



## Special Education Policies<sup>1</sup>

These policies constitute the basis for operation and administration of the special education activities to be carried out in Options Schools under Title 511 Article 7 of the Indiana Administrative Code (hereinafter Article 7) and the Individuals with Disabilities Education Improvement Act (IDEA '04). These local standards and policies have been made available to parents, guardians, and other members of the general public.

<sup>1</sup> This document does not include the legal requirements related to early childhood special education (i.e., 511 IAC 7-36-5, 7-43-2, and 7-46-3) and nonpublic schools or facilities (i.e., 511 IAC 7-34). If the school ever serves a preschool population of students who are 3 years of age through 5 years of age, but not eligible for kindergarten, necessary revisions will be required.

## I. GENERAL PROVISIONS

### State Regulatory Requirements: 511 IAC 7-33-1 through 7-33-4

#### A. Special Education Programs; Organizational and Administrative Structures

Options Schools shall provide a Free Appropriate Public Education (FAPE) to students identified and determined eligible for special education under Article 7, including students who have been suspended or expelled from school under 511 IAC 7-44-1 and 511 IAC 7-44-2. Options Schools, consisting of grades 6-12, provides and arranges the provision of special education for eligible students. Options Schools has a goal of providing a full educational opportunity to students with disabilities for whom the school is responsible.

##### Options Schools:

1. Provides or arranges for the provision of special education, including:
  - a. Secondary school programs.
2. Administers or provides special education programs through:
  - a. An individual school corporation or charter school that is a special education planning district.
  - b. Two (2) or more school corporations or charter schools that, together, are a special education planning district authorized by any of the following:
    - i. The Joint Service and Supply Act (IC 20-26-10).
    - ii. The Special Education Cooperatives Act (IC 20-35-5).
    - iii. The Interlocal Cooperation Act (IC 36-1-7).
    - iv. Any other cooperative arrangement permitted by law.
  - c. A transfer tuition agreement.
  - d. A contract for certain related services.

#### B. Use of public or private insurance proceeds

##### Options Schools:

1. Provides services at no cost to parents, but may seek to use Medicaid or other public benefits or insurance programs available to a student with a disability to pay for services required as part of the student's free appropriate public education, but this public agency **does not**:
  - a. Require parents to sign up for or enroll in public benefits or insurance programs in order for the student to receive a free appropriate public education; or
  - b. Require parents to incur an out-of-pocket expenses, such as the payment of a deductible or copay amount incurred in filing a claim for services provided, but may pay the cost that the parent otherwise would be required to pay; or
  - c. Use a student's benefits under a public benefits or insurance program if that use would:
    - i. decrease available lifetime coverage or any other insured benefit;
    - ii. result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
    - iii. increase premiums or lead to the discontinuation of benefits or insurance;or
  - iv. risk loss of eligibility for home and community based waivers, based on aggregate health related expenditures.
2. Obtains informed parental consent each time it seeks access to public benefits or insurance for specific services and duration of services identified in the student's IEP. Subsequent informed parental consent is

required if:

- a. The student's IEP is revised or extended to require additional services, or
  - b. The public agency charges a different amount for such services.
3. May access a parent's private insurance proceeds, but only if it:
- a. Obtains informed parental consent each time that access to private insurance benefits is sought, and
  - b. Informs the parent that refusal to permit the public agency to access the private insurance will not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parent.
4. May use its Part B federal funds, when services are required to ensure a free appropriate public education for a student, to:
- a. Provide or pay for services when the parent declines or does not respond to the public agency's request for consent to access private or public insurance or benefits, or
  - b. Pay the cost, such as a deductible or co-pay that a parent would incur for the service if private or public insurance or benefits or insurance were used to pay for the service.
5. Does not consider proceeds from private or public insurance or benefits as program income for purposes of with respect to the administration of federal grants and cooperative agreements.
6. Does not consider reimbursements (such as Medicaid) spent on services under Article 7 as state or local funds for purposes of maintenance of effort provisions.
7. Does not construe anything in Article 7 to alter the requirements imposed on the state Medicaid agency, or any other agency administering public benefits or insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public benefits or insurance program.

## **II. PROGRAM PLANNING AND EVALUATION**

### **State Regulatory Requirements: 511 IAC 7-35-1 through 7-35-2**

#### **A. Program monitoring**

Options Schools understands that:

1. The division of special education shall monitor it for special education to ensure compliance with and implementation of the requirements of federal and state laws, rules, regulations, and policies regarding the provision of programs, services, protections, and a free appropriate public education to all students with disabilities.
2. The monitoring activities may include, but are not limited to, the following:
  - a. Complaint investigations.
  - b. Data collection and analysis.
  - c. State or federal fiscal audits.
  - d. On-site reviews of the following:
    - i. The total special education program on a cyclical or other basis.
    - ii. Portions of programs to examine one (1) or more issues.
  - e. Accreditation information.

- f. Due process hearing decisions.
- g. Performance indicators measured by:
  - i. the state performance plan;
  - ii. the annual performance report; or
  - iii. other federal or state measures of performance or accountability; including facilitation of parent involvement by schools.

#### **B. Supports for public agency personnel**

1. Carries out activities to ensure that its personnel are:
  - a. Fully informed about their respective responsibilities for implementing Article 7; and b. Provided with technical assistance and training necessary to assist them in this effort and the necessary knowledge and skills to implement each student's IEP.
2. Ensures that each student's case conference committee, during the development, review or revision of the student's IEP, considers whether any support is necessary to provide public agency personnel with the knowledge and skills necessary to implement the student's IEP.
3. Ensures that the case conference committee documents, as determined necessary, the types of supports to be provided and the intent of the supports, which can be related to public agency personnel or the student, or both.

### **III. GENERAL ADMINISTRATION OF PROGRAMS**

#### **State Regulatory Requirements: 511 IAC 7-36-1 through 7-36-10**

#### **A. Parent and community participation**

Options Schools understands that:

1. It is encouraged to establish, or support the establishment of, a parent advisory council, committee, task force, or group.
2. Its goals for a parent group may include, but are not limited to:
  - a. supporting student and family membership in the school community;
  - b. inviting parents of students with disabilities to participate on school decision making committees; and
  - c. fostering effective communication with families focused on student learning and developing.

#### **B. Special education program personnel**

Employs or contracts personnel to provide special education or related services who are appropriately licensed or certified and have the content knowledge and skills necessary to provide the services for which the individual is employed or contracted in accordance with standards established by the department of education's division of professional standards or other applicable licensing and certification bodies.

1. Ensures that:
  - a. the person designated as a student's teacher of record for kindergarten through grade 12 is appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained.

