

**TITLE 105 INDIANA DEPARTMENT OF  
TRANSPORTATION**

**Proposed Rule**  
LSA Document #01-390

DIGEST

Amends 105 IAC 5-10-1 and 105 IAC 5-10-2 concerning the criteria for a petition for the opening and the abolishing of a railroad crossing. Effective 30 days after filing with the secretary of state.

**105 IAC 5-10-1**  
**105 IAC 5-10-2**

SECTION 1. 105 IAC 5-10-1, AS READOPTED AT 25 IR 899, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**105 IAC 5-10-1 Criteria for opening a crossing**

**Authority:** IC 8-6-7.7-3.1; IC 8-23-2-6  
**Affected:** IC 8-6-1-7; IC 8-6-7.7

Sec. 1. Subject to the provisions of IC 8-6-1-7 and IC 8-6-7.7, the department may approve a petition to open a crossing after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

- (1) Passenger trains do not operate in excess of sixty (60) m.p.h. at the location of the proposed crossing (Class 3 FRA track classification or higher). In cases where passenger service does not operate, this criteria is not applicable.
- (2) An alternate public crossing is not located within one (1) mile of the proposed crossing.
- (3) No crossings within two (2) miles of the proposed crossing have had at least three (3) accidents in the preceding five (5) years, with the expected characteristics of the proposed crossing being similar to the nearby crossings. Characteristics for all crossings within two (2) miles of the proposed crossing must be submitted with the petition.
- (4) The proposed crossing will have expected average annual daily traffic (AADT) of five hundred (500) or greater in rural areas or one thousand (1,000) or greater in urbanized areas, where the traffic collection procedure is completed in accordance with the Federal Highway Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.
- (5) Consideration shall be given to the overall design speed of the roadway approaches involving the proposed grade crossing. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.
- (6) There are not more than ten (10) train movements per day at the proposed crossing.
- (7) Freight trains do not operate in excess of twenty-five (25)

m.p.h. at the location of the proposed crossing (Class 2 FRA track classification or higher).

(8) The proposed crossing has, at a minimum, standard crossbucks, pavement markings, and flashing lights. Any proposed crossing must also meet all standards for a rail-highway ~~intersections~~ **intersection** as provided in the Indiana Manual on Uniform Traffic Control Devices, which is incorporated by reference at ~~105 IC 9-2-1~~ **105 IAC 9-2-1**. The requirement for flashing lights may be waived if the petitioner can demonstrate that such devices are not essential for safety at the proposed crossing. ~~If the petitioner can demonstrate that flashing lights are not essential for safety at the proposed crossing, the petitioner must bear the cost of installing flashing lights at the passive crossing having the highest accident prediction rate, as determined by the Federal Railroad Administration's (FRA) accident prediction formula (as set forth in the Rail-Highway Crossing Resource Allocation Procedure, Third Edition, August 1987), located within the county of the proposed crossing.~~

(9) The proposed crossing is not within two hundred (200) feet of a roadway intersection. Adjustment of this criteria will consider the maximum queue expected for the design hour.

(10) The proposed crossing does not have, at a minimum, an eighty (80) degree intersection alignment.

(11) The proposed crossing will not provide access for trucks carrying hazardous materials unless the utilization of the crossing by such traffic is incidental.

(12) The proposed crossing will not provide access for vehicles carrying passenger for hire unless the utilization of the crossing by such traffic is incidental.

(13) The proposed crossing will not provide access for school buses unless the use of the crossing by the school bus traffic provides enhanced safety over other transportation routes, as documented by the highest school transportation official.

(14) The proposed crossing will provide improved safety access for emergency vehicles. The department requires documentation from the highest emergency response official whose jurisdiction is located where the crossing is proposed for opening.

(15) While a new crossing may satisfy the ~~above~~ **listed in this section**, if it can be shown by evidence that there are extenuating circumstances which, in the opinion of **the** department, a new crossing would still constitute a hazard, it would be denied.

(16) While a new crossing may not satisfy the ~~above~~ **listed in this section**, if it can be shown by evidence that there are extenuating circumstances which, in the opinion of **the** department, a new crossing would still be justified, it would be approved.

*(Indiana Department of Transportation; 105 IAC 5-10-1; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

SECTION 2. 105 IAC 5-10-2, AS READOPTED AT 25 IR 899, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

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### 105 IAC 5-10-2 Criteria for abolishing a crossing

Authority: IC 8-6-7.7-3.1; IC 8-23-2-6

Affected: IC 8-6-7.7

Sec. 2. Subject to the provisions of IC 8-6-7.7, a crossing may be closed after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

(1) The crossing is located where passenger train service operates at greater than ten (10) m.p.h. (FRA Accepted Track Classification). In cases where passenger service does not operate, this criteria is not applicable.

(2) The crossing is located in a rail line section with at least four (4) crossings within an urban area and three (3) at grade crossing within a rural area within a one (1) mile segment along the railroad corridor.

(3) The crossing has an accident prediction rate of two-hundredths (.02) or higher, as determined by the Federal Railroad Administration's (FRA) Accident Prediction methodology, as set forth in the Rail-Highway Crossing Resource Allocation Procedure, Third Edition, August 1987.

(4) The crossing has an average annual daily traffic (AADT) of five hundred (500) or less within rural areas or one thousand (1,000) or less within urbanized areas, where the traffic collection procedure is completed by guidance provided in the Federal Highway Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.

(5) The posted or established speed limit on the road through the crossing exceeds ten (10) m.p.h. within one thousand (1,000) feet of the crossing. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.

(6) The crossing has more than ten (10) ~~trains~~ **train** movements per day which utilize the crossing.

(7) The crossing is located where freight train service operates at greater than twenty-five (25) m.p.h. (Class 2 FRA track classification or higher).

(8) The crossing has, at a minimum, a standard crossbuck or a standard crossbuck with flasher or other activated warning device.

(9) The roadway approach to the crossing is skewed or the physical characteristics of the crossing otherwise limit the ability to traverse the crossing in a safe manner.

(10) If the crossing is utilized by the following types of vehicles, then the use by such vehicles should be considered in determining whether a crossing stays open or is closed. The presence or lack of presence of any of the following types of vehicles may not solely be responsible for closure or nonclosure of a crossing:

- (A) Trucks carrying hazardous materials.
- (B) Vehicles carrying passengers for hire.
- (C) School buses.
- (D) Emergency vehicles.

*(Indiana Department of Transportation; 105 IAC 5-10-2; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4191; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on March 4, 2002 at 9:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 730, Indianapolis, Indiana the Indiana Department of Transportation will hold a public hearing on proposed amendments concerning the criteria for a petition for the opening and the abolishing of a railroad crossing. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 730 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

J. Bryan Nicol  
Commissioner  
Indiana Department of Transportation

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## TITLE 130 INDIANA PORT COMMISSION

### Proposed Rule

LSA Document #01-395

### DIGEST

Adds 130 IAC 2 to establish rules concerning applicability and definitions. Adds 130 IAC 3 to establish rules concerning traffic control. Adds 130 IAC 4 to establish rules concerning port use. Repeals 130 IAC 1. Effective 30 days after filing with the secretary of state.

**130 IAC 1**

**130 IAC 3**

**130 IAC 2**

**130 IAC 4**

SECTION 1. 130 IAC 2 IS ADDED TO READ AS FOLLOWS:

### ARTICLE 2. APPLICABILITY AND DEFINITIONS

#### Rule 1. Definitions

#### 130 IAC 2-1-1 Applicability

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 1. The definitions in this rule apply throughout this title.** *(Indiana Port Commission; 130 IAC 2-1-1)*

#### 130 IAC 2-1-2 "Commission" defined

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1; IC 8-10-2

**Sec. 2. "Commission" means the Indiana port commission created under IC 8-10-2.** *(Indiana Port Commission; 130 IAC 2-1-2)*

**130 IAC 2-1-3 “Control devices and signals” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 3. “Control devices and signals” means all signs, signals, markings, and devices placed or erected on the ports of Indiana for the purpose of regulating, warning, or guiding traffic. *(Indiana Port Commission; 130 IAC 2-1-3)*

**130 IAC 2-1-4 “Executive director” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 4. “Executive director” means an individual employed by the commission who is responsible for, among other duties, managing and administering the central office of the commission and all employees of the commission and supervising the port directors. *(Indiana Port Commission; 130 IAC 2-1-4)*

**130 IAC 2-1-5 “Oversize or unusual vehicle” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 5. “Oversize or unusual vehicle” means those vehicles exceeding the maximum allowable dimensions and weights set forth in 130 IAC 3-1-12 and those vehicles that are not designed, used, or maintained primarily for the carrying of persons or property upon the public highways. *(Indiana Port Commission; 130 IAC 2-1-5)*

**130 IAC 2-1-6 “Parking” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 6. “Parking” means the stopping or standing of a vehicle whether occupied or not. A vehicle shall not be deemed to be parked if stopped temporarily for any of the following reasons:

- (1) Movement of the vehicle is obstructed.
- (2) The vehicle is waiting to enter or leave a gate booth lane.
- (3) The vehicle is in obedience to:
  - (A) the direction of a police officer, port security officer, or other commission employee assigned to traffic control work; or
  - (B) an official sign, signal, marking, or device.

*(Indiana Port Commission; 130 IAC 2-1-6)*

**130 IAC 2-1-7 “Port” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 7. “Port” means any of the following:

- (1) Indiana’s International Port/Burns Harbor at Portage, Indiana.
- (2) Southwind Maritime Centre at Mount Vernon, Indiana.
- (3) Clark Maritime Centre at Jeffersonville, Indiana.

*(Indiana Port Commission; 130 IAC 2-1-7)*

**130 IAC 2-1-8 “Port area” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 8. “Port area” means any:

- (1) water;
- (2) land;
- (3) platform;
- (4) building;
- (5) structure;
- (6) dock;
- (7) road;
- (8) railroad; or
- (9) other facility or operation located at a port.

*(Indiana Port Commission; 130 IAC 2-1-8)*

**130 IAC 2-1-9 “Port director” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 9. “Port director” means an individual employed by the commission who is responsible for managing and administering a port. *(Indiana Port Commission; 130 IAC 2-1-9)*

**130 IAC 2-1-10 “Port employee” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 10. “Port employee” means each person in the official employ of the commission. *(Indiana Port Commission; 130 IAC 2-1-10)*

**130 IAC 2-1-11 “Port roads” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 11. “Port roads” means all:

- (1) traffic lanes;
- (2) acceleration lanes;
- (3) deceleration lanes;
- (4) shoulders;
- (5) medial strips;
- (6) bridges;
- (7) overpasses;
- (8) underpasses;
- (9) gate areas;
- (10) approaches;
- (11) entrance and exit ramps;
- (12) maintenance areas; and
- (13) any and all other areas adjacent thereto;

under the control or jurisdiction of the commission and comprising a part of the road system of the ports of Indiana. *(Indiana Port Commission; 130 IAC 2-1-11)*

**130 IAC 2-1-12 “Port security” defined**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

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**Sec. 12. "Port security"** means any commission employee or independent contractor employed by the commission to provide port protection services. (*Indiana Port Commission; 130 IAC 2-1-12*)

### 130 IAC 2-1-13 "Restricted area" defined

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 13. "Restricted area"** means all or part of a port area that has been posted by the port director as closed to the public. (*Indiana Port Commission; 130 IAC 2-1-13*)

### 130 IAC 2-1-14 "Vessel" defined

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 14. "Vessel"** means a boat, motorboat, sailboat, rowboat, skiff, dinghy, canoe, ship, tug, towboat, packet, barge, lighter, or other watercraft, whether self-propelled or not self-propelled. (*Indiana Port Commission; 130 IAC 2-1-14*)

SECTION 2. 130 IAC 3 IS ADDED TO READ AS FOLLOWS:

## ARTICLE 3. TRAFFIC CONTROL

### Rule 1. Vehicular Traffic

#### 130 IAC 3-1-1 Speed limits

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 1. (a)** No person shall operate a motor vehicle or vehicle at a speed in excess of thirty (30) miles per hour on any port road as clearly indicated by control devices and signals.

**(b)** No person shall operate a motor vehicle or vehicle at a speed in excess of fifteen (15) miles per hour within any dock, loading, or building area except on the acceleration and deceleration lanes thereof as clearly indicated by control devices and signals.

**(c)** No person shall drive a vehicle or motor vehicle on the port roads at a speed greater than is reasonable and prudent under the conditions having regard for the actual and potential hazards then existing. In every event, speed shall be so restricted as may be necessary to avoid colliding with any person, vehicle, motor vehicle, or other conveyance on or entering the port roads and with the duty of all persons to show due care.

**(d)** No person shall drive a motor vehicle or vehicle at such a low speed as to impede or block the normal and reasonable movement of traffic or at a speed of lower than five (5) miles per hour on the traffic lanes on the port roads, except when a reduced speed is necessary for safe operation or when ordered to do so by the port director, a police

officer, or other authorized employee of the commission, or when posted at a lower speed.

**(e)** Whenever the commission determines that any of the speeds provided in subsection (d) are greater than are reasonable or safe under conditions found to exist on certain portions of the port roads, the commission or its authorized employees shall determine and declare the reasonable and safe speed limit in such areas and for such periods of time as the commission may deem advisable. Such speed limits, when so determined and set forth by the commission, shall be effective when appropriate signs giving notice thereof are erected upon said port roads so signed at a greater speed than is indicated upon such sign. At the trial of any person charged with the violation of this section, oral proof of the contents of said sign and the location thereof shall be prima facie evidence of the determination and the option of the commission. (*Indiana Port Commission; 130 IAC 3-1-1*)

#### 130 IAC 3-1-2 Application of Title 9

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1; IC 9-20

**Sec. 2. (a)** Except as provided in subsection (c), IC 9 applies to the operator of a vehicle or motor vehicle when the vehicle is operated within the port area.

**(b)** The port director or the port director's designee, may confer with the commission's director of safety and security to provide policies for the port concerning traffic control specifically related to the port's activities, including:

- (1) speed limits for;
- (2) parking within; and
- (3) regulator signage for;

port areas.

