary services to be provided in conjunction with general education placement.

(7) In selecting the least restrictive environment, consideration is given to any potentially harmful effects of the suggested services on the student or on the quality of services needed.

(8) 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.

(9) Special education and related services are delivered in the least restrictive environment determined by the case conference committee, regardless of the identified disability.

(10) The provision of services to students with different disabilities at the same time and in the same classroom is permitted.

(11) Students with disabilities are in classes and buildings with their chronological peers unless an alternative is determined appropriate by the case conference committee and the reasons for that determination are documented in the written case conference committee report required by section 5 of this rule.

(12) 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 shall 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 vocational education, art, music, industrial arts, consumer and homemaking education, field trips, and convocations, as well as nonacademic and extracurricular activities, including meals and recess, athletics, clubs, employment assistance, and graduation ceremonies. Unless the student's individualized education program specifies otherwise, the student shall participate in these programs and activities with nondisabled students.

(c) The public agency shall make physical education, specially designed if necessary, available to all students with disabilities. Physical education shall 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 shall be afforded the opportunity to participate in the general physical education program available to nondisabled students unless:

- (1) the student is enrolled full time in a separate facility; or
- (2) the student needs specially designed physical education, as prescribed in the student's individualized education program.

(d) The public agency shall ensure the availability of a continuum of placement options, and shall include the following:

- (1) General education classroom with special education and related services provided during the instructional day.
- (2) Resource room with special education and related services provided outside the general education classroom during the instructional day.
- (3) Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day.

- (4) Separate public nonresidential school or facility with special education and related services provided.
- (5) Private nonresidential school or facility with special education and related services provided at public expense.
- (6) Public residential school or facility with special education and related services provided.
- (7) Private residential school or facility with special education and related services provided.
- (8) Homebound or hospital settings with special education and related services provided at the student's home, a hospital, or other noneducational site selected by the public agency.

(e) The public agency shall ensure the availability of a continuum of placement options that shall include the following:

- (1) Early childhood programs designed primarily for students without disabilities.
- (2) Early childhood special education programs, designed primarily for students with disabilities, located in a general education building or community setting.
- (3) Home-based early childhood special education and related services provided in the residence of the student's family or caregivers.
- (4) Separate nonresidential school or facility for students with disabilities that provides early childhood special education and related services.
- (5) A residential school or facility with early childhood special education and related services provided.

(f) The placement options listed in subsections (d) and (e) shall not be exclusive placement options, and a student's placement may be a combination of the options listed, as determined appropriate by the case conference committee.

(g) For a student with a disability who is convicted as an adult under state law and incarcerated in an adult facility, the case conference committee may modify the student's individualized education program or educational placement without regard to the requirements of this section where there is demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. (*Indiana State Board of Education; 511 IAC 7-27-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2474*)

SECTION 16. 511 IAC 7-27-12 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-12 Community-supported services; residential services

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 12. (a) **Before a public agency places a student with a disability in or refers a student to a private school or facility, the public agency shall convene a case conference committee and develop an individualized education program for the student in accordance with sections 4(c) and 6 of this rule. In accordance with section 3(e)(6) of this rule, the public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls, if the representative cannot attend in person.** Upon the recommendation of the case conference committee, the public agency may apply to the division of special education for financial support when a student requires community-supported services or residential services for educational reasons. The division of special education shall establish an application process.

(b) Nothing in this section shall be construed as restricting a public agency from obtaining the recommended community-supported services or residential services utilizing its own resources.

(c) This section is not applicable to the following situations:

- (1) Placement in a state-operated school upon the recommendation of the case conference committee.
- (2) Unilateral action of the parent in placing a student with disabilities in a private school.
- (3) Placement in any residential facility by any other public agency for other than educational reasons.

(d) All procedural safeguards under 511 IAC 7-22 and due process protections of 511 IAC 7-30 apply to this section.

(e) The division of special education shall approve or deny, in whole or in part, an application for financial support for community-supported services or residential services.

(f) Within ten (10) business days of approving or denying the application, the division of special education shall send written notice of approval or denial of financial support to the public agency, the parent, and, as applicable, other public agencies with whom the student is involved.