- b. the person designated as a student's teacher of record for an early childhood student holds an appropriate license to teach early childhood special education.
  - c. special education teachers meet the requirements of 511 IAC 7-36-2(a) and, with the exception of early childhood special education teachers, are highly qualified according to 511 IAC 7-36-3.
  - d. related services personnel who deliver services in their discipline meet the requirements of 511 IAC 7-36-2(a) and do not have their certification or licensure requirements waived on an emergency, temporary, or a provisional basis.
  - e. personnel working with deaf or hard of hearing students who provide sign language transliteration and interpreting services meet the requirements of 511 IAC 7-36-2(a) and (c), and are certified to interpret in an educational setting.
  - f. Any paraprofessionals and assistants assisting students in areas that relate to personal, social, and educational needs are appropriately trained to work under the direction and supervision of licensed teachers, highly qualified teachers, or related services personnel.
2. Provides and documents in writing the preservice and inservice training it provides to paraprofessionals on the following areas:
    - a. the role of the paraprofessional related to the role of the professional person providing supervision and direction;
    - b. the specific skills and content knowledge necessary to carry out the assigned responsibilities; and c. information on the specific special needs and characteristics of the students with whom the paraprofessional will be working and special education procedures, including the confidentiality of personally identifiable information.
  3. Ensures that paraprofessionals who provide instructional support in a program supported by funds from Title I, Part A of the Elementary and Secondary Education Act have a high school diploma as defined in 511 IAC 6-7.1-1(e) or its recognized equivalent. Paraprofessionals hired after January 8, 2002, have completed two (2) years of study at an institution of higher education, as defined in 511 IAC 7-32-52, obtained an associate's or higher degree, **or** met a rigorous standard of quality and are able to demonstrate, through a formal state academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness).
  4. Understands that a paraprofessional under 511 IAC 7-36-2(g) does not have to meet the requirement in subsection (g)(2) if the paraprofessional is a person who:
    - a. is proficient in English and a language other than English and acts solely as a translator to enhance the participation of limited English proficient students; or
    - b. only conducts parental activities, such as a home school liaison.
  5. Understands that a paraprofessional under 511 IAC 7-36-2(g) does not have to meet the requirements contained in subsection (g) if the paraprofessional:
    - a. works in a Title I targeted assistance program, as opposed to a Title I school-wide program, unless the paraprofessional's salary is funded, in whole or in part, by Title I Part A; or
    - b. does not provide instructional support, such as a person who solely provides personal care.
  6. Understands that, notwithstanding any other individual right of action that a parent or student may maintain under Article 7, nothing in Article 7 can be construed to:
    - a. create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to be highly qualified; or

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

### **C. Highly qualified teachers**

#### Options Schools:

1. Ensures that its special education teachers are highly qualified as a special education teacher by meeting the following requirements:
  - a. The teacher has obtained full state licensure as a special education teacher, including licensure obtained through an alternative route, as described in 511 IAC 7-36-3(b), or passed the state special education teacher licensing examinations and holds a license to teach in the state as a special education teacher.
  - b. The teacher has not had special education licensure requirements waived.
  - c. The teacher holds at least a bachelor's degree.
2. Understands that a teacher meets the requirement in 511 IAC 7-36-3 (a)(1) if that teacher is participating in an alternative route to special education licensure program under which the teacher:
  - a. Receives high quality professional development that is sustained, intensive, and classroom focused in order to have a positive and lasting impact on classroom instruction before and while teaching;
  - b. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
  - c. Assumes functions as a teacher only for a specified period of time not to exceed three (3) years; and
  - d. Demonstrates satisfactory progress toward full licensure as prescribed by the state; and the state ensures, through its licensure process, that these provisions in paragraph 2 are met.
3. Understands that special education teachers who do not teach core academic subjects only have to meet the highly qualified special education teacher requirements in 511 IAC 7-36-3(a). It further understands that a special education teacher does not teach core academic subjects if the special education teacher:
  - a. Is a co-teacher who:
    - i. works within the general education setting in which a highly qualified general education teacher provides instruction to the class on core academic elementary content or a core academic middle, junior high, or high school subject; and
    - ii. provides direct assistance to students with disabilities via individualized or small group instruction as a support to the highly qualified teacher's instruction.
  - b. Is a consultant teacher who provides consultation, such as:
    - i. adapting curricula;
    - ii. using behavioral supports and interventions; and
    - iii. selecting appropriate accommodations; to highly qualified general education teachers of core academic high school academic subject.
  - c. is a resource room teacher who provides direct assistance to students with disabilities, such as tutoring and reinforcement of content provided in the general education setting, in segregated settings after the students receive instruction on core academic high school subject from a highly qualified general education teacher; or
  - d. provides direct instruction to students with disabilities on noncore academic subjects, such as life skills, study skills, and community based instruction.
4. Ensures that:

- a. Special education teachers who teach core academic subjects, as defined in 511 IAC 7-32-21, are highly qualified as a special education teacher under 511 IAC 7-36-3(a) and highly qualified in the core academic subjects under 511 IAC 7-32-44. It further understands that special education teachers teach core academic subjects when:
    - i. The special education teacher is the primary teacher providing instruction to middle, junior high, or high school students in a core academic subject.
    - ii. The special education teacher team teaches in the general education setting alongside a highly qualified teacher of high school subject, and the teachers share responsibilities for the design and delivery of instruction; and evaluation of student performance.
  - b. Special education teachers who teach core academic subjects exclusively to students who are assessed against alternate achievement standards meet the requirements in subsection 511 IAC 7-36-3(a) and, whether they are a new or a veteran teacher, either meet the:
    - i. applicable requirements of 511 IAC 7-32-44 for any new or veteran high school teacher; or
    - ii. requirements of 511 IAC 7-32-44(b)(2) or 511 IAC 7-32-44(b)(3) as applied to an elementary school teacher and, in the case of instruction above the elementary level, have subject matter knowledge appropriate to the level of instruction being provided, as determined by the state.
  - c. Special education teachers who teach two (2) or more core academic subjects exclusively to students with disabilities (including students assessed against alternative achievement standards) meet the requirements in subsection 511 IAC 7-36-3(a) and either:
    - i. meet the applicable requirements of 511 IAC 7-32-44(b)(2) or 511 IAC 7-32-44(b)(3);
    - ii. in the case of a veteran teacher, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for a veteran elementary, middle, junior high, or high school teacher under 511 IAC 7-32-44, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or
  - d. A new special education teacher who teaches multiple subjects and is highly qualified in mathematics, language arts, or science, demonstrates, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, junior high, or high school teacher under 511 IAC 7-32-44, which may include a single HOUSSE covering multiple subjects.
5. Understands that, notwithstanding any other individual right of action that a parent or student may maintain under Article 7, nothing in this section is construed to:
- a. create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to be highly qualified; or
  - b. prevent a parent from filing a complaint under 511 IAC 7-45-1 about staff qualifications with the division of special education.
6. Understands that:
- a. A teacher who is highly qualified under this section is considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965, as amended by 20 U.S.C. 6311 et seq.
  - b. For purposes of 511 IAC 7-36-3 (f)(3), a fully licensed regular education teacher who subsequently becomes fully licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
  - c. The requirements in this section do not apply to teachers hired by nonpublic elementary, middle, junior high, or high schools, including nonpublic school teachers hired or contracted by public agencies to provide special education and related services to parentally-placed nonpublic school students with disabilities under 511 IAC 7-34-7(k)(2).