**(c)** IC 9-20 does not apply to the operator of a vehicle or motor vehicle in a port area if the operator of the vehicle or motor vehicle has obtained a written exemption from the port director. (*Indiana Port Commission; 130 IAC 3-1-2*)

#### 130 IAC 3-1-3 Parking

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 3. (a)** No person shall stop, park, or leave standing any vehicle or motor vehicle, whether attended or unattended:

- (1) upon the traffic lanes, acceleration lanes, deceleration lanes, bridges, or entrance or exit ramps; or
- (2) at any place where a "No Parking" sign is posted.

In case of an emergency, but not otherwise, a motor vehicle or vehicle may be stopped and parked on the shoulder, adjacent to the outer traffic lane in the designated direction of traffic, provided that all wheels and projecting parts of the vehicle or motor vehicle or its load shall be completely

clear of the traffic lanes. In the event that it is necessary for the operator of any vehicle or motor vehicle to leave the vehicle or motor vehicle on any portion of the port road unattended, the operator must obtain authorization for parking from the port director or port security before leaving the vehicle or motor vehicle unattended. This subsection does not apply to police or commission motor vehicles or vehicles.

(b) For the purpose of regulating the parking of vehicles or motor vehicles on the port area, the following classes of zones are hereby authorized and adopted:

(1) A public parking zone is a zone where all vehicles or motor vehicles shall park, except vehicles or motor vehicles for which a special parking zone is provided in this section. It may be designated by signs erected at the entrance to the zone.

(2) A no parking zone is a zone in which parking of all vehicles or motor vehicles shall be prohibited. It may be designated by painting on the roadway or curb or by the erection of a sign so indicating, or by both.

(3) A passenger loading zone is a zone exclusively set apart for the loading and unloading of passengers and their baggage. It may be designated by the painting of the curb or roadway or by the erection of a sign, or by both. After passengers and their baggage are loaded or unloaded, vehicles or motor vehicles using the zone for this purpose shall immediately leave the zone.

(4) A merchandise loading zone is a zone exclusively set apart for the loading and unloading of merchandise, freight, and supplies for the terminals. It may be designated as a merchandise, freight, and supplies loading and unloading zone, in which event it shall be for the exclusive use indicated. It may be designated by the painting of the curb or roadway or by the erecting of a sign so indicating, or by both.

(5) Any employee parking zone is a zone exclusively set apart for vehicles or motor vehicles of tenants, employees, and concessionaires of the terminals, and may, by a sign so indicating, be designated for the exclusive use of vehicles or motor vehicles.

(6) A nonstop zone is a zone in which it shall be unlawful for the operator of any vehicle or motor vehicle to stop a vehicle or motor vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer, port security, or traffic sign or signal. The space may be designated by a painted curb or roadway or by a sign reading, "Stopping Prohibited" or other words clearly so indicating, or by both.

(7) A limited parking zone is a zone in which the parking of all vehicles or motor vehicles shall be for a limited time. It may be designated by painting on the roadway or by the erection of a sign indicating the time limit of parking and the hours of the day in which the limit is applicable or by both.

(8) No parking within fifteen (15) feet in either direction of a fire hydrant adjacent to a roadway designated by painted curb or roadway or by a sign reading "No Parking" at any time or by both.

(9) A parking zone limited to parking of vehicles with properly designated handicapped identification.

The port director is hereby authorized to designate the zones established in this subsection in areas as in his or her judgment will be most compatible with the operation and maintenance of the port area. Whenever any zone is established, it shall be appropriately designated by painting or signs, or both, and when so designated or marked it shall be unlawful for any person to stop, park, or cause or permit to be stopped or parked any vehicle or motor vehicle contrary to a sign or marking. (*Indiana Port Commission; 130 IAC 3-1-3*)

#### **130 IAC 3-1-4 Impoundment of vehicles**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

Sec. 4. Any vehicle or motor vehicle that is operated on any port road or port area, without authorization from the port director, or that is illegally parked or abandoned on any portion of the port area or road may be towed off the port area and road and impounded. The vehicle or motor vehicle shall not be removed from the place where it is impounded without first obtaining the proper release from the local police department and the payment of all towing, storage, and other costs and charges and at the owner's risk. (*Indiana Port Commission; 130 IAC 3-1-4*)

#### **130 IAC 3-1-5 Vehicle operation**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

Sec. 5. (a) No person shall operate a motor vehicle or vehicle on the port road or port area unless such person is duly authorized to do so by the port director.

(b) No person shall operate a motor vehicle or vehicle on the port road unless such person is duly licensed in accordance with the law.

(c) No person shall operate a motor vehicle or vehicle on the port roads unless such vehicle or motor vehicle is registered in accordance with the law.

(d) No person who is under the influence of intoxicating liquor, narcotic drugs, or opiates shall operate or be in actual physical control of a vehicle or motor vehicle on the port roads.

(e) No person shall operate a motor vehicle or vehicle on the port roads without due regard for the safety and rights of others, so as not to endanger the life, limb, or property of any person. (*Indiana Port Commission; 130 IAC 3-1-5*)

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### 130 IAC 3-1-6 Compliance with orders and traffic control devices

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 6. No person shall fail, neglect, or refuse to comply with any lawful order or direction of a member of the port security, flagman, or port employee. No person shall fail, neglect, or refuse to comply with any traffic control sign, signal, or device erected or displayed on the port roads unless directed otherwise by a member of the port security, flagman, or commission employee. (*Indiana Port Commission; 130 IAC 3-1-6*)

### 130 IAC 3-1-7 Stops at gate entrance

Authority: IC 8-10-1-1; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 7. The operator of a motor vehicle or vehicle shall make a complete stop at the gate entrance, if any, when entering or leaving the port roads unless otherwise directed. (*Indiana Port Commission; 130 IAC 3-1-7*)

### 130 IAC 3-1-8 Limited entry and exit

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 8. Entry upon or exit from any part of the port roads or port area is prohibited without obtaining permission from the port director. (*Indiana Port Commission; 130 IAC 3-1-8*)

### 130 IAC 3-1-9 Accidents

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 9. In addition to the provisions of the motor vehicle laws of Indiana, the operator of a vehicle or motor vehicle involved in an accident on the port roads or port area resulting in injury or death to any person or damage to any property, real or personal, shall immediately stop such vehicle or motor vehicle at the scene of the accident, render such assistance as may be needed, and give his or her name, address, license number, and registration number to the person injured, or to the person sustaining the damage, and to the port director. (*Indiana Port Commission; 130 IAC 3-1-9*)

### 130 IAC 3-1-10 Covered and secured loads

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 10. All loads hauled over port roads shall be properly covered and adequately secured. (*Indiana Port Commission; 130 IAC 3-1-10*)

### 130 IAC 3-1-11 Hazardous vehicles

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 11. Vehicles, which are in such condition as to create a hazard to life or property, are prohibited on port roads. (*Indiana Port Commission; 130 IAC 3-1-11*)

### 130 IAC 3-1-12 Vehicle size and weight limits

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 12. (a) The following shall be the maximum allowable dimensions and weights permitted to operate on port roads without the written consent of the port director:

Factor	Limits
Width	8'0"
Heights	13'6"
Maximum length for single vehicle under own motive power (other than buses)	36'
Buses (common carriers of passengers)	40'
Maximum length for combination of any 2 vehicles	60'
Maximum length for combination of 3 or more vehicles	65'
Maximum wheel weight measured between flanges of rim	800 pounds per inch width of tire
Maximum axle weight tandem	18,000 pounds
Maximum single axle weight	22,400 pounds
Maximum tandem axle weight (2 or more axles separated by at least 40", but not more than 9' per axle)	18,000 pounds
Gross weight	90,000 pounds

(b) Scale weight tickets are to be carried in the cab for presenting at the gate, or to port security, for inspection at all times. Proper oversize permits from the state or port director shall be carried in the cab and presented at the gate or to the port security for inspection for loads requiring same.

(c) The operator or operators of any vehicle or motor vehicle exceeding any of the maximum allowable dimensions or weights set forth in subsection (a) shall, upon entering the port roads, state to the gate attendant on duty the facts relative to any excessive dimension or weight. If there shall be any question as to the safety of the vehicle or motor vehicle because of excessive dimension, the port security shall obtain approval from the port director or his duly authorized representative. (*Indiana Port Commission; 130 IAC 3-1-12*)

### 130 IAC 3-1-13 Applicability of state law

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 13. Except such that may have been modified or amplified by this title, the terms and provisions of 140 IAC

1 and 205 IAC 1 shall apply to the operator of a vehicle or motor vehicle on the port roads and port area same as if the operator was operating a vehicle or motor vehicle on the public highways of Indiana or railroad in Indiana. (*Indiana Port Commission; 130 IAC 3-1-13*)

**Rule 2. Rail and Pedestrian Traffic**

**130 IAC 3-2-1 Railroads**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 1. (a) IC 8 applies to the operator of a railroad located within a port.**

**(b) A person shall not use a front-end loader or other inappropriate means to move a railroad car or railroad engine in a port.** (*Indiana Port Commission; 130 IAC 3-2-1*)

**130 IAC 3-2-2 Pedestrian traffic**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 2. Pedestrians shall not walk on the traveled portions of port roads except to cross them in a safe manner. Pedestrians shall walk facing the vehicle traffic flow in the nearest lane.** (*Indiana Port Commission; 130 IAC 3-2-2*)

**130 IAC 3-2-3 Hitchhiking**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 3. Hitchhiking is prohibited on port roads or on any port area.** (*Indiana Port Commission; 130 IAC 3-2-3*)

**Rule 3. Waterborne Traffic**

**130 IAC 3-3-1 Applicability of boating laws**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 1. Federal maritime laws and regulations and Indiana boating laws and rules apply to the operation of vessels within a port area.** (*Indiana Port Commission; 130 IAC 3-3-1*)

**130 IAC 3-3-2 Regulation of water traffic**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 2. (a) Except as provided in subsection (b), and except as provided by federal and Indiana law, the port director may regulate all vessels within the port area.**

**(b) The maximum speed for a vessel, regardless of its size, while the vessel is within a port area, is five (5) miles per hour.** (*Indiana Port Commission; 130 IAC 3-3-2*)

**130 IAC 3-3-3 Conditions of port entry**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 3. (a) Except as provided in subsection (b):**

**(1) an aircraft; or**

**(2) a vessel;**

**may not enter a port without the permission of the port director or the port director's designee.**

**(b) An aircraft or a vessel may enter a port without the permission of the port director if access to the port is sought as a harbor of refuge.** (*Indiana Port Commission; 130 IAC 3-3-3*)

SECTION 3. 130 IAC 4 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 4. PORT USE**

**Rule 1. Prohibited Acts**

**130 IAC 4-1-1 Commercial activity**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 1. No person shall:**

**(1) offer or display goods or services for sale;**

**(2) post, distribute, or display signs, advertisements, circulars, or written or printed matter; or**

**(3) operate mobile or stationary public address equipment;**

**unless the commission shall have granted permission therefore; provided, however, that this section shall not apply to the display of customary warning, identifying, advertising, or like signs on a vehicle ordinarily and customarily carrying such signs.** (*Indiana Port Commission; 130 IAC 4-1-1*)

**130 IAC 4-1-2 Unauthorized use of areas**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 2. (a) No one shall make unauthorized use of any area within the port area. Unauthorized occupants are subject to immediate ejection and unauthorized material on site is subject to removal to storage areas at the owner's expense.**

**(b) Stevedores' tools, appliances and equipment, donkey engines, vehicles, or any other material or object, which are not part of the cargo, are not permitted to remain on the wharves or other public areas. Such materials shall be removed and stored at the owner's expense.** (*Indiana Port Commission; 130 IAC 4-1-2*)

**130 IAC 4-1-3 Areas closed to public**

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 3. No person shall enter any restricted area posted as being closed to the public, except a person:**

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- (1) assigned to duty in the restricted area; or
- (2) under the supervision and control of the port director or other personnel duly authorized to enter the restricted area.

(Indiana Port Commission; 130 IAC 4-1-3)

### 130 IAC 4-1-4 Solicitation prohibited

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 4.** No person shall solicit funds for any purpose on the port area without the written consent of the port commission. (Indiana Port Commission; 130 IAC 4-1-4)

### 130 IAC 4-1-5 Photography prohibited

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 5.** No person shall take still, motion, or sound pictures on any port or port area, except by special permission of the port director. (Indiana Port Commission; 130 IAC 4-1-5)

### 130 IAC 4-1-6 Designated traffic areas; obstruction

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 6.** No person shall travel on the port area other than on the roads, walks, or places provided for the particular class of traffic; nor shall any person use the roads or walks in such a manner as to hinder or obstruct their proper use. (Indiana Port Commission; 130 IAC 4-1-6)

### 130 IAC 4-1-7 Firearms and explosives

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 7. (a)** No person, except port security, conservation officers, police officers, customs officers, or members of the Armed Forces of the United States on official duty, shall carry any firearms, concealed weapons, explosives, or similar inflammable materials on the port area.

(b) All persons other than the excepted classes shall:

- (1) surrender all objects described in subsection (a) to the port security on guard at the entrance gate or to the port director;
- (2) be given a receipt; and
- (3) recover the object upon leaving the port area and surrendering the receipt.

(c) Shooting anywhere on the port area, either over or on the water or land, within the confines of any port boundary is prohibited without the consent of the port director. (Indiana Port Commission; 130 IAC 4-1-7)

### 130 IAC 4-1-8 Prohibited articles

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 8.** No person shall transport or carry on the port property any of the following:

- (1) Alcoholic beverages (excepting, however, alcoholic beverages permitted to be brought into the United States on cruise ships and in course of shipment).
- (2) Firearms.
- (3) Weapons.
- (4) Explosives.
- (5) Narcotics.
- (6) Obscene literature.