(g) If the decision is to deny financial support for all or any part of the proposed community-supported services or residential services, the public agency and the parent have the right to appeal the decision through the due process hearing procedures described in 511 IAC 7-30-3. If no request for a due process hearing is filed within ten (10) calendar days of the date the decision is received by the parent or the public agency, the decision is deemed accepted.

(h) After the financial support is approved, the effective date of the financial support for all or part of community-supported services or residential services shall be determined by the mutual agreement of the service provider, the parent, and the public agency.

(i) When a student is placed in a state-operated facility pursuant to this rule, the state-operated facility shall not bill the parent or the public agency for the costs associated with the placement. The state-operated facility shall assume the costs of room and board, special education, and related services normally provided by the residential facility.

(j) If the parent or public agency obtains community-supported services or places the student in residential services prior to or during the application process, the parent or the public agency that obtained the services for the student is responsible for all costs of the placement incurred up to the date of approval for financial support by the division of special education. Approval of financial support shall not be retroactive, and expenses incurred prior to the date of approval are not eligible for reimbursement.

(k) When a student is placed in a private residential facility, the costs of room and board, educational, and nonmedical related services are the responsibility of the state, the public agency of the student's residence, and, as applicable, any other public agency with responsibility for the student. The school corporation of legal settlement is responsible for an amount equal to the per capita expenditure of that school corporation for educating a nondisabled student.

(l) The parent of a student placed in a public or private residential facility or other out-of-home placement is financially responsible for all costs for which the parent would be responsible if the student were living in the home, including, but not limited to, the following:

- (1) Clothing and personal items as specified by the residential facility.
- (2) All medical costs, including medications, emergency treatment, or dental costs incurred that are not incorporated into the daily, weekly, or monthly charges.
- (3) Personal allowance, if applicable.

(m) If the student is in a public or private residential facility or other out-of-home or out-of-community placement, or there is a contracted third-party provider of services, **the state educational agency** and the school corporation of ~~the student's~~ legal settlement ~~is are~~ responsible for ensuring the following:

- (1) That the public agency initiates at least two (2) contacts with the residential service staff or third-party provider during the period specified by the current contract for services and payment and that those contacts are documented.
- (2) That, if the public agency permits the facility or provider to initiate and conduct case conference committee meetings on behalf of the student, all case conference committee procedures, including all required components of this section, are followed.
- (3) That a representative of the residential service staff or third-party provider participates in the development, review and revision of the student's individualized education program by a method agreed upon by the public agency and the provider.
- (4) That the parent and the school corporation are involved in all decisions with respect to the student's individualized education program and agree to any proposed changes in the services provided prior to the time any changes are implemented.
- (5) That the case conference committee determines which public agency shall issue credits and diploma, if applicable, during the student's placement at the facility.
- (6) That the facility or provider implements the student's individualized education program.
- (7) **That the public agency disseminates a copy of this article and the Procedural Manual for Community**

Supported and Residential Services to each private school or facility to which the public agency has referred or placed a student with a disability.

(Indiana State Board of Education; 511 IAC 7-27-12; filed May 22, 2000, 8:52 a.m.: 23 IR 2476)

SECTION 17. 511 IAC 7-28-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-28-3 Transition to adult life

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6; IC 20-1-6.1

Sec. 3. (a) Beginning at fourteen (14) years of age, or earlier if determined appropriate by the case conference committee, and updated annually, the individualized education program shall include a statement of the student's transition service needs **under the applicable components of the student's individualized education program**, based on career considerations and focused on the student's courses of study (such as participation in academic honors or advanced placement courses, Core 40, technical preparation courses, or vocational education courses). The statement shall also indicate whether the student will pursue a high school diploma or a certificate of completion.

(b) Beginning at the case conference prior to the student's entry into high school or sixteen (16) years of age, whichever comes first, **or earlier if determined appropriate by the case conference committee**, and at least annually thereafter, the student's individualized education program shall include a statement of needed transition services that guides the development of the special education and related services and the student's course of study, goals, benchmarks, and short term objectives, and includes the following:

(1) A coordinated set of activities designed within an outcome-oriented process that promotes movement from the public agency to postsecondary school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must meet the following criteria:

(A) Be based on the individual student's needs, taking into account the student's preferences and interests.

(B) Include the following:

(i) Instruction.

(ii) Related services.