- d. Because the early childhood special education program described in 511 IAC 7-36-5 is not part of the state's public elementary, middle, junior high, and high school system, kindergarten through grade 12, early childhood teachers do not have to meet the highly qualified teacher requirements, but they do have to be appropriately licensed.

#### **D. Elementary and secondary instructional day; school calendar; extended school year services**

##### **Options Schools:**

1. Ensures that the length of the instructional day for secondary students with disabilities is the same as the instructional day for nondisabled secondary students, respectively, in the same school building, **unless** the case conference committee determines the length of the student's instructional day should be different and documents the justification in the written notice described in 511 IAC 7-42-7.
2. Ensures that the school calendar of the school corporation or charter school providing the special education program is followed when the calendars of the providing school corporation or charter school and the school corporation of legal settlement or charter school differ. Unless otherwise provided, the school corporation of legal settlement or charter school provides for transportation necessary to enable students to attend school on days when the providing school corporation or charter school is in attendance but the school corporation of legal settlement or charter school is not in attendance.
3. Ensures that extended school year services are special education and related services that meet the standards of the department of education and are provided to a student with a disability:
  - a. beyond the public agency's school calendar or instructional day;
  - b. in accordance with the student's IEP; and
  - c. at no cost to the parent of the student.
4. Ensures that extended school year services are available as necessary to provide free appropriate public education, and provides extended school year services if a student's case conference committee determines, on an individual basis, in accordance with 511 IAC 7-42-6 or 511 IAC 7-42-9, that the services are necessary for the provision of free appropriate public education for the student.
5. Does not limit extended school year services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services.

#### **E. Facilities**

1. Provides instructional space for students with disabilities that is:
  - a. not less than the per student instructional space for general education students of the same chronological age in the same building;
  - b. comparable to the general space and instructional environment of the general education students in the same building; and
  - c. sufficient to accommodate a student's:
    - i. special equipment;
    - ii. assistive devices; or
    - iii. curricular needs.
2. When developing written emergency preparedness plans in accordance with 511 IAC 6.1-2-2.5, includes provisions for warning and evacuating students whose disabilities require special warning or evacuation procedures. The special warning and evacuation provisions:
  - a. address individual needs of students;



- b. be reviewed on an annual and as needed basis; and
- c. be implemented during tornado (shelter) preparedness drills, fire drills, and manmade occurrence disaster drills as required by IC 20-34-3-20.

## **F. Instructional curricula, materials, equipment, and assistive technology devices and services**

1. Ensures that each student is involved in and progresses in the general education curriculum, to the maximum extent feasible, as determined by the student's case conference committee
2. May supplement the general education curriculum with modified programs of instruction or curriculum that relate to state academic standards and functional skills to be achieved.
3. Provides students with disabilities with instructional materials and supplies comparable to those provided to nondisabled students.
4. Ensures that a student's case conference committee determines whether the student needs instructional materials, including print instructional materials as defined in 511 IAC 7-32-75, in an accessible format.
5. Understands that, for purposes of 511 IAC 7-36-7:
  - a. "accessible format" means an alternate approach to presenting information to a student with a disability;
  - b. accessible formats may be purchased ready for use by students with disabilities, developed for use by students with disabilities, or modified from existing materials in accordance with federal and state copyright laws; and
  - c. accessible formats include, but are not limited to Braille, audio, digital text, large type, tactile graphics, video, captions, and audio descriptions.
6. Ensures that, if a student's case conference committee determines that a student needs instructional materials in an accessible format that are not print instructional materials, it provides the student with the instructional materials at the same time as other students receive the instructional materials, in accordance with policies and procedures established by the department of education.
7. Ensures that, if a student's case conference committee determines that a student needs print instructional materials in an accessible format, it provides the materials to the student in a timely manner as described in 511 IAC 7-36-7(h).
8. Ensures that, when a student needs print instructional materials in an accessible format, it determines whether the student is a student with a print disability as defined in 511 IAC 7-32-93, including obtaining a written certification statement from a competent authority according to policies and procedures established by the department of education.
9. Understands that, with regard to paragraph 8 above, a competent authority is a recognized expert who attests to the physical basis of the visual, perceptual, or other physical disability that limits the student's use of standard print, in accordance with policies and procedures established by the department of education.
10. Understands that, for purposes 511 IAC 7-36-7, "timely manner" means that it will take all reasonable steps to ensure that students who need print instructional materials in accessible formats are provided those materials at the same time as other students receive instructional materials.

11. Understands that:
  - a. “reasonable steps” (per 511 IAC 7-36-7(h)) include, but are not limited to:
    - i. Requiring publishers or other contractors to, at a minimum, provide the National Instructional Materials Access Center (NIMAC) with electronic files containing the content of the print instructional materials using the National Instructional Materials Accessibility Standard (NIMAS). Such files must be provided to the NIMAC with sufficient time, according to policies and procedures established by the department of education, to ensure that students requiring accessible formats receive the instructional materials at the same time as other students receive the instructional materials.
    - ii. Having a means of acquiring print instructional materials in accessible formats according to policies and procedures established by the department of education, including for students who transfer into the public agency after the start of the school year.
  - b. “reasonable steps” does not include withholding print instructional materials from other students until print instructional materials in accessible formats are available.
  - c. nothing in 511 IAC 7-36-7 relieves it of its responsibility to ensure that the following students, who need print instructional materials in accessible formats, receive those materials in a timely manner:
    - i. A student who is not a student with a print disability as defined in 511 IAC 7-32-93.
    - ii. A student who needs print instructional materials that cannot be produced from NIMAS files.
  - d. charges to the parent for textbook rental, incidental fees, or any other fees permitted by state statute or rule do not violate the “at no cost” requirement.
12. Provides instructional materials and equipment and assistive technology devices and services, as defined in 511 IAC 7-32-7 and 511 IAC 7-32-8, which are specified in the student's IEP. It provides access to assistive technology devices in a student's home or other settings on a case-by-case basis when the student's case conference committee determines that the student needs such access in order to receive a free appropriate public education.
13. Is not responsible for providing basic equipment such as wheelchairs, braces, glasses, or hearing aids that the student may require at home as well as in the educational setting unless the student's case conference committee determines otherwise.
14. Is responsible for maintenance and repair of all equipment and devices it provides, but it is not responsible for the cost of repair or replacement of equipment it does not purchase.
15. Ensures that hearing aids worn in school by students who are deaf or hard of hearing are functioning properly.
16. Is not responsible for the postsurgical maintenance, programming, or replacement of a student with a disability's medical device that has been surgically implanted, or of an external component of the surgically implanted medical device. However, it ensures that the external components of the surgically implanted medical devices are functioning properly.