(Indiana Port Commission; 130 IAC 4-1-8)

### 130 IAC 4-1-9 No smoking areas

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 9.** Persons shall not smoke on:

- (1) the wharves or in the warehouses, sheds, and other structures of the port, set apart for:
  - (A) the loading and unloading of vessels;
  - (B) the storage or warehousing of their cargoes, or other merchandise; or
- (2) any truck dray, float, automobile, or vehicle of any kind when using such structure.

A person shall not smoke or use matches or cigar or cigarette lighters in the hold of any vessel or upon the decks thereof, while loading or unloading cargo. (Indiana Port Commission; 130 IAC 4-1-9)

### 130 IAC 4-1-10 Entry and exit permits

Authority: IC 8-10-1-7; IC 8-10-1-9

Affected: IC 8-10-1

**Sec. 10. (a)** Every person entering or leaving the port area shall stop at the entrance gate, identify himself or herself to the commission through its authorized employees or port security, and state his or her business and reason for being on the port area. If the person's business and purpose of being in the port area is in furtherance of or incidental to the operation and maintenance of the port area, the person shall be issued a temporary visitor's pass to enter the port area, which pass shall be completely filled out, signed by the visited party, and surrender upon leaving the port area.

(b) The commission, through its authorized employees, or port security shall refuse admittance to the port area to anyone whose purpose in the port area is not in furtherance of or incidental to the operation and maintenance of the port area.

(c) No admittance will be permitted to sheds, warehouses, platforms, docks, or other structures, except to those having business to transact with the commission or with its tenants and lessees.

(d) The commission, through its authorized employees, or port security shall refuse admittance to the port area to any person under the influence of intoxicants or drugs.



(e) A special permit and identification card may be given to persons regularly employed in the port area and will be used in lieu of any other identification or permit to enter and leave the port area upon presentation to the commission, through its authorized employees, or port security. The special permit shall not be transferable and may be taken up by the commission through its authorized employees or port police at any time for violation of port area rules.

(f) The operator of any vehicle entering or leaving the port area shall:

- (1) dim his or her lights and bring his or her vehicle to a complete stop at the gate;
- (2) identify himself or herself and his or her passengers and show his or her operator's permit and identification card to the port security; and
- (3) state his or her business and reason for being in the port area.

The commission, through its authorized employees or port security, shall refuse admittance to the port area to any person or vehicle without an operator's permit and whose purpose in the port area is not in furtherance of or incidental to the operation and maintenance of the port area.

(g) A visitor's pass for the vehicle windshield area may be issued to the operator of a vehicle, after identification that will permit the operator of the vehicle and passengers in the vehicle for a limited period to view the facilities of the port area or to use the public fishing area. The pass shall be surrendered to the port security upon leaving the port area. *(Indiana Port Commission; 130 IAC 4-1-10)*

**130 IAC 4-1-11 Fishing; swimming; boat launching**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 11. (a) No person shall fish in the port area between sunset and sunrise. Fishing is allowed only within the designated fishing area that is maintained and is under the jurisdiction of the department of natural resources and the commission.

(b) No person shall launch a boat or fish from a boat in the port area.

(c) Swimming is prohibited in the port area. *(Indiana Port Commission; 130 IAC 4-1-11)*

**130 IAC 4-1-12 Minors**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 12. All minors in the port area must be accompanied by a responsible adult. *(Indiana Port Commission; 130 IAC 4-1-12)*

**130 IAC 4-1-13 Fires prohibited**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 13. No person shall ignite or maintain an open fire in the port area without the consent of the port director. *(Indiana Port Commission; 130 IAC 4-1-13)*

**130 IAC 4-1-14 Searches of persons, vehicles, and cargoes**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 14. Every motor vehicle, truck, trailer, vessel, and semitrailer and any person or cargo therein shall be subject to complete search and inspection by the commission, through its authorized employees or port security on entering or leaving the port area and within the port area. No person shall interfere with or hinder the commission or port security in the conduct of any search. *(Indiana Port Commission; 130 IAC 4-1-14)*

**130 IAC 4-1-15 Compliance with orders**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 15. No person shall disobey any lawful and reasonable order given by the executive director, port director, port security, or other duly authorized port employee. Port employees may be invested with the authority by the executive director or port director to carry on the business of the commission and to enforce the rules of the commission. *(Indiana Port Commission; 130 IAC 4-1-15)*

**130 IAC 4-1-16 Damage to commission property**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 16. No person shall:  
(1) cut, mutilate, or remove any tree, shrub, or plant; or  
(2) deface, damage, mutilate, destroy, mar, or otherwise damage any signs, structures, fences, or any other property or equipment;  
owned by or under the jurisdiction or control of the commission without the consent of the port director. *(Indiana Port Commission; 130 IAC 4-1-16)*

**130 IAC 4-1-17 Disposal of litter, harmful material, and waste**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 17. No person shall:  
(1) place, drop, or permit to be dropped any litter upon the port roads, harbor property, or any article that may damage or injure any person or property in or upon the port roads or harbor property; or  
(2) dispose of bottles, cans, papers, garbage, rubbish, or

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other waste material of any kind or description at any place upon the port roads or port area; except at places designated therefore within the port area. (*Indiana Port Commission; 130 IAC 4-1-17*)

### 130 IAC 4-1-18 Discharge of liquid waste and other debris

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 18. The discharge or throwing of ballast, bilge water, wash water, fuel oil, sanitary waste, rubbish, dunnage, or debris:

(1) into:

- (A) Lake Michigan;
- (B) any area of the Port of Indiana-Burns Waterway Harbor;
- (C) the Ohio River; or
- (D) other ports under the jurisdiction of the commission; or

(2) at dock structures;

is prohibited. Any vessel needing to dispose of ballast, bilge water, wash water, or sanitary waste shall discharge same into facilities provided by the commission, if any. The commission will assist the owner of any such vessel or the owner's representatives in making contact with a disposal facility if the commission does not provide such a facility. (*Indiana Port Commission; 130 IAC 4-1-18*)

### 130 IAC 4-1-19 Fire equipment

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 19. A person shall not obstruct or interfere with the free and easy access to, or remove, or in any manner disturb any:

- (1) fire extinguishers;
- (2) fire hose;
- (3) fire hydrant; or
- (4) other firefighting appliance or apparatus;

installed in or upon any wharf, building, or any location within a port area. (*Indiana Port Commission; 130 IAC 4-1-19*)

## Rule 2. General Provisions

### 130 IAC 4-2-1 Lease of commission land

Authority: IC 8-10-1-9  
Affected: IC 8-10-1-7; IC 8-10-2-2

Sec. 1. (a) Land is available for lease at port sites under the control of the commission. Prospective tenants must meet the qualifications listed in this section.

(b) All port tenants must be registered, when required by law, with the Indiana secretary of state and be authorized to do business in Indiana.

(c) It is desirable that the intended commercial activities of prospective port tenants include direct use of waterborne commerce if at all practicable.

(d) The prospective port tenant must provide adequate assurance that the intended use of the port will comply with all applicable environmental quality laws and regulations.

(e) The prospective port tenant must provide evidence that the prospective tenant has adequate financial resources to undertake the proposed project. (*Indiana Port Commission; 130 IAC 4-2-1*)

### 130 IAC 4-2-2 Construction on commission land

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 2. No construction shall commence within any port or upon any port area without the prior written consent from the executive director, the port engineer, or the port director. Any authorized construction shall be limited to the area specifically approved in writing by the executive director, the port engineer, or the port director. (*Indiana Port Commission; 130 IAC 4-2-2*)

### 130 IAC 4-2-3 Packaging and labeling material

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 3. No radioactive material shall be transported in any vehicle or motor vehicle on the port roads or port area except in a package of sufficiently strong structure so as not to be affected in case the vehicle in which it is transported is involved in any kind of accident or occurrence, and such packaging shall bear legible labels identifying the contents and the radioactivity strength thereof, all in compliance with the Interstate Commerce Commission's regulations or other laws and regulations relating thereto. (*Indiana Port Commission; 130 IAC 4-2-3*)

### 130 IAC 4-2-4 Vehicle labels

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

Sec. 4. Every vehicle transporting radioactive materials on the port roads or port area shall display upon exterior of the vehicle four (4) radioactive labels, each complying with the Interstate Commerce Commission's regulations relative thereto as to the size, color, and contents. Such labels shall be so designed and affixed as to be durable and legible for the entire trip such vehicle is transporting such material and shall be placed on such vehicle as follows:

(1) One (1) on the front of the vehicle so as to be clearly visible to persons approaching the vehicle from the front thereof.

(2) One (1) on the rear of the vehicle so as to be clearly visible to any persons approaching the vehicle from the rear thereof.

(3) One (1) on each side of the vehicle clearly visible to persons approaching the vehicle from either side thereof.

(*Indiana Port Commission; 130 IAC 4-2-4*)

**130 IAC 4-2-5 Permits required**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 5. No radioactive material may be transported in any vehicle on port roads or port area other than those materials listed on the exempt list in the appropriate Interstate Commerce Commission's regulations without first applying to the director of operations or the port director, or to his or her duly authorized representative.** (*Indiana Port Commission; 130 IAC 4-2-5*)

**130 IAC 4-2-6 Accidents**

Authority: IC 8-10-1-7; IC 8-10-1-9  
Affected: IC 8-10-1

**Sec. 6. In the event of an accident occurring on the port road or port area, it shall be the responsibility of the driver of the vehicle wherein such material is transported, or any passenger therein, to notify the port director immediately, by telephone or radio or in person. In the event of such incident, it shall also be the responsibility of the carrier to prevent contamination of any port road or port property or exposure of any person on the port area, by taking every reasonable step to prevent the dispersal of such material in the interest of personnel into the affected area by setting out flares, lights, and flags as required in a case of a disabled vehicle, by the appropriate Interstate Commerce Commission's regulations.** (*Indiana Port Commission; 130 IAC 4-2-6*)

SECTION 4. 130 IAC 1 IS REPEALED.

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on February 26, 2002 at 10:00 a.m., at 150 West Market Street, Suite 100, Indianapolis, Indiana the Indiana Port Commission will hold a public hearing on proposed new rules concerning port use. Copies of these rules are now on file at the Indiana Port Commission, 150 West Market Street, Suite 100 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

William D. Friedman  
Executive Director  
Indiana Port Commission

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**TITLE 405 OFFICE OF THE SECRETARY OF  
FAMILY AND SOCIAL SERVICES**

**Proposed Rule**  
LSA Document #01-393

**DIGEST**

Amends 405 IAC 2-3-3 to exclude impairment-related work expenses in calculating income for Medicaid eligibility for the

aged, blind, and disabled. Adds 405 IAC 2-9 to set out eligibility requirements for Medicaid for employees with disabilities (MED Works). Effective 30 days after filing with the secretary of state.

**405 IAC 2-3-3**

**405 IAC 2-9**

SECTION 1. 405 IAC 2-3-3, AS READOPTED AT 24 IR 3822, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**405 IAC 2-3-3 Income of applicant or recipient (calculation)**

Authority: IC 12-13-5-3; IC 12-13-7-3; IC 12-15-1-10  
Affected: IC 12-15-4; IC 12-15-5

Sec. 3. Countable income is gross monthly income less the deductions and exclusions required to be excluded by federal and state statute or regulation and the deductions and exclusions as follows:

- (1) Determination of net earned income as follows:
  - (A) All of the earned income of a child under fourteen (14) years of age is excluded.
  - (B) Up to ten dollars (\$10) of earned income is disregarded if the income is received only once during the calendar quarter from a single source (infrequent) or could not be reasonably to expected (irregular). If the total amount of infrequent or irregular earned income received in a month exceeds ten dollars (\$10), this disregard cannot be applied.
  - (C) Expenses allowed by the Internal Revenue Service shall be deducted from gross income from self-employment to determined net self-employment earnings.
  - (D) Sixty-five dollars (\$65) of earned income per month, **plus impairment-related work expenses described in 405 IAC 2-9-2(b)**, plus one-half (½) of remaining earned income is excluded.
- (2) Funds from a grant, scholarship, or fellowship, other than that excluded by federal regulations, which are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes shall be deducted from the total of such funds.
- (3) Tax refunds are excluded from income.
- (4) Home energy assistance is disregarded.
- (5) Up to twenty dollars (\$20) of unearned income is disregarded if the income is received only once during the calendar quarter from a single source (infrequent) or could not reasonably be expected (irregular). If the total amount of infrequent or irregular unearned income received in a month exceeds twenty dollars (\$20), this disregard cannot be applied.
- (6) A general income disregard of fifteen dollars and fifty cents (\$15.50) is deducted per month.
- (7) Payments made to foster parents or licensed child caring institutions from county funds or reimbursed under Title IV-B of the Social Security Act on behalf of an applicant or recipient who is a ward of the county department shall be excluded.

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(8) For an applicant or recipient of medical assistance under the blind category, an amount of his or her income, as specified in an approved plan for achieving self-support, is disregarded for a period of time not to exceed twelve (12) months. Such a plan will be approved by the family and social services administration, if the plan is in writing and fully documents that the income to be disregarded will be used by the applicant or recipient in pursuing a bona fide activity aimed at achieving self-support.

*(Office of the Secretary of Family and Social Services; 405 IAC 2-3-3; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1018, eff Apr 1, 1984; filed Jul 16, 1987, 2:00 p.m.: 10 IR 2669; errata, 11 IR 799; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1783; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-3-5) to the Office of the Secretary of Family and Social Services (405 IAC 2-3-3) by P.L. 9-1991, SECTION 131, effective January 1, 1992.*

SECTION 2. 405 IAC 2-9 IS ADDED TO READ AS FOLLOWS:

### Rule 9. Medicaid for Employees with Disabilities

#### 405 IAC 2-9-1 Purpose and general eligibility requirements

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-15-2-6.5; IC 12-15-41

**Sec. 1. (a)** This rule establishes the eligibility requirements for the two (2) optional Medicaid categories for employees with disabilities identified in 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI), and in accordance with IC 12-15-41.

(b) As used in this rule, "applicant or recipient" means an individual whose Medicaid eligibility is being determined under one (1) of the Medicaid categories referenced in subsection (a) and in accordance with this rule.