(iii) Community experiences.

(iv) The development of employment and other postsecondary school adult living objectives.

(v) Where appropriate, acquisition of daily living skills and a functional vocational evaluation.

(2) The individuals and agencies responsible for implementing the activities and services, including, if appropriate, a statement of the interagency responsibilities or any needed linkages, or both, before the student leaves the secondary education program.

(3) An indication whether there is an expectation that the student will need adult services provided through state or local agencies, following graduation or exiting the secondary education program.

(c) When a purpose of a case conference committee meeting is to discuss transition services, the student shall be invited. The case conference committee shall review, based on areas addressed in the statement of needed transition services, the available adult services provided through state and local agencies and present written information on those services to the student and the parent. Adult services are provided by public agencies and other organizations to enhance adult life. Adult services may include, but are not limited to, the following:

(1) Services provided by a vocational rehabilitation services program.

(2) The department of workforce development.

(3) The Social Security Administration.

(4) The bureau of developmental disabilities services.

(5) A mental health center.

(6) A community rehabilitation program.

(7) An area agency on aging.

(d) Upon obtaining authorization to disclose confidential information, the public agency and the vocational rehabilitation counselor shall 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 shall do the following:

(1) Provide adequate notice to the vocational rehabilitation counselor regarding the case conference committee meeting to be conducted during the school year before the student's projected final year of school. The notification to the vocational rehabilitation counselor shall include the name, address, age, and identified disability of the student for whom the case conference committee meeting is being conducted.

(2) At the case conference committee meeting, orally advise and provide written materials to the student and the parent that describe the array of vocational rehabilitation services that may be available and the process to access those services.

(e) 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.

(f) If a participating agency, other than the public agency, fails to provide the transition services described in an agreed upon individualized education program, the public agency shall reconvene the case conference committee to identify alternative strategies to meet the transition objectives for the student set out in the individualized education program.

(g) Transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(h) The requirements of this section do not apply to students who are convicted as adults under state law and incarcerated in adult prisons whose eligibility for special education and related services 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. (*Indiana State Board of Education; 511 IAC 7-28-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2481*)

SECTION 18. 511 IAC 7-29-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-5 Functional behavioral assessment and behavioral intervention plan procedures

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 5. (a) Either before but not later than ten (10) business days after either first suspending the student for more than ten (10) cumulative instructional days in a school year, placing the student in an interim alternative educational setting, ~~or~~ expelling the student, **or otherwise commencing a removal that constitutes a change of placement**, the public agency shall convene a case conference committee meeting for one (1) of the following purposes:

(1) To develop a plan for assessing the student's functional behavior if no functional behavioral assessment was conducted or behavioral intervention plan was implemented prior to the occurrence of the behavior that resulted in the removal.

(2) To review a student's existing behavioral intervention plan and its implementation and to modify the plan and its implementation as necessary to address the behavior.

(b) After an assessment plan has been developed as described in subsection (a)(1) and the assessments required by the plan are completed, the public agency shall convene a case conference committee meeting within ten (10) instructional days of the completion of the assessments to develop a behavioral intervention plan and provide for its implementation.

(c) If a student has an existing behavioral intervention plan and has been removed from the student's current placement for more than ten (10) cumulative instructional days in a school year and is subjected to a removal that does not constitute a change of placement, the case conference committee shall review the behavioral intervention plan and its implementation to determine whether modifications are necessary.

(d) If one (1) or more of the case conference committee members believe that modifications to an existing behavioral

intervention plan are needed, the case conference committee shall meet to modify the plan and its implementation, to the extent the case conference committee determines necessary. (*Indiana State Board of Education; 511 IAC 7-29-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2485*)

SECTION 19. 511 IAC 7-29-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-6 Manifestation determination

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 6. (a) If a public agency contemplates action for a student with a disability that involves removing a student with a disability from the student's current placement for a behavior described in sections 3(a) and 4(b) of this rule or that involves a removal that constitutes a change of placement for a student who has engaged in other behavior that violated any rule or code of conduct of the public agency that applies to all students, the public agency shall, no later than the date on which the decision to take action is made:

- (1) notify the parent of the public agency's decision; and
- (2) provide the parent with the notice of procedural safeguards.