## **G. Transportation**

1. Transports students with disabilities with nondisabled students when appropriate.

2. Understands that the school corporation of legal settlement or charter school is ultimately responsible for transportation of students with disabilities, unless such responsibility is otherwise delegated under a comprehensive plan, joint services agreement, Interlocal or cooperative arrangement.
3. Treats transportation as a related service, under 511 IAC 7-43-1(u), when the student's case conference committee determines or IEP specifies that transportation is necessary for the student to receive special education and related services.
4. Places a written student-specific justification in the student's record whenever the transit time of a student with a disability exceeds the transit time of nondisabled students of comparable age in the same school corporation or charter school and applies any local policies limiting transit time to its students with disabilities.
5. Does not require the parent of a student with a disability to provide transportation. If the parent does transport the student, such transportation is pursuant to a written agreement with the parent, and the public agency reimburses the parent at not less than the per mile rate at which employees of the public agency are reimbursed.

#### **H. Medication administration**

1. Has established, maintains, and implements written policies and procedures on the administration of medication that include the following provisions:
  - a. No medication is administered without the written and dated consent of the parent.
  - b. The parent's written consent is valid only for the period specified on the consent form and never longer than the current school or program year.
  - c. A physician's prescription, a copy of the original prescription, or the pharmacy label must be provided by the parent and on file with the public agency.
  - d. Medication is maintained in a secure location and administered in accordance with the physician's prescription.
  - e. The parent may, upon request, obtain a copy of the public agency's policies and procedures on medication administration.
  - f. If the medication is to be terminated prior to the date on the prescription, the written and dated consent or withdrawal of consent of the parent is required.
  - g. The person or persons authorized to administer medication are specified.
2. Documents any special training provided to persons authorized to administer medication.
3. Does not permit its personnel to require a parent to obtain a prescription for medication for a student as a condition for attending school, receiving a special education evaluation under 511 IAC 7-40, or receiving special education and related services under Article 7.
4. Does not construe anything in Article 7 as prohibiting teachers and other school personnel from consulting or sharing classroom based observations with a parent regarding his or her student's academic and functional performance, behavior in the classroom or school, or need for evaluation under 511 IAC 7-40-2 related to child identification.

#### **I. State and local assessments**

1. Ensures that students with disabilities participate in all state and local assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in a student's IEP.
2. To the extent possible, uses universal design principles in developing and administering district assessments under 511 IAC 7-36-10.
3. Understands that appropriate accommodations for the state assessment programs are set forth in the program manual issued each year by the department of education and that these accommodations that do not invalidate scores.
4. Develops guidelines for the provision of appropriate accommodations that do not invalidate scores on district-wide assessments.
5. Ensures that the student's case conference committee determines, in advance, whether a student will utilize any of the appropriate accommodations described in 511 IAC 7-36-10(c) and (d) during state and district assessments and throughout the student's education program.
6. Ensures that, if the student will utilize accommodations, the case conference committee:
  - a. selects testing accommodations the student needs in order for the assessment to reflect the student's academic achievement;
  - b. does not select testing accommodations that will invalidate a student's score; and
  - c. documents the testing accommodations in the student's IEP.
7. Understands that nothing in Article 7 prohibits the use of accommodations in classroom instruction that, if used for state and district assessments, would invalidate a student's score.
8. Understands that the case conference committee may determine that a student will participate in an alternate assessment in lieu of participating in the general assessment, and ensures that, for state assessments, the case conference committee's determination is based upon the criteria in 511 IAC 5-2-4.5.
9. Ensures that, before a case conference committee determines that a student will participate in an alternate assessment in lieu of the general assessment, it has provided the case conference committee with a clear explanation of the differences between the assessments, including any effects of state or district policies on the student's education resulting from participation in an alternate assessment.
10. Ensures that, if the case conference committee determines that a student will participate in an alternate assessment, the parent is informed that the student's performance will not be measured against grade-level academic achievement standards.

#### **IV. PROCEDURAL SAFEGUARDS**

##### **State Regulatory Requirements: 511 IAC 7-37-1 and 7-37-2**

##### **A. Notice of Procedural Safeguards**

###### **Options Schools:**

- a. Has established, maintains, and implements procedures in accordance with 511 IAC 7-37-1 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. Ensures that its written notice of procedural safeguards is:
  - i. a standard notice;
  - ii. written in language understandable to the general public
  - iii. provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so and
  - iv. printed in a format that is easy to read.
- c. Ensures and documents in writing that, when the native language or other mode of communication of the parent is not a written language, it takes steps to make sure that:
  - i. The procedural safeguards are translated orally or by other means to the parent in his or her native language or other mode of communication and
  - ii. The parent understands the content of the notice.
- d. Give a copy of the notice of procedural safeguards to the parent of a student with a disability one (1) time a school year, as well as upon:
  - i. initial referral or parental request for evaluation;
  - ii. receipt of the first filing of a complaint under 511 IAC 7-45-1 in a school year;
  - iii. receipt of the first due process hearing request under 511 IAC 7-45-3 in a school year;
  - iv. the date the public agency decides to make a removal that results in a disciplinary change of placement under 511 IAC 7-44-2, which includes removals to interim alternative education settings for weapons, drugs, and serious bodily injury under 511 IAC 7-44-6; and
  - v. request by a parent.
- e. May place a copy of the notice of procedural safeguards on its Internet website if a website exists, but understands that such posting does not satisfy the requirement of providing the notice of procedural safeguards to a parent.
- f. Utilizes the Notice of Procedural Safeguards developed and provided by the division of special education and understands that the Notice provided by the divisions provides a full explanation of the requirements of 511 IAC 7-37-1(f).

#### **B. Notice by electronic mail**

This public agency will allow parents to elect to receive the written notice of procedural safeguards by an electronic mail communication if it makes that option available.

### **V. CONFIDENTIALITY OF INFORMATION**

#### **State Regulatory Requirements: 511 IAC 7-38-1 through 7-38-3**

##### **A. Access to and disclosure of educational records**

- 1. Provides written notice annually to parents of students currently in attendance, or students of legal age currently in attendance, of their rights regarding confidentiality of personally identifiable information, including the right to:

- a. Inspect and review the student's educational record with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.
  - b. Seek amendment of the student's educational record that the parent or student of legal age believes to be inaccurate, misleading or otherwise in violation of the student's privacy rights.
  - c. Consent to disclosures of personally identifiable information contained in the student's educational record, except to the extent that this rule authorizes disclosure without consent.
  - d. File a complaint concerning the public agency's alleged failure to comply with the requirements of this rule.
2. Ensures that the written notice includes:
- a. The procedures for exercising the right to inspect and review educational records and requesting an amendment of educational records.
  - b. The criteria for determining what constitutes a public agency official and what constitutes a legitimate educational interest, if the public agency has a policy of disclosing educational records to other public agency officials who have been determined to have a legitimate educational interest.
3. Provides the written notice by whatever means is reasonably likely to inform the parents or students of legal age of their right will effectively notify parents of students with disabilities, students of legal age with disabilities, or parents who have a primary or home language other than English.
4. Understands that the right to inspect and review educational records includes the right to:
- a. a response from the public agency to reasonable requests for explanations and interpretations of the educational record;
  - b. have other arrangements made to inspect and review a requested educational record or to receive copies of the educational record from the public agency if the failure to provide those copies would prevent the parent or student of legal age from exercising the right to inspect and review the educational record;
  - c. have a representative of the parent or student of legal age inspect and review the educational record; and
  - d. receive a copy of the student's educational record from the public agency for use in a pending due process hearing.
5. Permits a parent, or parent's representative, to inspect and review any educational record of the parent's children from birth to eighteen (18) years of age that it collects, maintains, or uses as described in Article 7, and understands that all rights under this rule transfer from the parent to the student of legal age, as defined in 511 IAC 7-32-91, when the student has reached eighteen (18) years of age and not had a guardian appointed.
6. Permits a custodial and noncustodial parent to inspect and review the student's educational record unless it has received actual written notice that a court order has terminated or restricted the parent's authority to access the student's educational record under applicable state law governing matters, such as, but not limited to, guardianship, separation, divorce, or custody.
7. Complies with a request from a parent or student of legal age to inspect and review the educational record:
- a. without unnecessary delay,
  - b. before any meeting regarding an IEP, IAES, or manifestation determination,
  - c. prior to a resolution session, due process hearing, or expedited due process hearing, and

- d. in no case more than forty-five (45) calendar days after the request is made.
8. May charge a fee for copies of educational records, but does not charge a fee when the requested record is a copy of a student's educational evaluation report or IEP and the request is made by a parent or student of legal age, including a parent of a student or student of legal age who attends a nonpublic school.
9. Ensures that its fees for copies:
  - a. Do not exceed actual cost of duplication; and
  - b. Are not charged if doing so effectively prevents the parent or student of legal age from exercising the right to inspect and review the educational record.
10. Does not charge a fee to search for or retrieve information under 511 IAC 7-38-1.
11. Understands and ensures that, if an educational record includes information on more than one (1) student, the parent or student of legal age has the right to inspect and review only the information relating to the parent's child or student of legal age or be informed of that specific information.
12. Maintains a record of each request for access to and disclosure of personally identifiable information from the educational record of each student, except when the disclosure has been by or to:
  - a. A parent or student of legal age.
  - b. A party with written consent from the parent or student of legal age.
  - c. A party seeking directory information.
  - d. An authorized public agency official.
  - e. A party receiving the record pursuant to a lawfully issued subpoena or other court order specifically stating that the following will not be disclosed:
    - i. The existence and contents of the subpoena or other court order.
    - ii. The information furnished in response to the subpoena or other court order.
13. Maintains the record of access and disclosure with the educational record as long as the educational record is maintained and includes the name of the person who has requested or received personally identifiable information from the educational record, the purpose of the party in requesting or obtaining the information, and the date of disclosure of the information.
14. Ensures that, if it discloses personally identifiable information with the understanding that the party receiving the information may make further disclosures on behalf of the public agency in which prior consent is not required, the record of disclosure will include the names of the additional parties to which the receiving party may disclose the information on behalf of the public agency and the purpose of each of the additional parties in requesting or obtaining the information.
15. Upon request of a parent or student of legal age, provides a list of the types and locations of educational records it collects, maintains, or uses.
16. Transmits the student's current IEP and any disciplinary records relative to a suspension or expulsion when transmitting the student's educational record due to a student's transfer from one school to another.
17. Ensures that, when reporting a crime committed by a student with a disability, it transmits copies of the education and disciplinary record of the student only to the extent the transmission is permitted by the Family Educational Rights and Privacy Act (which includes requiring the receiving authorities to certify in writing that the records will not be disclosed to any other parties) and as required by IC 20-33-7-3, without

the prior written consent of the parent or the student of legal age for consideration by the appropriate authorities to whom it reports the crime.

18. Obtains the written and dated consent of the parent or student of legal age before personally identifiable information is disclosed, except as specified in 511 IAC 7-38-1(o), (q), and (r), to anyone other than the parent, student of legal age, or authorized public agency officials, or before the information is used for any purpose other than those specified in Article 7. The public agency ensures that the consent specifies the record that may be disclosed, the purpose of the disclosure, and the person or class of persons to whom the record may be disclosed.
19. Understands with the following exceptions that parental consent is not required before personally identifiable information is released to officials of other agencies or institutions for purposes of meeting a requirement of Article 7:
  - a. Parental consent, or the consent of a student of legal age, as defined in 511 IAC 7-32-17, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 511 IAC 7-43-3.
  - b. If a student is enrolled or is going to enroll in a nonpublic school that is not located in the student's school district of legal settlement, parental consent must be obtained before any personally identifiable information about the student is released between officials from the school corporation where the nonpublic school is located and the school corporation of legal settlement.
20. May allow access to, or disclose information from, an educational record without consent of the parent or student of legal age under any of the following conditions:
  - a. The disclosure is to authorized public agency officials within the agency, including teachers, whom the agency has determined to have legitimate educational interests.
  - b. The disclosure is to officials of another public agency or institution of postsecondary education where the student is enrolled, or intends to enroll, subject to the following:
    - i. The public agency must make a reasonable attempt to notify the parent or student of legal age at the last known address of the parent or student of legal age, unless the:
      1. disclosure is initiated by the parent or student of legal age; or
      2. annual notice in 511 IAC 7-38-1 (a) includes notice that the agency forwards educational records to another public agency or institution that has requested the records and in which the student intends to or has enrolled.
    - ii. The public agency must provide the following:
      1. Upon request of the parent or student of legal age, a copy of the disclosed record.
      2. At the request of a parent or student of legal age, the opportunity for a hearing as described in 511 IAC 7-38-(c).
  - c. Notwithstanding paragraph 20(b)(i) above, when a student was previously enrolled in the public agency, it will take reasonable steps to promptly respond to a request from the student's new school, public or nonpublic, for the student's educational records.
  - d. The disclosure is to authorized representatives of the Comptroller General or Attorney General of the United States, the Secretary of the United States Department of Education, or state and local education authorities in connection with an audit, evaluation, or accreditation of federal or state supported education programs, or for the enforcement of, or compliance with, federal or state legal requirements related to those programs.
  - e. The disclosure is in connection with financial aid for which the student applied or which the student has received, if the information is necessary for such purposes as determining eligibility for financial

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

ii. that a parent or student of legal age has the right to refuse to let the public agency designate any or all of those types of information about the student as directory information; and iii. of the period of time in which a parent or student of legal age has to notify the public agency in writing that he or she does not want any or all of those types of information about the student designated as directory information.