(c) A person who is less than sixteen (16) years of age, or sixty-five (65) years of age or older is not eligible for Medicaid for employees with disabilities.

(d) A recipient must report any change in income, resources, employment status, or marital status within ten (10) days of the date of the change. An additional ten (10) days is allowed to provide any necessary verification.

(e) In addition to the requirements in this rule, the following requirements apply to applicants and recipients of Medicaid for employees with disabilities:

- (1) 405 IAC 2-1-2.
- (2) 405 IAC 2-1-3.
- (3) 405 IAC 2-2-4.
- (4) 405 IAC 2-3-1.1.
- (5) 405 IAC 2-3-2.
- (6) 405 IAC 2-3-11.

- (7) 405 IAC 2-3-12.
- (8) 405 IAC 2-3-13.
- (9) 405 IAC 2-3-14.
- (10) 405 IAC 2-3-22.
- (11) 405 IAC 2-4-1.
- (12) 405 IAC 2-5-1.
- (13) 405 IAC 2-8-1.
- (14) 405 IAC 2-8-2.

*(Office of the Secretary of Family and Social Services; 405 IAC 2-9-1)*

#### 405 IAC 2-9-2 Income of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-15-2-6.5; IC 12-15-41

**Sec. 2. (a)** Countable income is gross monthly income less the deductions and exclusions required by federal or state statute or regulation and the deductions and exclusions in this section.

(b) The following are disregarded or deducted in determining net earned income:

(1) Up to ten dollars (\$10) of earned income is disregarded if the income is either infrequent or irregular. Infrequent income is income received only once during the calendar quarter from a single source. Irregular income is income that could not reasonably be expected. If the total amount of infrequent or irregular earned income received in a month exceeds ten dollars (\$10), this disregard cannot be applied.

(2) Expenses allowed by the Internal Revenue Service shall be deducted from gross income from self-employment to determine net self-employment earnings.

(3) Sixty-five dollars (\$65) of earned income per month, plus impairment-related work expenses described in subdivision (4), plus one-half (½) of remaining earned income is excluded.

(4) Impairment-related work expenses are expenses that are paid by the applicant or recipient for the purchase or rental of certain items and services that are necessary, due to the severity of his or her impairment, in order for the applicant or recipient to work. No deduction is allowed if the expense has been, could be, or will be paid by another source or if the applicant or recipient will be reimbursed by another source, including, but not limited to, Medicaid, Medicare, private health insurance, or another agency. Allowable impairment-related expenses are as follows:

(A) Payments for attendant care services in the following circumstances:

(i) Because of the applicant's or recipient's impairment, he or she needs assistance in traveling to and from work, or while at work needs assistance with personal functions, for example, eating or toileting, or with work-related functions, for example, reading or communicating.

(ii) Because of the applicant's or recipient's impairment, assistance is needed at home with personal functions, for example, dressing or administering medications, in preparation for going to and returning from work.

(iii) Payments made to a family member for attendant care services will be allowed only if the family member suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked in order to perform the services.

(iv) A family member is anyone who is related to the applicant or recipient by blood, marriage, or adoption, whether or not that person lives with the applicant or recipient.

(v) If only part of the payment to a person is for services that come under the provisions of items (i) and (ii), only the portion attributable to those services will be allowed.

**(B) Payments for medical devices.** If the impairment requires the applicant or recipient to utilize medical devices in order to work, the payments made for those devices may be deducted. As used in this clause, medical devices include durable medical equipment that can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators, and pacemakers.

**(C) Payments for prosthetic devices.** If the impairment requires the applicant or recipient to utilize a prosthetic device in order to work, the payments made for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs, and other parts of the body.

**(D) Payments for work-related equipment.** If the impairment requires the applicant or recipient to utilize special equipment in order to do his or her job, the payments made for that equipment may be deducted.

**(E) Payments for residential modifications.** If the impairment requires the applicant or recipient to make modifications to his or her place of residence, the location of the workplace will determine if the cost of these modifications will be deducted. If the applicant or recipient is employed away from home, only the cost of changes made outside of the home to permit the applicant or recipient to get to his or her means of transportation, for example, the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches, will be deducted. Costs relating to modifications of the inside of the home will not be deducted if the person works away from home. If the applicant or recipient works at home, the costs of modifying the inside of the home in order to create a working space to

accommodate his or her impairment will be deducted to the extent that the changes pertain specifically to the space in which he or she works. Examples of such changes are the enlargement of a doorway leading into the work space or modification of the work space to accommodate problems in dexterity. However, if the applicant or recipient is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

**(F) Payments for transportation costs in the following circumstances are allowed:**

(i) The impairment requires that in order for the applicant or recipient to get to work, a vehicle that has structural or operational modifications is required. The modifications must be critical to the applicant's or recipient's operation or use of the vehicle and directly related to his or her impairment. The costs of the modifications will be deducted, but not the cost of the vehicle. A mileage allowance for the trip to and from work will be allowed in the same amount as allowed by the Supplemental Security Income program for this purpose.

(ii) The impairment requires the applicant or recipient to use driver assistance, taxicabs, or other hired vehicles in order to work. Amounts paid to the driver and, if the applicant's or recipient's own vehicle is used, a mileage allowance will be deducted for the trip to and from work.

(iii) The impairment prevents the applicant or recipient from taking available public transportation to and from work and he or she must drive his or her (unmodified) vehicle to work. A mileage allowance for the trip to and from work will be deducted if verification is obtained through the applicant's or recipient's physician or other sources that the need to drive is caused by the impairment, and not due to the unavailability of public transportation.

**(G) All other impairment-related expenses allowed by the Supplemental Security Income program.**

(c) Funds from a grant, scholarship, or fellowship that are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes shall be deducted from the total of such funds except as prohibited by federal regulations.

(d) Tax refunds are excluded from income.

(e) Home energy assistance is disregarded.

(f) Up to twenty dollars (\$20) of unearned income is disregarded if the income is either infrequent or irregular. Infrequent income is income received only once during the calendar quarter from a single source. Irregular income is income that could not reasonably be expected. If the total amount of infrequent or irregular unearned income

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received in a month exceeds twenty dollars (\$20), this disregard cannot be applied.

(g) A general income disregard of fifteen dollars and fifty cents (\$15.50) is deducted per month.

(h) Payments made to foster parents or licensed child caring institutions from county funds or reimbursed under Title IV-B of the Social Security Act on behalf of an applicant or recipient who is a ward of the county department are excluded.

(i) Income of the spouse of the applicant or recipient is excluded.

(j) Income of the parents of the applicant or recipient is excluded. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-2*)

### 405 IAC 2-9-3 Income eligibility and posteligibility determinations of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-15-2-6.5; IC 12-15-41

Sec. 3. (a) An applicant's or recipient's income eligibility shall be determined by the following procedures:

- (1) Determine the applicant's or recipient's unearned income that is not excluded by state or federal statute or regulation.
- (2) Subtract the general income disregard specified in section 2 of this rule. The resulting amount is countable unearned income.
- (3) Determine the earned income of the applicant or recipient.
- (4) Subtract any remaining general income disregard.
- (5) Subtract the earned income disregard or disregards specified in section 2 of this rule. The resulting amount is countable earned income.
- (6) Combine countable unearned and countable earned income.
- (7) Subtract the monthly income standard that is equal to three hundred fifty percent (350%) of the federal poverty guideline for a family size of one (1), divided by twelve (12) and rounded up to the next whole dollar.
- (8) If the resulting amount in subdivision (7) is zero dollars (\$0) or less than zero dollars (\$0), the applicant or recipient is eligible for Medicaid for employees with disabilities. If the resulting amount is greater than zero dollars (\$0), the applicant or recipient is not eligible.

(b) The income standard referenced in subsection (a)(8) shall be increased annually beginning the second month following the month in which the federal poverty guidelines are published in the Federal Register.

(c) The following procedures are used to determine the

amount of income to be paid to an institution for an applicant or recipient who has been determined eligible under subsection (a) and who is residing in a Title XIX certified health care facility:

- (1) Determine the applicant's or recipient's total income that is not excluded by federal statute. Total income includes amounts deducted in the eligibility determination under subsection (a).
- (2) Subtract the minimum personal needs allowance of fifty dollars (\$50).
- (3) Subtract an amount for increased personal needs as allowed under Indiana's approved Medicaid state plan. The increased personal needs allowance includes, but is not limited to, court ordered guardianship fees paid to an institutionalized applicant's or recipient's legal guardian, not to exceed thirty-five dollars (\$35) per month. Guardianship fees include all services and expenses required to perform the duties of a guardian, as well as any attorney fees for which the guardian is liable.
- (4) Subtract the amount of health insurance premiums.
- (5) Subtract an amount for expenses incurred for necessary medical or remedial care recognized by state law but not covered under the state plan, subject to any reasonable limits set forth in Indiana's approved Medicaid state plan.
- (6) The resulting amount is the amount by which the Medicaid payment to the facility shall be reduced.

(*Office of the Secretary of Family and Social Services; 405 IAC 2-9-3*)

### 405 IAC 2-9-4 Resource eligibility of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-15-2-6.5; IC 12-15-41-2

Sec. 4. (a) An applicant or recipient is ineligible for Medicaid for employees with disabilities for any month in which the total equity value of all nonexempt personal property owned by the applicant and his or her spouse does not exceed the applicable limitation for a single individual or married couple as prescribed by the Supplemental Security Income program.

(b) The resources of the applicant's or recipient's parents are excluded.

(c) In addition to that property required to be excluded by federal statute or regulation, the following property is exempt from consideration:

- (1) All household goods and personal effects.
- (2) Personal property required by an individual's employer while the individual is employed.
- (3) The equity value of personal property used to produce food for home consumption or used in the production of income.
- (4) The value of life insurance with a total face value of ten thousand dollars (\$10,000) or less if provision has

been made for payment of the applicant's or recipient's funeral expenses from the proceeds of such insurance. However, the ten thousand dollar (\$10,000) limitation shall be reduced by any amount in an irrevocable burial trust or irrevocable prepaid funeral agreement.

(5) For a period of no more than nine (9) months from the date of receipt, the proceeds or any interest earned on the proceeds of casualty insurance received as a result of damage, destruction, loss, or theft of exempt real or personal property if the applicant or recipient demonstrates that the proceeds are being used to repair or replace the damaged, destroyed, lost, or stolen exempt property.

(6) One (1) motor vehicle according to the following provisions:

(A) One (1) motor vehicle is excluded, regardless of value, if, for the applicant or recipient or other member of his or her household, the motor vehicle is:

- (i) necessary for employment;
- (ii) necessary for the medical treatment of a specific or regular medical problem; or
- (iii) modified for operation by or transportation of a handicapped person.

(B) If no motor vehicle is excluded under clause (A), four thousand five hundred dollars (\$4,500) of the current market value of one (1) motor vehicle is excluded.

(7) Burial spaces.

(8) Subject to the requirements in subsection (d), the home that is the principal place of residence of:

- (A) the applicant or recipient;
- (B) the spouse of the applicant or recipient;
- (C) the parent of the applicant or recipient who is under eighteen (18) years of age;
- (D) the applicant's or recipient's biological or adoptive child under eighteen (18) years of age; or
- (E) the applicant's or recipient's blind or disabled biological or adoptive child eighteen (18) years of age or older.

(9) Income producing real property if the income is greater than the expenses of ownership.

(10) Up to twenty thousand dollars (\$20,000), as approved by the central office of the family and social services administration, for an independence and self-sufficiency account defined in IC 12-15-41-2(3). A resource disregard for this purpose will be approved if the applicant or recipient submits a plan in writing that describes specifically the goods and or services that he or she intends to purchase that will increase, maintain, or retain his or her employability or independence. The items must be reasonable in terms of the applicant's or recipient's ability to achieve a stated goal that is focused on the individual's employability by removing barriers. Items that are recreational in nature will not be approved. A request to save money without specifying goods or

services to be purchased within an achievable period of time will not be approved. An approved account will be reviewed by the local office of family and children caseworker at each annual redetermination. If the terms of the original approved account have not been met, the recipient will be required to submit an updated request to the caseworker within thirty (30) days of receiving written notification from the caseworker that such an update is required. If the recipient fails to submit the update, the disregard will be disapproved and resource eligibility will be redetermined without it. The caseworker will forward updates to the central office for approval. At any time during the period of eligibility under the Medicaid for employees with disabilities program, the recipient may submit an update requesting an adjustment in the approved amount. Approval will not be given for any services that are available to the recipient under Medicaid or any other publicly funded program.

(11) Retirement accounts held by the applicant or recipient or his or her spouse are exempt. This includes Individual Retirement Accounts, Keogh Plans, 410(k) plans, and any employer-related retirement account.

(d) The home exempted by subsection (c)(8) is exempt until such time as it is verified that none of the persons listed in subsection (c)(8) intends to reside there. The home is the shelter in which the person resides, the land on which the shelter is located, and related outbuildings.

(e) As a condition of eligibility for Medicaid for employees with disabilities, an applicant or recipient and his or her spouse must sign an agreement to offer for sale or for rent all nonexempt real property that he or she or his or her spouse own.

(f) If nonexempt real property is not offered for sale or for rent at current market value within thirty (30) days of written notification of medical assistance or within thirty (30) days after the agreement referenced in subsection (e) is signed, whichever is later, the recipient shall be ineligible. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-4*)

**405 IAC 2-9-5 Employment requirements; continuing eligibility when employment ends**

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-15-2-6.5; IC 12-15-41

Sec. 5. (a) In order for an individual to be eligible for Medicaid for employees with disabilities, the individual must be engaged in a substantial and reasonable work effort. This means that the person must be either employed or self-employed, with the intent of such work activity being ongoing. Employment must be verifiable by pay stubs or other verification from an employer documenting that the income is subject to income tax and FICA withholding. Self-

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employment must be verified by the individual's income tax return, or in the case of a new business for which a tax return has not yet been filed, the personal business records of the individual.