(b) Immediately, if possible, but in no case later than ten (10) instructional days after the date on which the decision to take action is made, the case conference committee and other qualified professionals as appropriate shall conduct a review of the relationship between the student's disability and the behavior subject to the disciplinary action. This review may be conducted at the same case conference committee meeting that is convened to develop or review the functional behavior assessment and behavior intervention plan as described in section 5 of this rule.

(c) The local director of special education or the local director's designee shall serve as the public agency representative to the case conference committee when the case conference committee is convened to determine whether the student's behavior is:

- (1) a manifestation of the student's disability; or
- (2) the result of deficiencies in the student's individualized education program or special education placement.

(d) In carrying out this review, the case conference committee and other qualified professionals may determine that the student's behavior is not a manifestation of the student's disability only if the case conference committee and other qualified professionals do the following:

- (1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including the following:
 - (A) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student.
 - (B) Observations of the student.
 - (C) The student's individualized education program and placement.
- (2) Then determine the following:
 - (A) In relationship to the behavior subject to the disciplinary action, the student's individualized education program and placement were appropriate.
 - (B) The special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement.
 - (C) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to the disciplinary action.
 - (D) The student's disability did not impair the student's ability to control the behavior subject to disciplinary action.

(e) If the case conference committee and other qualified professionals determine that any of the standards in subsection (d)(2) were not met, the behavior must be considered a manifestation of the student's disability.

(f) If, as a result of the case conference committee's review, the public agency identifies deficiencies in the student's individualized education program, placement, or **their** implementation, ~~of special education services~~, the public agency shall take immediate steps to remedy the identified deficiencies.

(g) If the case conference committee and other qualified professionals determine that the student's behavior is a manifestation of the student's disability, the student may not be suspended or expelled for the behavior. The case conference committee shall review all of the following:

- (1) The student's current educational placement.
- (2) The student's individualized education program.
- (3) Current educational evaluation data.

(h) The case conference committee and other qualified professionals shall, if necessary, revise the student's individualized education program or change the student's placement.

(i) If the case conference committee determines that the behavior of the student with a disability is not a manifestation of the student's disability, the written report of the case conference committee's findings shall be given to the parent and the superintendent of the public agency in which the student's current educational placement is located.

(j) Upon receipt of the case conference committee report, the superintendent shall decide whether or not to appoint an expulsion examiner in accordance with Indiana statute. If an expulsion examiner is appointed, the expulsion examiner shall give the student's parent notice of the right to request and appear at an expulsion meeting in accordance with Indiana statute. The public agency's expulsion procedures must comply with Indiana statute.

(k) The public agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the expulsion examiner.

(l) The parent of a student with a disability who disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding a student's change of placement under this rule may do the following:

- (1) Request mediation in accordance with 511 IAC 7-30-1.
- (2) Request a due process hearing in accordance with 511 IAC 7-30-3 or 511 IAC 7-30-5.
- (3) Request, simultaneously, mediation and a due process hearing.

(m) Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-30-5.

(n) In reviewing a decision with respect to the manifestation determination, an independent hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of subsection (d).

(o) Except as provided in section 7 of this rule, during the pendency of any proceeding to challenge the result of the manifestation determination, the student involved in the due process hearing must remain in the student's current educational placement unless the public agency and the parents of the student agree otherwise.

(p) In the event the student is expelled, the public agency shall provide services to enable the student to appropriately:

- (1) progress in the general curriculum; and
- (2) advance toward achieving the goals set out in the student's individualized education program.

(q) The student's case conference committee shall determine the extent to which services described in subsection (p) are necessary. (*Indiana State Board of Education; 511 IAC 7-29-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2485*)

SECTION 20. 511 IAC 7-29-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-8 Protections for children not yet eligible for special education and related services

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 8. (a) A student who has not been determined eligible for special education and related services under this article

and who has 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 (or orally if the parent does not know how to write or has a disability that prevents a written statement) to certified personnel of the public agency that the student is in need of special education and related services.
- (2) The behavior or performance of the student demonstrates the need for these services.
- (3) The parent of the student or the public agency has requested an evaluation of the student pursuant to 511 IAC 7-25-4.
- (4) The teacher of the student, or other certified personnel of the public agency, has expressed concern about the behavior or performance of the student to the director of special education of the public agency or to other administrative personnel in accordance with the agency's established child find or special education referral system.