The public agency may disclose directory information about former students without meeting the conditions set forth in this paragraph.

m. The disclosure is to any of the following:

- i. The parent of a dependent student as defined under Section 152 of the Internal Revenue Code of 1986.
- ii. Accrediting organizations to carry out their accrediting functions.
- iii. The parent of a student or to the student of legal age.

21. Upon request, provides the parent or student of legal age with a copy of the information that has been disclosed.

22. May disclose personally identifiable information from an educational record only on the condition that the party to whom the information is disclosed will not redisclose the information to any other party without the prior consent of the parent or student of legal age, except for disclosures:

- a. of directory information;
- b. to the parent or student of legal age; or
- c. made pursuant to court orders or lawfully issued subpoenas.

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

24. May utilize the due process procedures described in 511 IAC 7-45 if a parent refuses to provide consent under 511 IAC 7-38-1

## **B. Procedures for amending educational records**

1. Understands that a parent or student of legal age who believes that information in an educational record collected, maintained, or used under this rule is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the record to amend the information and that the request must be in writing, dated, and specify what information the parent or student of legal age believes to be inaccurate, misleading, or in violation of the student's privacy or other rights.

2. If it agrees to amend the information as requested, amends the information within ten (10) business days after the request is received and notifies the parent or student of legal age in writing that the change has been made, including the date the change was made.

3. If it refuses to amend the information as requested, notifies the parent or student of legal age of the refusal in writing within ten (10) business days after the request is received. The written notice includes a statement of the right of the parent or student of legal age to a hearing to challenge the information in the student's educational record and the procedures for the hearing, including the following:

- a. The parent or student of legal age must submit to the public agency a written request for a hearing,

specifying the:

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

### **C. Confidentiality safeguards in the collection, maintenance, and destruction of educational records**

1. Has established, maintains, and implements procedures to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. These procedures must include, but are not limited to, those described in 511 IAC 7-38 and the following:
  - a. The appointment of one (1) official in each building or administrative office to be responsible for ensuring compliance with the confidentiality provisions of this rule.
  - b. The provision of training or instruction for all persons collecting or using personally identifiable information regarding the following:
    - i. The student and parent procedural safeguards with respect to the provision of a free and appropriate public education.
    - ii. Confidentiality provisions of this rule and the Family Educational Rights and Privacy Act, 20

2. Maintains for public inspection a current listing of the names and positions of those employees within the public agency authorized to access personally identifiable information.
3. Informs the parent or student of legal age, in writing, when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information is destroyed at the request of the parent or student of legal age in accordance with the public agency's record retention schedules.
4. Maintains a student's educational record for at least three (3) years after the student exits from the special education program and in accordance with its record retention schedules. It does not destroy any educational record if there is an outstanding request to inspect and review the record.
5. The public agency may maintain a permanent record, without time limitation, of the following student information:
  - a. Name, address, and telephone number.
  - b. Grades.
  - c. Classes attended.
  - d. Grade level completed and year completed.
  - e. Attendance record.
  - f. The year the student exited from school.
  - g. High school transcript that includes the following:
    - i. Attendance records.
    - ii. The student's latest statewide assessment program test results.
    - iii. Any secondary or postsecondary certificates of achievement.
    - iv. Immunization information.
    - v. Other information as determined by the public agency.
6. Maintains and stores a student's educational record in such a manner that the manner of maintenance and storage does not abridge any rights under 511 IAC 7-38 and so that the educational record can be reviewed and copies made if needed.

## **VI. EDUCATIONAL SURROGATE PARENTS**

### **State Regulatory Requirements: 511 IAC 7-39-1 and 7-39-2**

#### **A. Method for determining whether a student needs an educational surrogate parent**

1. Has established, maintains, and implements written procedures on how it determines a student is in need of an educational surrogate parent and how eligible persons will be trained to serve as educational surrogate parents.
2. Protects the rights the rights of a student by assigning an educational surrogate parent:
  - a. When no parent, as defined in 511 IAC 7-32-70, can be identified.
  - b. When, after reasonable efforts, the public agency cannot locate a parent.
  - c. When the student is a ward of the state under the laws of the state, unless:

- i. The court order creating the wardship permits the student to remain in the home or expressly reserves to a parent the authority to make decisions regarding the student's education or upbringing, or
    - ii. The student is a ward of the department of correction who has a parent as defined by 511 IAC 7-32-70.
  - d. When the student is a homeless student as defined in 511 IAC 7-32-46 who is not in the physical custody of a parent or guardian.
3. Appoints an educational surrogate parent, if needed:
    - a. at the time the student is referred for an initial educational evaluation; and
    - b. any time the public agency determines that a student who has been identified as disabled under Article 7 is in need of an educational surrogate parent.
  4. Makes reasonable efforts to ensure the assignment of an educational surrogate parent not more than thirty (30) calendar days after it determines that a student needs an educational surrogate parent.
  5. Understands that, if a student is a ward of the state, the educational surrogate parent may be appointed by the judge overseeing the student's case, provided that the educational surrogate parent meets the requirements of 511 IAC 7-39-2(b)(1) and (d).

**B. Method for assigning an educational surrogate parent**

1. Has established, maintains, and implements written procedures regarding the assignment of educational surrogate parents that include:
  - a. A system to assign educational surrogate parents.
  - b. A system for determining the eligibility of individuals to serve as educational surrogate parents.
  - c. A system for training individuals to serve as educational surrogate parents that includes training regarding special education laws and rules.
2. Ensures that a person assigned as an educational surrogate parent:
  - a. is not employed by the department of education, a public agency, or any other agency involved in the education or care of the student;
  - b. has no personal or professional interest that conflicts with the interests of the student whom the educational surrogate parent represents;
  - c. matches the student's cultural and linguistic background to the extent possible; and
  - d. has knowledge and skills that ensure adequate representation of the student.
3. Understands that an individual who otherwise qualifies to be an educational surrogate parent under 511 IAC 7-39-2(b) is not considered an employee of the public agency solely because it may pay the individual to serve as an educational surrogate parent.
- 4.. Understands and allows an educational surrogate parent may represent the student in all matters relating to identification, evaluation and eligibility, placement, and the provision of a free appropriate public education.
5. Understands that an educational surrogate parent's representation of a student includes:
  - a. Participating in case conferences or other parent-teacher conferences.
  - b. Granting or denying written consent for evaluation or services.

- c. Accessing and reviewing the student's educational record.
  - d. Requesting mediation, a due process hearing, or filing a complaint.
  - e. Exercising on behalf of the student any other rights that a parent may exercise under Article 7.
6. Understands that an individual assigned as an educational surrogate parent is not liable for damages arising out of any civil action initiated as a result of the individual's discharge of this duty.
  7. Trains or contracts with another agency or organization to train educational surrogate parents about special education laws and rules in accordance with 511 IAC 7-39-2(a)(3) in order to develop a pool of educational surrogate parents from which the public agency may draw.
  8. Assigns or arranges for the assignment of an educational surrogate parent for a student who attends an educational program outside the school corporation of legal settlement and is in need of an educational surrogate parent, by assigning the educational surrogate parent from the school corporation of legal settlement, or from geographic area where the educational program is located as agreed upon by the administrators of both programs involved.
  9. Keeps a list of educational surrogate parents from which it makes its assignments. The list includes the qualifications of and number of assignments for each educational surrogate parent.