(b) In order for a recipient of Medicaid for employees with disabilities to remain eligible when the definition of medically improved disability in section 7 of this rule is met, the recipient must be employed as defined in subsection (a) and must have monthly earnings as calculated under 405 IAC 2-5-1 that are equal to or greater than the federal minimum wage times forty (40) unless the provisions in subsection (c) are met.

(c) A recipient who is involuntarily not working can remain eligible for the Medicaid for employees with disabilities program for up to twelve (12) months if he or she meets all other program requirements and is either:

- (1) on temporary medical leave from his or her employment as defined in subsection (d); or
- (2) maintains a connection to the workforce by participating in at least one (1) of the following activities:
  - (A) Enrollment in a vocational rehabilitation program.
  - (B) Enrollment or registration with the department of workforce development.
  - (C) Participation in a transition from school to work program.
  - (D) Participation with an approved provider of employment services.

(d) As used in this section, "temporary medical leave" means a leave from the place of employment due to health reasons when the employer is keeping a position open for the individual to return. If the employer is no longer holding a position open, the recipient must maintain a connection to the workforce as defined in subsection (c)(2) in order for coverage to continue under Medicaid for employees with disabilities.

(e) In order to remain eligible upon becoming unemployed, the recipient or his or her authorized representative must submit a written request for continued coverage to the local office of family and children no later than sixty (60) days after termination of employment. Attached to this written request must be verification that the recipient meets the requirements in subsection (c). On a quarterly basis thereafter, as long as the recipient continues to be unemployed and wishes coverage to continue, verification of his or her medical leave or workforce connection status must be provided to the local office of family and children. The quarterly verification must consist of a statement from the agency or service provider that documents the recipient's continued participation in an activity that constitutes connection to the workforce, or from the recipient's employer stating he or she remains on a temporary involuntarily medical leave.

(f) A recipient who voluntarily terminates his or her employment for any reason is not eligible for Medicaid for employees with disabilities. Eligibility for the other Medicaid categories will be pursued.

(g) A recipient who fails to submit the initial request for coverage continuation within the required sixty (60) day period, or who fails to submit the quarterly verification report is no longer eligible for Medicaid for employees with disabilities. Eligibility for other Medicaid categories will be pursued. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-5*)

### 405 IAC 2-9-6 Medical disability determination

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 6. (a) In order to qualify for Medicaid for employees with disabilities, an applicant must meet the definition of disability in IC 12-14-15-1(2). If not for earned income, the applicant or recipient would medically qualify for Medicaid under the traditional disability category according to statute.

(b) The determination of disability is made by the Medicaid medical review team (MMRT) based upon the principles found in 405 IAC 2-2-3, except that the determination of whether an impairment is substantial enough to meet the definition of disability is made without considering work activity, earnings, and substantial gainful activity (SGA). If not for the fact that the applicant or recipient is working, the condition would otherwise be substantial enough to prevent the person from participating in gainful activity.

(c) A redetermination of disability is required annually of each recipient at the time the county office does its complete redetermination of all factors of eligibility. A redetermination of disability may be required more frequently or may be waived at the discretion of the MMRT based upon the condition of the recipient. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-6*)

### 405 IAC 2-9-7 Medically improved disability

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 7. (a) In order to qualify for the Medicaid for employees with disabilities program after improvement of a medical condition, a recipient must meet the requirements in this section.

(b) The person must be a recipient of Medicaid under the Medicaid for employees with disabilities group described in section 6 of this rule who no longer qualifies for coverage under that category due to a medical improvement in his or her condition. The improvement of the condition must be



verifiable by acceptable clinical standards; however, the disease, illness, or process must be of a type that, due to the nature and course of the illness, will continue to be a disabling impairment. A condition that has been resolved or a person who is completely recovered does not medically qualify for this program.

(c) The determination of whether a recipient meets the medical eligibility requirements for this category will be made at the time of the regularly scheduled annual redetermination for Medicaid by the county office. Determination of medical eligibility under this section is made by the Medicaid medical review team (MMRT). (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-7*)

**405 IAC 2-9-8 Premiums**

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15  
 Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 8. (a) To be eligible for Medicaid for employees with disabilities, an individual must pay monthly premiums in accordance with the requirements specified in this section unless the gross income of the individual and the individual's spouse is less than one hundred fifty percent (150%) of the federal poverty level. The amount of the premium is based on the gross income of the recipient and the recipient's spouse as a percentage of the federal poverty level for the applicable family size as determined in subsection (b). The amount of the premium will be adjusted by the premium amount of other creditable private health insurance as defined in 42 U.S.C. 300gg-91 that covers the applicant or recipient and is paid by the applicant or recipient or his or her spouse or parent. The amount of the premium is calculated as described as follows:

Income as a Percent of the Federal Poverty Level	Amount of Premium	
Less Than 150%—No Premium is Required	Individual	Married Couple
150% to 175%	\$ 48	\$ 65
More than 175% to 200%	\$ 69	\$ 93
More than 200% to 250%	\$ 107	\$ 145
More than 250% to 300%	\$ 134	\$ 182
More than 300% to 350%	\$ 161	\$ 218
More than 350%	\$ 187	\$ 254

(b) The individual premium amount is used when the individual, regardless of age, is not married or not living with his or her spouse. When the individual premium amount is used, only the individual's income is considered in calculating the premium, and the income is compared to the federal poverty level for a family size of one (1).

(c) The married couple premium amount is used when the individual is legally married and living with his or her spouse. When the couple premium amount is used, the

income of both spouses is considered in calculating the premium, and the income is compared to the federal poverty level for a family size of two (2).

(d) When an applicant is determined eligible, the applicant will be conditionally approved pending payment of the premium. The first month for which a premium is required is the month following the month in which an applicant is approved as conditional. After the premium is received, coverage will be retroactive to the first day of the third month prior to the month of application if all eligibility requirements were met in the prior months.

(e) The individual must pay the first premium in order to receive coverage. If payment is not received by the due date specified in the second premium notice, the Medicaid application will be denied. A payment of less than the full amount due will be considered nonpayment.

(f) If any premium after the first premium is not paid by the due date, coverage will continue for a maximum of sixty (60) days before being discontinued. When an individual or couple have been discontinued from the program due to nonpayment of premiums, an application must be filed in order to be considered for eligibility. To be reenrolled based on an application filed after such a discontinuance, the individual must pay all past due premiums in addition to premiums owed for the current application. Past due premiums remain the obligation of the individual as a condition of eligibility for two (2) years after the date of discontinuance.

(g) When both spouses are recipients of Medicaid for employees with disabilities, the continued eligibility of the couple is based on the payment of the married couple premium amount. Failure to pay the required premium amount in accordance with this section will result in the discontinuance of Medicaid coverage for both spouses.

(h) When a recipient reports a change in income or marital status as required by section 1(d) of this rule, and the change results in a lower premium, the new premium amount will be effective the first month following the date in which verification of the change is received.

(i) When a recipient who is eligible for Medicaid in the blind or disabled categories obtains employment, the change must be reported within ten (10) days as required by 470 IAC 2.1-1-2. An additional ten (10) days is allowed to provide verification of the employment. If the recipient is eligible for Medicaid for employees with disabilities, eligibility begins the first month following the date on which verification is received, subject to the timely notice requirements in 42 CFR 431.211. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-8*)

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### Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 27, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 5, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to exclude impairment-related work expenses in calculating income for Medicaid eligibility for the aged, blind, and disabled and new rules to set out eligibility requirements for Medicaid for employees with disabilities (MED Works). Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton  
Secretary  
Office of the Secretary of Family and Social Services

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### TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

#### Proposed Rule

LSA Document #01-420

#### DIGEST

Amends 405 IAC 1-12 to establish Medicaid reimbursement criteria for certain community residential facilities for the developmentally disabled (CRFs/DD) licensed as small extensive medical needs residence for adults. Sets a limit of 12 hours per resident day for staffing costs for a facility that is exclusively for adults with extensive medical needs. Effective 30 days after filing with the secretary of state.

**405 IAC 1-12-2**

**405 IAC 1-12-9**

**405 IAC 1-12-5**

**405 IAC 1-12-22**

SECTION 1. 405 IAC 1-12-2, AS READOPTED AT 24 IR 3822, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 1-12-2 Definitions**

**Authority:** IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

**Affected:** IC 12-13-7-3; IC 12-15

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "All-inclusive rate" means a per diem rate, which, at a minimum, reimburses for all nursing or resident care, room and board, supplies, and all ancillary services within a single, comprehensive amount.

(c) "Allowable per patient or per resident day cost" means a ratio between total allowable costs and patient or resident days.

(d) "Annual or historical financial report" refers to a presentation of financial data, including appropriate supplemental data and accompanying notes derived from accounting records and intended to communicate the provider's economic resources or obligations at a point in time, or changes therein for a period of time in compliance with the reporting requirements of this rule, which shall constitute a comprehensive basis of accounting.

(e) "Average inflated allowable cost of the median patient day" means the inflated allowable per patient day cost of the median patient day from all providers when ranked in numerical order based on average inflated allowable cost. The average inflated allowable cost shall be computed on a statewide basis for like levels of care, with the exception noted in this subsection, and shall be maintained by the office and revised four (4) times per year effective April 1, July 1, October 1, and January 1. If there are fewer than six (6) homes with rates established that are licensed as developmental training homes, the average inflated allowable cost for developmental training homes shall be computed on a statewide basis utilizing all basic developmental homes with eight and one-half ( $8\frac{1}{2}$ ) or fewer hours per patient day of actual staffing. If there are fewer than six (6) homes with rates established that are licensed as small behavior management residences for children, the average inflated allowable cost for small behavior management residences for children shall be the average inflated allowable cost for child rearing residences with specialized programs increased by two hundred forty percent (240%) of the average staffing cost per hour for child rearing residences with specialized programs. **If there are fewer than six (6) homes with rates established that are licensed as small extensive medical needs residences for adults, the average inflated allowable cost of the median patient day for small extensive medical needs residences for adults shall be the average inflated allowable cost of the median patient day for basic developmental increased by one hundred fifty-nine percent (159%).**

(f) "Change of provider status" means a bona fide sale or capital lease that for reimbursement purposes is recognized as creating a new provider status that permits the establishment of an initial interim rate. Except as provided under section 17(f) of this rule, the term includes only those transactions negotiated at arm's length between unrelated parties. The term does not include a facility lease transaction that does not constitute a capital lease under Financial Accounting Standards Board Statement 13 as issued by the American Institute of Certified Public Accountants in November 1976.

(g) "Cost center" means a cost category delineated by cost reporting forms prescribed by the office.

(h) "CRF/DD" means a community residential facility for the developmentally disabled.

(i) "DDARS" means the Indiana division of disability, aging, and rehabilitative services.

(j) "Debt" means the lesser of the original loan balance at the time of acquisition and original balances of other allowable loans or eighty percent (80%) of the allowable historical cost of facilities and equipment.

(k) "Desk audit" means a review of a written audit report and its supporting documents by a qualified auditor, together with the auditor's written findings and recommendations.

(l) "Equity" means allowable historical costs of facilities and equipment, less the unpaid balance of allowable debt at the provider's reporting year end.

(m) "Field audit" means a formal official verification and methodical examination and review, including the final written report of the examination of original books of accounts by auditors.

(n) "Forms prescribed by the office" means forms provided by the office or substitute forms which have received prior written approval by the office.

(o) "General line personnel" means management personnel above the department head level who perform a policy making or supervisory function impacting directly on the operation of the facility.

(p) "Generally accepted accounting principles" or "GAAP" means those accounting principles as established by the American Institute of Certified Public Accountants.

(q) "ICF/MR" means an intermediate care facility for the mentally retarded.

(r) "Like levels of care" means:

- (1) care within the same level of licensure provided in a CRF/DD; or
- (2) care provided in a nonstate-operated ICF/MR.

(s) "Office" means the Indiana office of Medicaid policy and planning.

(t) "Ordinary patient or resident related costs" means costs of services and supplies that are necessary in delivery of patient or resident care by similar providers within the state.

(u) "Patient or resident/recipient care" means those Medicaid program services delivered to a Medicaid enrolled recipient by a certified Medicaid provider.

(v) "Profit add-on" means an additional payment to providers in addition to allowable costs as an incentive for efficient and economical operation.

(w) "Reasonable allowable costs" means the price a prudent, cost conscious buyer would pay a willing seller for goods or services in an arm's-length transaction, not to exceed the limitations set out in this rule.

(x) "Related party/organization" means that the provider is associated or affiliated with, or has the ability to control, or be controlled by, the organization furnishing the service, facilities, or supplies.

(y) "Routine medical and nonmedical supplies and equipment" includes those items generally required to assure adequate medical care and personal hygiene of patients or residents by providers of like levels of care.

(z) "Unit of service" means all patient or resident care at the appropriate level of care included in the established per diem rate required for the care of a patient or resident for one (1) day (twenty-four (24) hours).

(aa) "Use fee" means the reimbursement provided to fully amortize both principal and interest of allowable debt under the terms and conditions specified in this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-2; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2314; filed Aug 15, 1997, 8:47 a.m.: 21 IR 76; filed Oct 31, 1997, 8:45 a.m.: 21 IR 949; filed Aug 14, 1998, 4:27 p.m.: 22 IR 63; errata filed Dec 14, 1998, 11:37 a.m.: 22 IR 1526; filed Sep 3, 1999, 4:35 p.m.: 23 IR 19; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

SECTION 2. 405 IAC 1-12-5, AS READOPTED AT 24 IR 3822, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**405 IAC 1-12-5 New provider; initial financial report to office; criteria establishing initial interim rates; supplemental report; base rate setting**

**Authority:** IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2  
**Affected:** IC 12-13-7-3; IC 12-15

Sec. 5. (a) Rate requests to establish initial interim rates for a new operation, a new type of certified service, a new type of licensure for an existing group home, or a change of provider status shall be filed by submitting an initial rate request to the office on or before thirty (30) days after notification of the certification date or establishment of a new service or type of licensure. Initial interim rates will be set at the greater of:

- (1) the prior provider's then current rate, if applicable; or
- (2) the fiftieth percentile rates as computed in this subsection.