(c) A public agency shall not be deemed to have knowledge if, as a result of receiving the information described in subsection (b), the public agency has done either of the following:

- (1) Conducted an evaluation and determined that the student was not a student with a disability under this article, **and provided notice to the student's parents of this determination consistent with 511 IAC 7-22-2.**
- (2) Determined that an evaluation was not necessary; and provided notice to the student's parents of its determination consistent with 511 IAC 7-22-2.

(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 evaluation of a student during the time period in which the student is subjected to **suspension, expulsion, or 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 case conference committee within twenty (20) instructional days from the date of the parent's written consent for the evaluation. A copy of the evaluation report shall be provided to the parent at the case conference committee 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 from the evaluation conducted by the public agency and information provided by the parents, the public agency shall provide special education and related services in accordance with this article, including the requirements of this rule. (*Indiana State Board of Education; 511 IAC 7-29-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2487*)

SECTION 21. 511 IAC 7-30-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-1 Mediation

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 4-21.5-3.5; IC 20-1-6

Sec. 1. (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 educational evaluation.
- (3) The appropriateness of the student's proposed or current special education services or placement.
- (4) Any other dispute involving the provision of a free appropriate public education to the student.
- (5) 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 preclude or delay a due process hearing or deny any other rights afforded in this article. Mediation is not an alternative to the complaint process under section 2 of this rule for alleged violations of state or federal laws in special education programs, nor is mediation under this section to address issues unrelated to the identification, evaluation, placement, or provision of a free appropriate public education to a student.

(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 if the department of education is providing direct services to a student who is the subject of the mediation process or any public agency receiving funding under Part B of the Individuals with Disabilities Education Act.

(e) The division of special education shall maintain a current list of the persons who serve as mediators, including information on the qualifications of those persons. The division of special education shall, on a general rotation basis within the geographic region, 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 scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute as determined by the mediator.

(g) ~~A nonbinding Any agreement reached by the parties in the mediation process must be set forth in a written mediation agreement. The mediation agreement shall be submitted to the student's case conference committee for approval or, where a due process hearing has been requested and an independent hearing officer appointed, the mediation agreement shall be submitted, upon request of the independent hearing officer, to the independent hearing officer for approval.~~

(h) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be asked to sign a confidentiality pledge prior to the beginning of the mediation session.

(i) The public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who:

- (1) is under contract with a parent training and information center or an appropriate alternative dispute resolution entity; and**
- (2) would explain the benefits of the mediation process and encourage the parents to use the process.**

Such procedures must be approved by the division of special education prior to implementation by the public agency, and the public agency may not use these procedures to deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting. The division of special education shall bear the cost of the meetings in accordance with the written procedures. (Indiana State Board of Education; 511 IAC 7-30-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2488)

SECTION 22. 511 IAC 7-30-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-3 Due process hearings

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 4-21.5-3; IC 20-1-6

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 any dispute regarding any of the following:

- (1) A student's identification and eligibility for services under this article.
- (2) The appropriateness of the educational evaluation.
- (3) The appropriateness of the student's proposed or current level of special education services or placement.
- (4) Any other dispute involving the provision of a free appropriate public education for the student.
- (5) Reimbursement for services obtained by the parent.

(b) This section does not apply to allegations of violations of this article or the Individuals with Disabilities Education Act unless the allegations are directly related to a due process hearing issue with respect to the student. Due process hearing issues must present a dispute regarding a ~~current case or controversy~~ involving a student.

(c) 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 the student's name and address and the name of the school the student attends;
- (3) specify the reasons for the hearing request, including a description of the nature of the problem and any facts related to the problem;
- (4) include a proposed resolution of the problem to the extent known and available to the parents at the time; and
- (5) be sent simultaneously to the superintendent of public instruction, the division of special education, and the public agency, if the request is made by the parent. If the request is made by the public agency, the request shall be sent simultaneously to the superintendent of public instruction, the division of special education, and the parent.

(d) The right to a due process hearing shall not be denied or delayed for failure to provide the notice required in subsection (c).