## **VII. IDENTIFICATION AND EVALUATION**

### **State Regulatory Requirements: 511 IAC 7-40-1 through 7-40-8**

#### **A. Child find**

1. Shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students attending the charter school who are in need of special education and related services, regardless of severity of their disabilities.
2. Must develop and implement a practical method to determine which students are currently receiving needed special education and related services.

#### **B. Comprehensive and coordinated early intervening services**

##### **Options Schools:**

1. Does not use more than fifteen percent (15%) of the amount the public agency receives under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., for any fiscal year, less any amount reduced by the public agency pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement comprehensive and coordinated early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
2. If it implements comprehensive and coordinated early intervening services under 511 IAC 7-40-2, it may carry out activities that include, but are not limited to:
  - a. Professional development, which may be provided by entities other than public agencies, for teachers

and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software.

- b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
3. Does not construe anything in 511 IAC 7-40-2 to either limit or create a right to a free appropriate public education under Article 7 or delay appropriate evaluation of a child suspected of having a disability.
4. If it develops and maintains comprehensive and coordinated early intervening services under 511 IAC 7-70-2 will annually report the following to the department of education:
  - a. The number of children served under this section who received early intervening services.
  - b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Article 7 during the preceding two (2) year period.
5. Understands that funds made available to carry out 511 IAC 7-40-2 may be used to carry out comprehensive and coordinated early intervening services aligned with activities funded by and carried out under the Elementary and Secondary Education Action of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA) if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.
6. Provides a written notice to parents when a student participates in a process that assesses the student's response to scientific, research based interventions and requires an intervention that is not provided to all students in the general education classroom, and ensures that the written notice includes:
  - a. The amount and nature of student performance data that will be collected and the general education services that will be provided.
  - b. The evidence-based strategies that will be utilized for increasing the student's rate of learning to grade level.
  - c. The parent's right to request an educational evaluation to determine eligibility for special education and related services.
  - d. An explanation that:
    - i. it will initiate a request for an educational evaluation if the student fails to make adequate progress after an appropriate period of time, as determined by the parent and the public agency, when provided with scientific, research based interventions; and
    - ii. when the it initiates a request for a educational evaluation under paragraph (d)(i) above, it will provide written notice to the parent regarding the evaluation before requesting written parental consent for the evaluation as specified in 511 IAC 7-40-4. After obtaining written parental consent, it will evaluate the student and convene the case conference committee within twenty (20) instructional days.

### **C. Educational evaluations -- in general**

1. Applies 511 IAC 7-40-3 to educational evaluation procedures that enable a student's case conference committee to determine:
  - a. whether the student is eligible for special education and related services; and
  - b. if eligible, the special education and related services necessary to meet the educational needs of the student.

2. Does not apply these procedures to:
  - a. A test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
  - b. A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.
  - c. A review of existing data regarding a student.
  - d. The collection of progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions described in 511 IAC 7-40-2.
3. Has established, maintains, and implements written procedures regarding initial evaluations and reevaluations, including a description of:
  - a. The way in which a parent or the public agency may request an initial educational evaluation.
  - b. The methods used to assign a multidisciplinary team to conduct educational evaluations.
  - c. The procedures used for reevaluations.
4. Understands that, when referrals for any student from birth through the school year in which the student becomes twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind and Visually Impaired, the Indiana Soldiers' and Sailors' Children's Home, or any other state-operated school by other than the designated representative of the student's public school corporation of legal settlement, the state-operated school shall refer the person making the contact back to the public school corporation of legal settlement and the referral, evaluation, and case conference committee meeting described in 511 IAC 7-40-4 are the responsibility of the public school corporation of legal settlement.
5. Has established, maintains, and implements procedures to ensure that:
  - a. Assessments and other evaluation materials are:
    - i. Provided and administered in the student's native language or other mode of communication and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
    - ii. Selected and administered so as not to be discriminatory on a racial or cultural basis.
    - iii. Used for the purposes for which the assessments or measures are valid and reliable.
    - iv. Administered as follows by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessments.
    - v. Technically sound instruments that may assess the relative contributions of cognitive and behavioral factors, in addition to physical or developmental factors.
  - b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient.
  - c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure.
  - d. The student is assessed or information is collected in all areas related to the suspected disability, including, if appropriate, development, cognition, academic achievement, functional performance or adaptive behavior, communication skills, motor and sensory abilities (including vision or hearing), available educationally relevant medical or mental health information, and social and developmental history.



- e. Assessments of students with disabilities who transfer from one (1) public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 511 IAC 7-40-5(c)(2), to ensure prompt completion of full evaluations.
  - f. Assessment tools and strategies provide relevant information that directly assists the case conference committee in determining the special education and related service needs of the student. g. Educational evaluations are sufficiently comprehensive to identify all of the student's special education and related service needs whether or not commonly linked to the disability category in which the student has been classified.
6. Ensures that, in conducting the educational evaluation, the multidisciplinary team uses a variety of assessment tools and strategies, as required in 511 IAC 7-41, to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, to assist the case conference committee in determining:
    - a. Whether the student is eligible for special education and related services and
    - b. The content of the student's individual educational program, including information related to enabling the student to be involved in and progress in the general education curriculum (or for an early childhood student, to participate in appropriate activities).
  7. Evaluates a student with a disability in accordance with the requirements of this 511 IAC 7-40 and 511 IAC 7-41 before a case conference committee can determine that the student is no longer a student with a disability, except when termination of the student's eligibility is due to:
    - a. graduation with a high school diploma as defined in 511 IAC 6-7.1-1(e);
    - b. exceeding the age eligibility under Article 7; or
    - c. a parent's revocation of consent for special education and related services in accordance with 511 IAC 7-42-15.
  8. Provides a student with a summary of performance, as required in 511 IAC 7-43-7 whenever a student graduates with a high school diploma as defined in 511 IAC 6-7.1-1, leaves high school with a certificate of completion, or exceeds the age eligibility for special education and related services under Article 7.
  9. May provide a student with a summary of performance when the student withdraws from high school after an exit interview is conducted, and the student's parent and principal consent to the withdrawal as specified in IC 20-33-2-28.5(b).