Initial interim rates shall be effective upon the later of the certification date, the effective date of a licensure change, or the date that a service is established. The fiftieth percentile rates shall be computed on a statewide basis for like levels of care, except as provided in subsection (b), using current rates of all CRF/DD and ICF/MR providers. The fiftieth percentile rates shall be maintained by the office, and a revision shall be made to these rates four (4) times per year effective on April 1, July 1, October 1, and January 1.

(b) If there are fewer than six (6) homes with rates established that are licensed as developmental training homes, the fiftieth

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percentile rates for developmental training homes shall be computed on a statewide basis using current rates of all basic developmental homes with eight and one-half (8½) or fewer hours per patient day of actual staffing. If there are fewer than six (6) homes with rates established that are licensed as small behavior management residences for children, the fiftieth percentile rate for small behavior management residences for children shall be the fiftieth percentile rate for child rearing residences with specialized programs increased by two hundred forty percent (240%) of the average staffing cost per hour for child rearing residences with specialized programs. **If there are fewer than six (6) homes with rates established that are licensed as small extensive medical needs residences for adults, the fiftieth percentile rate for small extensive medical needs residences for adults shall be the fiftieth percentile rate for basic developmental increased by one hundred fifty-nine percent (159%).**

(c) The provider shall file a nine (9) month historical financial report within sixty (60) days following the end of the first nine (9) months of operation. The nine (9) months of historical financial data shall be used to determine the provider's base rate. The base rate shall be effective from the first day of the tenth month of certified operation until the next regularly scheduled annual review. An annual financial report need not be submitted until the provider's first fiscal year end that occurs after the rate effective date of a base rate. In determining the base rate, limitations and restrictions otherwise outlined in this rule, except the annual rate limitation, shall apply. For purposes of this subsection, in determining the nine (9) months of the historical financial report, if the first day of certification falls on or before the fifteenth day of a calendar month, then that calendar month shall be considered the provider's first month of operation. If the first day of certification falls after the fifteenth day of a calendar month, then the immediately succeeding calendar month shall be considered the provider's first month of operation.

(d) The provider's historical financial report shall be submitted using forms prescribed by the office. All data elements and required attachments shall be completed so as to provide full financial disclosure and shall include the following at a minimum:

- (1) Patient or resident census data.
- (2) Statistical data.
- (3) Ownership and related party information.
- (4) Statement of all expenses and all income.
- (5) Detail of fixed assets and patient or resident related interest bearing debt.
- (6) Complete balance sheet data.
- (7) Schedule of Medicaid and private pay charges in effect on the last day of the reporting period and on the rate effective date as defined in this rule; private pay charges shall be the lowest usual and ordinary charge.
- (8) Certification by the provider that:

(A) the data are true, accurate, and related to patient or resident care; and

(B) expenses not related to patient or resident care have been clearly identified.

(9) Certification by the preparer, if different from the provider, that the data were compiled from all information provided to the preparer, by the provider, and as such are true and accurate to the best of the preparer's knowledge.

(e) The base rate may be in effect for longer or shorter than twelve (12) months. In such cases, the various applicable limitations shall be proportionately increased or decreased to cover the actual time frame, using a twelve (12) month period as the basis for the computation.

(f) The base rate established from the nine (9) months of historical data shall be the rate used for determining subsequent limitations on annual rate adjustments.

(g) Extension of the sixty (60) day filing period shall not be granted unless the provider substantiates to the office circumstances that preclude a timely filing. Requests for extensions shall be submitted to the office prior to the date due, with full and complete explanation of the reasons an extension is necessary. The office shall review the request and notify the provider of approval or disapproval within ten (10) days of receipt. If the extension is disapproved, the report shall be due twenty (20) days from the date of receipt of the disapproval from the office.

(h) If the provider fails to submit the nine (9) months of historical financial data within ninety (90) days following the end of the first nine (9) months of operation and an extension has not been granted, the initial interim rate shall be reduced by ten percent (10%), effective on the first day of the tenth month after certification and shall so remain until the first day of the month after the delinquent annual financial report is received by the office. Reimbursement lost because of the penalty cannot be recovered by the provider.

(i) Except as provided in section 17(f) of this rule, neither an initial interim rate nor a base rate shall be established for a provider whose change of provider status was a related party transaction as established in this rule.

(j) The change of provider status shall be rescinded if subsequent transactions by the provider cause a capital lease to be reclassified as an operating lease under the pronouncements adopted in November 1976 by the American Institute of Certified Public Accountants. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-5; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2317; filed Aug 21, 1996, 2:00 p.m.: 20 IR 12; filed Aug 15, 1997, 8:47 a.m.: 21 IR 78; filed Oct 31, 1997, 8:45 a.m.: 21 IR 950; filed Sep 3, 1999, 4:35 p.m.: 23 IR 20; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

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SECTION 3. 405 IAC 1-12-9, AS READOPTED AT 24 IR 3822, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**405 IAC 1-12-9 Criteria limiting rate adjustment granted by office**

**Authority:** IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2  
**Affected:** IC 12-13-7-3; IC 12-15

Sec. 9. The Medicaid reimbursement system is based on recognition of the provider's allowable costs plus a potential profit add-on payment. The payment rate is subject to several limitations. Rates will be established at the lowest of the four (4) limitations listed as follows:

- (1) In no instance shall the approved Medicaid rate be higher than the rate paid to that provider by the general public for the same type of services. For purposes of this rule, the rates paid by the general public shall not include rates paid by the DDARS.
- (2) Should the rate calculations produce a rate higher than the reimbursement rate requested by the provider, the approved rate shall be the rate requested by the provider.
- (3) Inflated allowable per patient or per resident day costs plus the allowed profit add-on payment as determined by the methodology in Table I.
- (4) In no instance shall the approved Medicaid rate exceed the overall rate limit percent (Column A) in Table II, times the average inflated allowable cost of the median patient or resident day.

TABLE I  
Profit Add-On

The profit add-on is equal to the percent (Column A) of the difference (if greater than zero (0)) between a provider's inflated allowable per patient or resident day cost, and the ceiling (Column B) times the average inflated allowable per patient or resident day cost of the median patient or resident day. Under no circumstances shall a provider's per patient or resident day profit add-on exceed the cap (Column C) times the average inflated allowable per patient or resident day cost of the median patient or resident day.

	(A) Percent	(B) Ceiling	(C) Cap
Level of Care			
Sheltered living	40%	105%	10%
Intensive training	40%	120%	10%
Child rearing	40%	130%	12%
Nonstate-operated ICF/MR	40%	125%	12%
Developmental training	40%	110%	10%
Child rearing with a specialized program	40%	120%	12%
Small behavior management residences for children	40%	120%	12%
Basic developmental	40%	110%	10%
<b>Small extensive medical needs residences for adults</b>	<b>40%</b>	<b>110%</b>	<b>10%</b>

TABLE II  
Overall Rate Limit

	(A) Percent
Level of Care	
Sheltered living	115%
Intensive training	120%
Child rearing	130%
Developmental training	120%
Child rearing with a specialized program	120%
Small behavior management residences for children	120%
Basic developmental	120%
<b>Small extensive medical needs residences for adults</b>	<b>120%</b>
Nonstate-operated ICF/MR	107%

*(Office of the Secretary of Family and Social Services; 405 IAC 1-12-9; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2320; filed Aug 15, 1997, 8:47 a.m.: 21 IR 79; filed Oct 31, 1997, 8:45 a.m.: 21 IR 951; Aug 14, 1998, 4:27 p.m.: 22 IR 65; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 4. 405 IAC 1-12-22, AS READOPTED AT 24 IR 3822, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**405 IAC 1-12-22 Community residential facilities for the developmentally disabled; allowable costs; compensation; per diem rate**

**Authority:** IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2  
**Affected:** IC 12-13-7-3; IC 12-15

Sec. 22. (a) Notwithstanding the application of standards and procedures set forth in sections 1 through 20 of this rule, the procedures described in this section apply to intermediate care facilities for the mentally retarded with eight (8) or fewer beds (community residential facilities for the developmentally disabled), except for intermediate care facilities for the mentally retarded licensed as:

- (1) small behavior management residences for children for which the procedures described in this section apply to facilities with six (6) or fewer beds; **and**
- (2) **small extensive medical needs residences for adults for which the procedures described in this section apply to facilities with four (4) beds.**

(b) Costs related to staffing shall be limited to the following:

Type of License	Staff Hours Per Resident Day
Sheltered living	4.5
Intensive training	6.0
Developmental training	8.0
Child rearing	8.0
Child rearing residences with specialized programs	10.0
Basic developmental	10.0

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Small behavior management residences for children	12.0
<b>Small extensive medical needs residences for adults</b>	<b>12.0</b>

(c) Any change in staffing that exceeds the current limitations of four and one-half (4.5) hours per resident day for adults and eight (8) hours per resident day for children will require approval on a case-by-case basis, upon application by the facility. This approval will be determined in the following manner:

(1) A new or current provider of service which seeks staffing above four and one-half (4.5) hours per resident day for adults or eight (8) hours per resident day for children must first obtain approval from the DDARS, based upon the DDARS assessment of the program needs of the residents. The DDARS will establish the maximum number of staff hours per resident day for each facility, which may be less than but may not be more than the ceiling for each type of license. If a change in type of license is required to permit the staffing limitation determined by the DDARS, then the DDARS will make its recommendation to the licensing authority and convey to the office of Medicaid policy and planning the decision of the licensing authority. The office shall conduct a complete and independent review of a request for increased staffing and shall retain final authority to determine whether a rate change will be granted as a result of a change in licensure type.

(2) If a provider of services holds a current license which would permit staffing above the limitation of four and one-half (4.5) hours per resident day for adults and eight (8) hours per resident day for children, but the provider does not seek approval of staffing beyond those limitations, then the DDARS may investigate whether the provider holds the appropriate type of license.

(d) The per diem rate shall be an all-inclusive rate. The established rate includes all services provided to residents by a facility. The office shall not set a rate for more than one (1) level of care for each community residential facility for the developmentally disabled provider. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-22; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2328; filed Aug 15, 1997, 8:47 a.m.: 21 IR 81; filed Oct 31, 1997, 8:45 a.m.: 21 IR 953; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

### **Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on February 25, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to establish Medicaid reimbursement criteria for certain community residential facilities for the developmentally*

*disabled (CRFs/DD) licensed as small extensive medical needs residences for adults. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

John Hamilton  
Secretary  
Office of the Secretary of Family and Social Services

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## TITLE 431 COMMUNITY RESIDENTIAL FACILITIES COUNCIL

**Proposed Rule**  
LSA Document #01-422

### DIGEST

Amends 431 IAC 1.1-1-2, concerning the definition of "community residential facility for persons with developmental disabilities", to add a new category for types of services to include small residence for adults with extensive medical needs. Effective 30 days after filing with the secretary of state.

### **431 IAC 1.1-1-2**

SECTION 1. 431 IAC 1.1-1-2 IS AMENDED TO READ AS FOLLOWS:

### **431 IAC 1.1-1-2 Types of facilities defined**

**Authority:** IC 12-28-5-10; IC 12-28-5-19  
**Affected:** IC 12-7-2; IC 12-28-5

Sec. 2. "Community residential facility for persons with developmental disabilities" means a residential facility, as defined by IC 12-7-2, which is operated for the purpose of providing one (1) of the following types of services to four (4) to eight (8) persons with developmental disabilities:

(1) "Adult support residence" means a home or an apartment staffed by personnel, which provides assistance with activities of daily living, transportation, and other assistance to residents with developmental disabilities other than mental retardation, to enable them to function in the community and within the home. The residence shall include specialized equipment, communication devices, and environmental controls as needed for the residents to enhance their ability to participate in activities of life.

(2) "Basic developmental residence" means a home or apartment setting for adults, staffed and supervised by personnel, to provide training for those individuals functioning at severe and profound levels of developmental disabilities in one (1) or more of the following areas:

- (A) Activities of daily living.
- (B) Communication.

- (C) Behavioral training.
- (D) Behavior management.
- (3) "Child rearing residence" means a home for children only, staffed by personnel, which provides developmental training and support in specific areas for residents who function on a similar behavioral level.
- (4) "Child rearing residence with a specialized program" means a home for children only, which provides developmental training and support in specific areas. The home must be:
  - (A) staffed by personnel and/or behavior management consultants who develop and monitor behavioral training; and/or
  - (B) staffed by personnel trained to provide intense personal assistance with activities of daily living due to physical limitations.
- (5) "Intensive training residence" means a home or apartment for adults, staffed by personnel, which provides a system of structured, individualized supports and comprehensive training for residents to progress to a less restrictive setting in one (1) or more of the following areas:
  - (A) Activities of daily living.
  - (B) Behavioral training.
  - (C) Behavior management.
  - (D) Communication.
  - (E) Leisure time.
- (6) "Developmental training residence" means a home or apartment for adults, staffed and supervised by personnel, to provide assistance and training for residents to promote their developmental growth in one (1) or more of the following areas:
  - (A) Activities of daily living.
  - (B) Behavioral training.
  - (C) Behavioral management.
  - (D) Communication.
  - (E) Personal adjustment.
  - (F) Leisure time.
  - (G) Use of community resources.
- (7) "Sheltered living residence" means a home or apartment for adults, staffed by personnel, which provides training for residents to achieve an independent lifestyle in one (1) or more of the following areas:
  - (A) Activities of daily living.
  - (B) Behavioral training.
  - (C) Behavior management.
  - (D) Communication.
  - (E) Use of community resources.
- (8) "Small behavior management residence for children" means a home exclusively for children which:
  - (A) has a behavior management program staffed by a behavior management consultant or personnel to develop and monitor behavioral training, developmental training, and support in specific areas for all residents who function on a similar level; and
  - (B) does not have more than six (6) beds.
- (9) "Small residence for adults with extensive medical

**needs" means a residence, which is exclusively for adults with extensive medical needs and meets the following requirements:**

**(A) A residence for adults with extensive medical needs must provide:**

- (i) a medical management program to address the extensive medical needs of the residents; and**
- (ii) training for residents to address deficits in basic skills, including training in one (1) or more of the following areas:**

- (AA) Activities of daily living.**
- (BB) Communication.**
- (CC) Personal adjustment.**
- (DD) Behavior management.**
- (EE) Behavior training.**
- (FF) Leisure time.**
- (GG) Use of community resources.**

**(B) A residence under this subdivision shall have four (4) beds.**

*(Community Residential Facilities Council; 431 IAC 1.1-1-2; filed Sep 30, 1991, 1:40 p.m.: 15 IR 96; filed Nov 2, 1992, 5:00 p.m.: 16 IR 850; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2373; filed Nov 13, 1997, 12:05 p.m.: 21 IR 1342; readopted filed Oct 1, 2001, 3:40 p.m.: 25 IR 528)*

#### **Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on February 25, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Community Residential Facilities Council will hold a public hearing on proposed amendments to the definition of "community residential facility for persons with developmental disabilities" to add a new category for the types of services to include small extensive medical needs residence for adults.*

*If an accommodation is required to allow an individual with a disability to participate in a public hearing, please contact Judy Hall at (317) 232-7930 at least 48 hours before the hearing.*

*Written comments about the proposed rule may be directed to the Community Residential Facilities Council, Attention: Judy Hall, 402 West Washington Street, Room W453, Indianapolis, Indiana 46204. Written comments will be accepted through March 11, 2002.*

*Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa Connolly  
Presiding Officer  
Community Residential Facilities Council

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## Proposed Rules

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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:

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- (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 avail-

able 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;

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- (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 ~~(h)~~; **511 IAC 7-25-4(l)**, 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:

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- (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

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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 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

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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

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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.