(e) The state superintendent of public instruction shall appoint the independent hearing officer. When a due process hearing request is received, the department of education shall send the public agency and the parent a written notice of the name of the independent hearing officer who has been appointed and a copy of the letter requesting a due process hearing.

(f) The public agency shall inform the parent of the availability of mediation as a means of dispute resolution. ~~and The public agency shall 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 initiates a hearing under this section.**

(g) A person who may be appointed as an independent hearing officer shall:

- (1) be trained in the due process hearing procedures;
- (2) have no personal or professional interest that would conflict with the person's objectivity in the hearing;
- (3) 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;
- (4) have knowledge of laws and regulations relating to the provision of special education and related services; and
- (5) be subject to any other qualifications established by the superintendent of public instruction.

(h) 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.

(i) The due process hearing timeline begins on the date a request for a due process hearing is received by the

department of education. Due process hearings 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 the request for a hearing is received. An independent hearing officer may grant specific extensions of time beyond the forty-five (45) day timeline at the request of a party. Any extension of time granted by the independent hearing officer shall be in writing to all parties and included in the record of the proceedings.

(j) Except as provided in 511 IAC 7-29-3 and 511 IAC 7-29-7, 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 proceedings extend beyond the end of the school year and the 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.

(k) 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.

(l) Any party to a due process hearing has the right to:

- (1) be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of children with disabilities;
- (2) present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- (3) prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing;
- (4) a separation of witnesses who are not parties to the dispute;
- (5) obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing;
- (6) obtain written or, at the option of the parents, electronic findings of facts and decision;
- (7) 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; and
- (8) obtain from the other party all evaluations completed and recommendations based on the offering party's evaluations that the party intends to use at least five (5) business days prior to a hearing.

(m) The independent hearing officer has the discretion and authority to:

- (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 (l)(8) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party; and
- (6) order a student with a disability to be placed in an interim alternative educational setting for not more than forty-five (45) calendar days if the requirements of 511 IAC 7-29-4(b) have been met.

(n) A parent, or the parent's representative, involved in a due process hearing has the right to:

- (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 fees if a court determines the parent ultimately prevailed at the due process hearing, administrative appeal, or judicial review;
- (5) obtain a written or electronic verbatim transcript of the proceedings at no cost; and
- (6) obtain written or electronic findings of fact and decisions at no cost.

(o) 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.

(p) Due process hearings under this section shall be conducted pursuant to IC 4-21.5-3 and this section. The hearing shall be 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 such funds shall not be used to pay attorney's fees or costs of a party. When the hearing is initiated by or against the department of education regarding the proposal or denial of funding for community-supported intensive services or residential services under 511 IAC 7-27-12, the department of education shall be responsible for the aforementioned costs.

(r) The decision of the independent hearing officer shall be based solely upon the oral and written evidence presented at the hearing. The party requesting the due process hearing shall present evidence and testimony first regarding the appropriateness of the proposed or refused action.

(s) A verbatim transcript of the hearing shall be made. The independent hearing officer is responsible for ensuring the hearing is transcribed and for 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.

(t) 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.

(u) 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.

(v) If, as a result of the due process hearing, the independent hearing officer's decision concurs with the parents' contention that a change of placement is appropriate, the placement ordered by the independent hearing officer shall be treated as a placement agreed upon by the parent and the public agency.

(w) 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 pursuant to section 4 of this rule.

(x) 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 4 of this rule.

(y) 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 notices, pleadings, exceptions, motions, requests, and other papers filed in the hearing.

(z) The division of special education shall, after deleting personally identifiable information from copies of the due process hearing findings, conclusions, and orders, do the following:

- (1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.
- (2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(Indiana State Board of Education; 511 IAC 7-30-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2490)

SECTION 23. 511 IAC 7-30-4 IS AMENDED TO READ AS FOLLOWS

511 IAC 7-30-4 Due process hearing appeals

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 4-21.5-3; IC 4-21.5-5-5; IC 20-1-6

Sec. 4. (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. Each member shall be appointed for a three (3) year term, with the year of appointment alternating to preclude all three (3) members being appointed at once. The members of the board shall alternate as chair when conducting impartial reviews. A member of the board:

- (1) may not be an officer, employee, or agent of a public agency involved in the education or care of a student;
- (2) may not have any personal or professional interest that conflicts with the member's objectivity in the appeal process; and
- (3) must be a resident of Indiana.