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(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

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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

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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 informa-

tion 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:

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- (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

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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

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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

### TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

#### Proposed Rule

LSA Document #01-345

#### DIGEST

Amends 820 IAC 4-4-5 to change specific curriculum requirements for manicurists training. Amends 820 IAC 4-4-14 to change the number of performances of actual practice hours required for students in manicurist training. Amends 820 IAC 6-2-1 to remove the prohibition to mention or promote products used during a continuing education course. Effective 30 days after filing with the secretary of state.

**820 IAC 4-4-5**

**820 IAC 4-4-14**

**820 IAC 6-2-1**

SECTION 1. 820 IAC 4-4-5 IS AMENDED TO READ AS FOLLOWS:

#### **820 IAC 4-4-5 Specific curriculum for manicurists**

**Authority:** IC 25-8-3-23; IC 25-8-5-4

**Affected:** IC 25-8

Sec. 5. (a) The following are the requirements for manicurist training:

Subject	Theory and Demonstration Practice	Actual Practice	Total Hours
Sanitation	<del>20</del> 40		<del>20</del> 40
Anatomy and disorders	25		25
Statute and rules	10		10
Nail techniques	<del>20</del> 40	<del>80</del> 160	<del>100</del> 200
<b>Basic preparation</b>			
Tips			
Sculptures			
Overlays			
Fiberglass			
Gel nails			
Nail wrapping			
Acrylic nails			
Manicuring	10	<del>40</del> 50	<del>50</del> 60
Pedicuring	10	25	35
Chemistry	10		10
Salesmanship	5	10	15
<b>Electric drill/file</b>	<b>10</b>	<b>10</b>	<b>20</b>
Discretionary hours	35		35
<b>Totals</b>	<b><del>145</del> 195</b>	<b><del>155</del> 255</b>	<b><del>300</del> 450</b>

(b) Students shall be required to complete no fewer than the number of actual practice performances provided for in the progress book required by section 14 of this rule.

(c) The nails on two (2) hands or two (2) feet constitutes one (1) performance of a manicure or pedicure. All manicures, pedicures, and nail techniques must be done on live models.

(d) Students shall not work on customers of the cosmetology school until they have completed a total of forty (40) hours. Customers shall be rotated according to students' needs for practice on live models. (*State Board of Cosmetology Examiners; 820 IAC 4-4-5; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1409, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 576, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of*



state. LSA Document #91-87 was filed Dec 3, 1991.]; filed Oct 27, 1993, 9:00 a.m.: 17 IR 393; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1489; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)

SECTION 2. 820 IAC 4-4-14, AS AMENDED AT 24 IR 2693, SECTION 26, IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-4-14 Student progress book for manicurists

Authority: IC 25-8-3-23
Affected: IC 25-8

Sec. 14. (a) Students in manicurist training shall perform no fewer than the number of performances of actual practice hours required by the student progress book.

(b) It is the purpose of the progress book that the student, cosmetology school, and state board of cosmetology examiners may at all times know the exact progress of the student concerning practical experience and the number of completed performances of required activities.

(c) It is the responsibility of the cosmetology school to keep the progress book up to date.

(d) All performances listed in the progress book are to be completed in accordance with 820 IAC 3.

(e) The progress book reads as follows:

OFFICIAL STUDENT
PROGRESS BOOK
TRAINING IN
MANICURING



STATE OF INDIANA
BOARD OF COSMETOLOGY EXAMINERS

Student's Name
Date Issued
Date Completed

REQUIREMENTS FOR USE IN
PROGRESS BOOK

(1) All students enrolling in manicuring training shall be permitted to review this progress book which is to be completed on or before being admitted to the state board of cosmetology examiners for examination for a manicurist license.

(2) The amount of performances is equal to the hours outlined by the state board of cosmetology examiners. It is to be the minimum requirement only.

(3) Each performance, as it is accomplished, must be dated

and initialed by the licensed instructor or instructor trainee, who oversees the performance. All projects are to be checked for accuracy and credit and given only if done to the school's standards. All projects must be identified whether "S" for student or "P" for patron (or customer). A pencil cap rubber stamp or pen written initials (first and last initials) of the instructor are both acceptable methods of marking.

(4) Number of performances on patron or student may be determined by each school subject to the requirements of section 6 of this rule.

(5) Overages in any area may not be applied to any other area.

(6) In the development of the student's sales ability, all items in the sales category must be completed on patrons.

(7) All projects are to be recorded as one (1) project marked for one (1) project completed.

(8) The progress book must never be taken home by the student and must remain in the school at all times.

(9) The requirements of the progress book are minimum requirements. A school may require more actual performances than those prescribed in this book.

School name

Address

City State Zip

Instructor's signature

Instructor's identifying initialing

Instructor's signature

Instructor's identifying initialing

Instructor's signature

Instructor's identifying initialing

Instructor's signature

Instructor's identifying initialing

Manicures (53 (40 performances)

- 1 2 3 4 5 6 7 8 9 10 11 12 13
14 15 16 17 18 19 20 21 22 23 24 25 26
27 28 29 30 31 32 33 34 35 36 37 38 39
40 41 42 43 44 45 46 47 48 49 50 51 52
53

Nail Techniques (15 (28 performances)

- 1 2 3 4 5 6 7 8 9 10 11 12 13
14 15 16 17 18 19 20 21 22 23 24 25 26
27 28

Nail Repair (5 (15 performances)

(1 performance per patron)

- 1 2 3 4 5 6 7 8 9 10 11 12 13
14 15

Pedicures (25 (15 performances)

- 1 2 3 4 5 6 7 8 9 10 11 12 13
14 15 16 17 18 19 20 21 22 23 24 25

Salesmanship (20 performances)

Services or Retail

- 1 2 3 4 5 6 7 8 9 10 11 12 13
14 15 16 17 18 19 20

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Electric File/Drill (20 performances)

1 2 3 4 5 6 7 8 9 10 11 12 13  
14 15 16 17 18 19 20

I, \_\_\_\_\_, do hereby certify and declare this official progress book required to be kept by the state board of cosmetology examiners is a correct and accurate record of the progress of \_\_\_\_\_ enrolled at \_\_\_\_\_ cosmetology school and meeting the requirements of the state board of cosmetology examiners. Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 19 20 \_\_\_\_\_.

Notary Public \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
County of Residence \_\_\_\_\_  
*(State Board of Cosmetology Examiners; 820 IAC 4-4-14; filed Oct 27, 1993, 9:00 a.m.: 17 IR 398; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1500; filed May 4, 2001, 11:16 a.m.: 24 IR 2693; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)*

SECTION 3. 820 IAC 6-2-1 IS AMENDED TO READ AS FOLLOWS:

### 820 IAC 6-2-1 Continuing education requirements

Authority: IC 25-8-3-23

Affected: IC 25-8-15-9; IC 25-8-16-1

Sec. 1. (a) Every cosmetology professional under IC 25-8: (1) whose license has not been classified as inactive under IC 25-8-16-1; or

(2) who has not been granted a waiver under IC 25-8-15-9; must complete, during each four (4) year licensure period, at least sixteen (16) hours of the continuing education required by IC 25-8-15 and this article, which are given by approved cosmetology educators.

(3) A cosmetology professional shall not be required to obtain more than sixteen (16) hours of continuing education under IC 25-8-15 regardless of the number of licenses that individual may hold.

(b) Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

(c) Credit toward the hour requirement may be granted only where the length of the educational offering is at least two (2) hours.

(d) No more than eight (8) hours of continuing education may be acquired during any one (1) day.

(e) A cosmetology professional shall not be entitled to any continuing education credit for a course unless the cosmetology professional attends the entire course.

(f) There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the four (4) year licensure period.

(g) Any continuing education credit accumulated above the minimum requirement for a four (4) year licensure period may not be carried forward to the next four (4) year licensure period.

(h) A cosmetology professional who attends the same continuing education course more than once in the same four (4) year licensure period is only entitled to continuing education credit for that course one (1) time only.

(i) An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not be credited for more than six (6) hours of credit for instructing in any four (4) year licensure period. Instructors may not receive credit for repeated courses.

(j) Continuing education hours credited toward license renewal must be relevant to at least one (1) of the licenses held by the individual.

(k) ~~Mention, promotion, or~~ Sale of products is prohibited during a continuing education course. *(State Board of Cosmetology Examiners; 820 IAC 6-2-1; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3468)*

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on March 18, 2002 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 4, Indianapolis, Indiana the State Board of Cosmetology Examiners will hold a public hearing on proposed amendments to change specific curriculum requirements for manicurists training, to change the number of performances of actual practice hours required for students in manicurist training, and to remove the prohibition to mention or promote products used during a continuing education course. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Gerald H. Quigley  
Executive Director  
Indiana Professional Licensing Agency

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## TITLE 828 STATE BOARD OF DENTISTRY

**Proposed Rule**  
LSA Document #01-307

### DIGEST

Adds 828 IAC 0.5-2-5 concerning fees related to the registration of mobile dental facilities and portable dental operations.

Adds 828 IAC 4 concerning the conduct of mobile dental facilities and portable dental operations. Effective 30 days after filing with the secretary of state.

828 IAC 0.5-2-5  
828 IAC 4

SECTION 1. 828 IAC 0.5-2-5 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-2-5 Registration of mobile dental facilities and portable dental operations

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 3. The board shall charge and collect the following fees related to the registration of mobile dental facilities and portable dental operations:

- (1) Application \$200
  - (2) Registration renewal \$100
- (State Board of Dentistry; 828 IAC 0.5-2-5)

SECTION 2. 828 IAC 4 IS ADDED TO READ AS FOLLOWS:

ARTICLE 4. MOBILE DENTAL FACILITIES AND PORTABLE DENTAL OPERATIONS

Rule 1. Applicability; Exceptions

828 IAC 4-1-1 Applicability

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 1. This article applies to the operator of a mobile dental facility or portable dental operation who:

- (1) provides dental services; and
  - (2) does not have a physically stationary office in the county where the services are provided.
- (State Board of Dentistry; 828 IAC 4-1-1)

828 IAC 4-1-2 Exceptions

Authority: IC 25-14-1-13  
Affected: IC 25-13-1-10; IC 25-13-1-11; IC 25-14

Sec. 2. (a) Federal, state, and local governmental agencies are exempt from the requirements of this rule.

(b) Dentists licensed to practice in Indiana who have not registered with the board to operate a mobile dental facility or a portable dental operation may provide dental services through use of dental instruments, materials, and equipment taken out of a dental office without registering if the service is provided as emergency treatment for their patients of record.

(c) Dentists who:

- (1) do not operate a mobile dental facility or portable dental operation; or

(2) are not employed by or independently contracting with a mobile dental facility or portable dental operation; may provide treatment for their patients of record in the county in which the dentist maintains a physically stationary office or in a county adjacent to the county in which the dentist maintains a physically stationary office if such services are provided outside the physically stationary office or outside the county of the physically stationary office fewer than thirty (30) days per year.

(d) Dental hygienists who are providing dental hygiene services, instruction, and in-service training in accordance with IC 25-13-1-10 and IC 25-13-1-11 of the dental hygienist practice act are exempt from the requirements of this rule. Furthermore, dental hygienists may provide dental hygiene services, instruction, and in-service training in accordance with IC 25-13-1-10 and IC 25-13-1-11 in a mobile dental facility or portable dental operation. (State Board of Dentistry; 828 IAC 4-1-2)

Rule 2. Definitions

828 IAC 4-2-1 Applicability

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 1. The definitions in this rule apply throughout this article. (State Board of Dentistry; 828 IAC 4-2-1)

828 IAC 4-2-2 "Mobile dental facility or portable dental operation" defined

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 2. "Mobile dental facility or portable dental operation" means either of the following:

- (1) Any self-contained facility in which dentistry will be practiced, which may be moved, towed, or transported from one (1) location to another.
- (2) Any nonfacility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location, including, but not limited to:
  - (A) other dentists' offices;
  - (B) patients' homes;
  - (C) schools;
  - (D) nursing homes; or
  - (E) other institutions.

(State Board of Dentistry; 828 IAC 4-2-2)

Rule 3. Registration

828 IAC 4-3-1 Application

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 1. (a) In order to operate a mobile dental facility or

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portable dental operation, the operator shall register with the board.

(b) The applicant shall complete an application in the form and manner required by the board.

(c) The applicant shall pay the registration fee at the time of application as set by the board by rule.

(d) The applicant shall provide the board with evidence of compliance with the requirements of this rule.

(e) The applicant shall submit proof of radiographic equipment inspection with the application for registration. (*State Board of Dentistry; 828 IAC 4-3-1*)

### 828 IAC 4-3-2 Official business or mailing address

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 2. (a) The operator of a mobile dental facility or portable dental operation shall maintain an official business or mailing address of record, which shall not be a post office box and which shall be filed with the board.

(b) The operator of a mobile dental facility or portable dental operation shall maintain an official telephone number of record, which shall be filed with the board.

(c) The board shall be notified within thirty (30) days of any change in the address or telephone number of record.

(d) All written or printed documents available from or issued by the mobile dental facility or portable dental operation shall contain the official address and telephone number of record for the mobile dental facility or portable dental operation.

(e) When not in transit, all dental and official records shall be maintained at the official office address of record. (*State Board of Dentistry; 828 IAC 4-3-2*)

### 828 IAC 4-3-3 Written procedures; communication facilities; conformity with requirements; driver requirements

Authority: IC 25-14-1-13

Affected: IC 12-15; IC 12-17.6; IC 25-14

Sec. 3. The operator of a mobile facility, mobile unit, or portable dental operation shall ensure the following:

(1) There is a written procedure for emergency follow-up care for patients treated in the mobile dental facility and that such procedure includes arrangements for treatment in a dental facility that is permanently established in the area where services were provided.

(2) The mobile dental facility has communication facilities

that will enable the operator thereof to contact necessary parties in the event of a medical or dental emergency. The communications facilities must enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The provider who renders follow-up care must also be able to contact the operator and receive treatment information, including radiographs.

(3) The mobile dental facility conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, OSHA guidelines, and federal Centers for Disease Control Guidelines, and the applicant possesses all applicable county and city licenses or permits to operate the unit.

(4) The driver of the unit possesses a valid Indiana driver's license appropriate for the operation of the vehicle.

(5) No services are performed on minors without a signed consent form from the parent or guardian, which indicates that:

(A) if the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider; and

(B) the treatment of the child by the mobile dental facility may affect the future benefits that the child may receive under:

(i) private insurance;

(ii) Medicaid (IC 12-15); or

(iii) the children's health insurance program (IC 12-17.6).

(6) A mobile dental facility that accepts a patient and provides preventive treatment, including prophylaxis, radiographs, and fluoride, but does not follow-up with treatment when such treatment is clearly indicated, is considered to be abandoning the patient. Arrangements must be made for treatment services.

(*State Board of Dentistry; 828 IAC 4-3-3*)

### 828 IAC 4-3-4 Physical requirements for mobile dental facility

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 4. The operator shall ensure that the mobile dental facility or portable dental operation has the following:

(1) Ready access to a ramp or lift if services are provided to disabled persons.

(2) A properly functioning sterilization system.

(3) Ready access to an adequate supply of potable water, including hot water.

(4) Ready access to toilet facilities.

(5) A covered galvanized, stainless steel, or other

noncorrosive container for deposit of refuse and waste materials.

*(State Board of Dentistry; 828 IAC 4-3-4)*

**828 IAC 4-3-5 Identification of personnel; notification of changes in written procedures; display of licenses**

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 5. (a) The operator shall identify and advise the board in writing within thirty (30) days of any personnel change relative to all licensed dentists and licensed dental hygienists associated with the mobile dental facility or portable dental operation by providing the full name, address, telephone numbers, and license numbers where applicable.

(b) The operator shall advise the board in writing within thirty (30) days of any change in the written procedure for emergency follow-up care for patients treated in the mobile dental facility, including arrangements for treatment in a dental facility, which is permanently established in the area. The permanent dental facility shall be identified in the written procedure.

(c) Each dentist and dental hygienist providing dental services in the mobile dental facility or portable dental operation shall prominently display his or her Indiana dental or Indiana dental hygienist license in plain view of patients. *(State Board of Dentistry; 828 IAC 4-3-5)*

**828 IAC 4-3-6 Identification of location of services**

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 6. (a) Each operator of a mobile dental facility or portable dental operation shall maintain a written or electronic record detailing for each location where services are provided:

- (1) the street address of the service location;
- (2) the dates of each session;
- (3) the number of patients served; and
- (4) the types of dental services provided and quantity of each service provided.

(b) The written or electronic record shall be made available to the board within ten (10) days of a request by the board. Costs for such records shall be borne by the mobile dental facility. *(State Board of Dentistry; 828 IAC 4-3-6)*

**828 IAC 4-3-7 Licensed dentist in charge**

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 7. A mobile dental facility or portable dental operation shall at all times be in the charge of a dentist licensed

to practice dentistry in Indiana. A dentist licensed to practice dentistry in Indiana shall be present at all times that clinical services are rendered. *(State Board of Dentistry; 828 IAC 4-3-7)*

**828 IAC 4-3-8 Prohibited operations**

Authority: IC 25-14-1-13

Affected: IC 25-13; IC 25-14

Sec. 8. The operator of a mobile dental facility or portable dental operation is prohibited from hiring, employing, allowing to be employed, or permitting to work in or about a mobile dental facility or portable dental operation, any person who performs or practices any occupation regulated under IC 25-13 or IC 25-14 who is not duly licensed by the board. *(State Board of Dentistry; 828 IAC 4-3-8)*

**828 IAC 4-3-9 Information for patients**

Authority: IC 25-14-1-13

Affected: IC 25-14

Sec. 9. (a) During or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient shall be provided with an information sheet. If the patient has provided consent to an institutional facility to access the patient's dental health records, the institution shall also be provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long term care facility or school.

(b) An information sheet shall include the following:

- (1) Pertinent contact information as required by this article.
- (2) The name of the dentist and other dental staff who provided services.
- (3) A description of the treatment rendered, including billed service codes and fees associated with treatment, and tooth numbers when appropriate.
- (4) If necessary, referral information to another dentist as required by this article.

*(State Board of Dentistry; 828 IAC 4-3-9)*

**828 IAC 4-3-10 Cessation of operations**

Authority: IC 25-14-1-13

Affected: IC 16-39; IC 25-14

Sec. 10. (a) Upon cessation of operation by the mobile dental facility or portable dental operation, the operator shall notify the board within thirty (30) days of the last day of operations in writing of the final disposition of patient records and charts.

(b) If the mobile dental facility or portable dental operation is sold, a new registration application must be filed with the board.

(c) Upon choosing to discontinue practice or services in a

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community, the operator of a mobile dental facility or portable dental operation shall:

- (1) notify all of the operator's active patients in writing, or by publication once a week for three (3) consecutive weeks in a newspaper of general circulation in the community, that the operator intends to discontinue the mobile dental facility's or portable dental operation's practice in the community; and
- (2) encourage the patients to seek the services of another dentist.

(d) The operator shall make reasonable arrangements with the active patients of the mobile dental facility or portable dental operation for the transfer of the patient's records, including radiographs or copies thereof, to the succeeding practitioner, or, at the written request of the patient, to the patient, in compliance with IC 16-39.

(e) As used in this section, "active patient" applies and refers to a person whom the mobile dental facility or portable dental operation has examined, treated, cared for, or otherwise consulted with during the two (2) year period prior to discontinuation of practice, or moving from or leaving the community.

(f) Nothing in this section supersedes the requirements of IC 16-39. (*State Board of Dentistry; 828 IAC 4-3-10*)

### 828 IAC 4-3-11 Renewal of registration

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 11. (a) The registration shall be renewed on March 1 of even-numbered years in the form and manner provided by the board.

(b) The registrant shall pay the registration renewal fee in an amount set by the board by rule. (*State Board of Dentistry; 828 IAC 4-3-11*)

### 828 IAC 4-3-12 Failure to comply

Authority: IC 25-14-1-13  
Affected: IC 25-14

Sec. 12. Failure to comply with state statutes or rules regulating the practice of dentistry, dental hygiene, and the operation of mobile dental facilities or portable dental operations shall subject the registrant and all practitioners providing services through a mobile dental facility or portable dental operation to disciplinary action. (*State Board of Dentistry; 828 IAC 4-3-12*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on March 1, 2002 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 4,*

*Indianapolis, Indiana the State Board of Dentistry will hold a public hearing on proposed rules concerning fees related to the registration of mobile dental facilities and portable dental operations and the conduct of mobile dental facilities and portable dental operations. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes  
Executive Director  
Health Professions Bureau

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## TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule  
LSA Document #01-403

### DIGEST

Amends 876 IAC 3-6-2 to incorporate by reference the 2002 edition of the Uniform Standards of Professional Appraisal Practice. Amends 876 IAC 3-6-3 to update the revisions to the Uniform Standards of Professional Appraisal Practice based upon the changes in the 2002 edition. Effective 30 days after filing with the secretary of state.

### 876 IAC 3-6-2

### 876 IAC 3-6-3

SECTION 1. 876 IAC 3-6-2, AS AMENDED AT 24 IR 3068, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

### 876 IAC 3-6-2 Uniform Standards of Professional Appraisal Practice

Authority: IC 25-34.1-3-8  
Affected: IC 4-22-2; IC 25-34.1

Sec. 2. (a) That certain document being titled Uniform Standards of Professional Appraisal Practice, ~~2001~~ 2002 edition, as published by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005, copyright ~~2001~~, 2002, is hereby incorporated by reference as if fully set out in this rule except for the revisions stated in section 3 of this rule. The Statements on Appraisal Standards are adopted as part of this rule. The Advisory Opinions are not adopted as part of this rule. The Comments are adopted as part of this rule.

(b) No subsequent editions, amendments, supplements, or releases of the Uniform Standards of Professional Appraisal Practice will be in effect in Indiana or adopted by the commission except by following the rulemaking provisions of IC 4-22-2.

(c) As used in this article, “appraiser” refers to the following:

- (1) Indiana licensed trainee appraiser.
- (2) Indiana licensed residential appraiser.
- (3) Indiana certified residential appraiser.
- (4) Indiana certified general appraiser.

*(Indiana Real Estate Commission; 876 IAC 3-6-2; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1766; filed May 10, 1999, 12:42 p.m.: 22 IR 2879; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2243; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238)*

SECTION 2. 876 IAC 3-6-3, AS AMENDED AT 24 IR 3068, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**876 IAC 3-6-3 Deletions from the Uniform Standards of Professional Appraisal Practice**

**Authority:** IC 25-34.1-3-8

**Affected:** IC 25-1-11-5; IC 25-34.1

Sec. 3. (a) Standards 6 through 10 are deleted.

(b) The references to Standards 6 through 10 of the Uniform Standards of Professional Appraisal Practice are deleted or revised as follows:

(1) In the Comment under the definition of “REPORT”, delete the following:

- (A) “personal property”.
- (B) “Appraisal Report: a written report prepared under Standards Rule 10-2(a)”.
- (C) “or 8-2(a)”.
- (D) “or 8-2(b)”.
- (E) The comma after 2-2(c) and “8-2(c) or 10-2(b)”.

(2) Delete the last three (3) sentences of the fifth paragraph of the Preamble.

(3) In the second Comment under the Ethics Rule in the Preamble, delete “6-8, 8-3, and 10-3”.

(4) In the second Comment under the Management category of the Ethics Rule in the Preamble, delete “6-8, 8-3 or 10-3” and before “5-3”, insert “or”.

**(5) In the last paragraph of the Comment under the Record Keeping category under the Ethics Rule in the Preamble, delete “8-2(c)(ix), and 10-2(b)(ix)”.**

~~(5)~~ **(6)** In the third to last paragraph of the Comment following the Departure Rule in the Preamble, delete “8-2(a)(xi), 8-2(b)(xi), 8-2(c)(xi), 10-2(a)(x), and 10-2(b)(x)” and before “2-2(c)(xi)”, insert “and”.

~~(6)~~ **(7)** In the next to last paragraph of the Comment following the Departure Rule in the Preamble, delete “6-1, 6-3, 6-6, 6-7, 6-8, 7-1, 7-2, 7-5, 8-1, 8-2, 8-3, 9-1, 9-2, 9-3, 9-5, 10-1, 10-2, and 10-3” and before “5-3”, insert “and”.

~~(7)~~ **(8)** In the Comment under Standards Rule 1-4(g), delete “(See Standard 7)” and “(See Standard 9)”.

~~(8)~~ **(9)** In Standard 3, delete “or personal property”.

~~(9)~~ **(10)** In the Comment under Standard 3, delete “or personal property” and delete “and 8-3”.

~~(10)~~ **(11)** In the Comment under Standard 3-1(c), delete “(STANDARD 1 or 7)” and insert “(STANDARD 1)”.

~~(11)~~ **(12)** In the Comment under Standard 3-2(d), delete “or 8-1” and “or 8-2(a), (b), or (c)(viii)”.

~~(12)~~ **(13)** Any references to Standards 6 through 10 in the Statements on Appraisal Standards are deleted and shall not apply.

(c) Delete the second paragraph of the Preamble.

(d) In the Preamble, add the following sentences to the end of the text of Supplemental Standards, “Any such supplemental standard shall not be considered part of this title. However, this does not preclude the possibility of disciplinary sanctions under IC 25-1-11-5(a)(3) where appropriate.”.

(e) In the Definitions in the Preamble, delete the title and text of the Comment under Real Property. *(Indiana Real Estate Commission; 876 IAC 3-6-3; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; errata filed May 8, 1995, 4:30 p.m.: 18 IR 2262; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1767; filed May 10, 1999, 12:42 p.m.: 22 IR 2880; errata, 22 IR 3420; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2244; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238)*

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on March 28, 2002 at 10:00 a.m., at the Indiana Association of Realtors, Inc., 7301 North Shadeland Avenue, Suite A Board Room, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to incorporate by reference the 2002 edition of the Uniform Standards of Professional Appraisal Practice and to update the revisions to the Uniform Standards of Professional Appraisal Practice based upon the changes in the 2002 edition. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Gerald H. Quigley  
Executive Director  
Indiana Professional Licensing Agency