(b) The general counsel for the department of education shall serve as the agent for the board for receipt of all correspondence and the filing of documents.

(c) Due process hearing appeals under this section shall be conducted pursuant to 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 shall be:

- (1) in writing;
- (2) filed simultaneously with the department of education and the opposing party;
- (3) 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
- (4) 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:
 - (A) the petition for review;
 - (B) the independent hearing officer's findings, conclusions, and orders;
 - (C) a transcript of the hearing;
 - (D) exhibits, pleading, exceptions, motions, and requests; and
 - (E) 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 conduct an impartial review, prepare a written decision, and mail the written decision via certified mail, return receipt requested, to all parties. At the option of the parents, 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.

(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 section 3 of this rule. The board may decide the matter with or without oral argument. 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 children with disabilities. Each party has the opportunity for argument and rebuttal. The board may ask questions of any person present to clarify the record. The board may, at its discretion, exercise the same powers as an independent hearing officer under section 3 of this rule. When the board receives evidence or testimony, the parties shall have the same rights as under section 3(l) of this rule.

(m) The board, upon completion of its impartial review, shall prepare **a an independent** written decision that:

- (1) contains findings of fact, conclusions of law, and, if necessary, orders; and
- (2) includes a notice of ~~the right to seek judicial review of the board's decision:~~ **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. Pursuant to 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 the federal or state Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or 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 and 4 of this rule shall

be exhausted to the same extent as would be required had the action been brought under this article.

(p) A parent represented by legal counsel during the proceedings of a due process hearing, appeal, or civil court action is entitled to reimbursement for legal fees if the parent ultimately prevails. Determination of which party prevails and the amount of reimbursement shall be determined by negotiation between the parent and the public agency. If agreement cannot be reached, either party may proceed to civil court for resolution under section 6 of this rule. Mediation, as described in section 1 of this rule, is not available for resolution of legal fees.

(q) The costs of the board, including travel, associated expenses, and reporting services, shall be borne by the department of education.

(r) 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.

(s) 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 state or local public agency. (*Indiana State Board of Education; 511 IAC 7-30-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2493*)

SECTION 24. 511 IAC 7-30-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-6 Attorneys' fees

Authority: IC 20-1-1-6; IC 20-1-6-4

Affected: IC 20-1-6

Sec. 6. (a) **Independent hearing officers and the board of special education appeals shall include a notice in their written decisions stating that** an action for attorneys' fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after:

- (1) receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals; **or**
- (2) receipt of the board of special education appeals' final decision if no request for judicial review is filed in federal or state civil court. ~~or~~
- ~~(3) the final decision of the civil court if no appeal is sought.~~

(b) Attorneys' 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.

(c) Attorneys' 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.

(d) Notwithstanding subsection (c), a court may award attorneys' fees and related costs to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Attorneys' fees may not be awarded relating to any meeting of the case conference committee unless such meeting is convened as a result of an administrative proceeding or judicial action. Attorneys' fees may not be awarded for a mediation described in section 1 of this rule that is conducted prior to the filing of the due process hearing.

(f) Unless a court finds that the public agency unreasonably protracted the final resolution of the action or proceeding or any other violation of this rule, a court may reduce the amount of attorneys' fees awarded if the court finds any of the following:

- (1) During the course of the action or proceeding, the parent unreasonably protracted the final resolution of the controversy.
- (2) The amount of attorneys' 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 pursuant to section 3(c) of this rule.

(g) A public agency may not use funds under Part B of the Individuals with Disabilities Education Act to pay attorneys' fees or costs of a party related to an action or procedure under the Individuals with Disabilities Education Act and this article. (*Indiana State Board of Education; 511 IAC 7-30-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2495*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 26, 2002 at 4:00 p.m., at the Indiana Department of Education, Riley Room, 151 West Ohio Street, Indianapolis, Indiana; AND on February 26, 2002 at 4:00 p.m., at South Bend Community Schools, Third Floor Atrium, 635 South Main Street, South Bend, Indiana; AND on February 26, 2002 at 4:00 p.m., at Columbus High School, Room 129, 230 South Marr Road, Columbus, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments to conform to the federal requirements for special education. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education