**D. Initial educational evaluation; public agency written notice and parental consent**

1. Understands that either a parent of a student or a public agency may initiate a request for an educational evaluation to determine if a student is eligible for special education and related services under Article 7. If a parent makes a request for an evaluation after revoking consent for special education and related services in accordance with 511 IAC 7-42-15, the public agency must treat the parent's request for evaluation as a request for an initial evaluation, and the evaluation must be conducted in accordance with this section.
2. Initiates a request for an educational evaluation if a student is suspected of having a specific learning disability because the student has not made adequate progress after an appropriate period of time when provided with appropriate instruction described in 511 IAC 7-41-12(a)(3)(G).
3. Subsequent to a request to conduct an educational evaluation, but before actually conducting the evaluation,

provides the parent with written notice as specified in 511 IAC 7-40-4(e) and obtains parental consent as defined in 511 IAC 7-32-17.

4. Understands that a parent's request for an evaluation may be made verbally or in writing and must be made to licensed personnel as defined in 511 IAC 7-32-58.
5. Provides written notice to the parent within ten (10) instructional days of licensed personnel's receipt of the parent's request that includes:
  - a. A statement that it is proposing or refusing to conduct the educational evaluation that includes a description of each evaluation procedure, assessment, record, or report it used as a basis for proposing or refusing to conduct the educational evaluation.
  - b. A description of other factors relevant to the public agency's proposal or refusal to conduct the educational evaluation.
  - c. If it is proposing to conduct the evaluation:
    - i. A description of any evaluation procedures it proposes to conduct,
    - ii. The timeline for conducting the educational evaluation and convening the case conference committee meeting, and
    - iii. An explanation of how to request a copy of the educational evaluation report, at no cost to the parent, prior to the case conference committee meeting and/or a meeting with an individual who can explain the results of the educational evaluation prior to the case conference committee meeting.
  - d. If it is refusing to conduct the educational evaluation, an explanation of the parent's right to contest the agency's decision by requesting mediation in 511 IAC 7-45-2 and/or a due process hearing in 511 IAC 7-45-3.
  - e. A statement that a parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1.
  - f. A list of sources for parents to contact to obtain assistance with understanding the provisions of Article 7.
6. Provides a copy of the notice of procedural safeguards to the parent when providing the written notice described in paragraph 5 above.
7. Ensures that the written notice described in paragraph 5 above is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
8. Ensures and documents in writing that, when the native language or other mode of communication of the parent is not a written language, it takes steps to make sure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication and the parent understands the content of the notice.
9. Understands that a parent may challenge the public agency's refusal to conduct an initial evaluation by requesting mediation in 511 IAC 7-45-2 and/or a due process hearing in 511 IAC 7-45-3.
10. Understands that, after receiving the written notice described in paragraphs 5, 6, 7, and 8 above, the parent of the student must provide consent, as defined in 511 IAC 7-32-17, to licensed personnel before it can conduct the initial educational evaluation.
11. Understands that, at the same time the parent provides consent for the educational evaluation, the parent

may request a copy of the educational evaluation report, at no cost to the parent, prior to the case conference committee meeting and/or a meeting with an individual who can explain the results of the educational evaluation prior to the case conference committee meeting.

12. Understands that it is not required to obtain parental consent:
  - a. To review existing data as part of an educational evaluation.
  - b. To administer a test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
  - c. To screen students if a teacher or a specialist is using the information to determine appropriate instructional strategies for curriculum implementation.
  - d. To collect progress-monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions as described in section 2 of this rule.
13. Makes reasonable efforts to obtain parental consent, as defined in 511 IAC 7-32-17, for the initial educational evaluation and documents such efforts by keeping a record of its attempts to obtain parental consent, including:
  - a. detailed records of telephone calls made or attempted and the results of the calls.
  - b. copies of correspondence sent to the parent and any responses received
  - c. detailed records of visits made to the parent's home or place of employment and the results of those visits.
14. Does not construe parental consent for an initial educational evaluation as consent for initial provision of special education and related services.
15. For initial educational evaluations only, if the student is a ward of the state and is not residing with the student's parent, is not required to obtain consent as defined in 511 IAC 7-32-17, from the parent for an initial evaluation to determine whether the student is a student with a disability if:
  - a. despite reasonable efforts to do so, it cannot discover the whereabouts of the parent of the student;
  - b. the rights of the parents of the student have been terminated in accordance with state law; or
  - c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.
16. Understands that, if the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial educational evaluation under 511 IAC 7-40-4 (i), or the parent fails to respond to a request to provide consent, it may, but is not required to, pursue the initial educational evaluation of the student by utilizing mediation in 511 IAC 7-45-2 and/or requesting a due process hearing in 511 IAC 7-45-3.
17. Understands it does not violate its obligations under Article 7 if it declines to pursue the educational evaluation.
18. Understands that if a parent of a student who is parentally-placed in a nonpublic school, including a home school, does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to its efforts to obtain consent, it may not pursue the initial educational evaluation of the student by utilizing mediation in 511 IAC 7-45-2 or requesting a due process hearing in 511 IAC 7-45-3 and is not required to consider the student as eligible for special education and related services under 511 IAC 7-34.

## **E. Conducting an initial educational evaluation**

1. Conducts a comprehensive and individual educational evaluation, after a parent has provided consent, as defined in 511 IAC 7-32-17, in accordance with the requirements of 511 IAC 7-40 and 511 IAC 7-41.
2. Ensures that the educational evaluation is conducted by a multidisciplinary team that prepares an educational evaluation report addressing the necessary components of evaluation specific to each suspected disability set forth in 511 IAC 7-41.
3. Ensures that the multidisciplinary team's report is utilized by the student's case conference committee to determine eligibility for special education and related services and, if a student is found to be eligible, to inform the student's case conference committee of the student's special education and related service needs.
4. Ensures that the educational evaluation is conducted by a multidisciplinary team, which is a group of qualified professionals who conduct a student's educational evaluation with input from the student's parent. It further ensures that the qualified professionals include, but are not limited to:
  - a. at least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability.
  - b. a school psychologist, except for a student with a suspected:
    - i. developmental delay, in which case the multidisciplinary team is at least two (2) qualified professionals from different disciplines based upon the needs of the student;
    - ii. language impairment, a speech-language pathologist and at least one (1) qualified professional from a different discipline based upon the needs of the student; or
    - iii. speech impairment only, a speech-language pathologist may serve as the sole qualified professional on the multidisciplinary team.
  - c. For a student with a suspected specific learning disability:
    - i. 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.
    - ii. For early childhood students, an individual who holds an appropriate license to teach early childhood special education.
  - d. For a student who is blind or has low vision, deaf or hard of hearing, or has suspected multiple disabilities, it may request that representatives of the state-operated schools serve as part of the multidisciplinary team only if the parent has provided written consent, in addition to the written consent to conduct the initial educational evaluation, for the representative's participation in the educational evaluation.
5. Ensures that, as part of the educational evaluation, the multidisciplinary team, with or without a meeting:
  - a. Reviews existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom, local, and state assessments, and classroom based observations and observations by teachers and related services providers.
  - b. On the basis of that review, and input from the student's parents, identifies the suspected disability or disabilities, any additional data, as described in 511 IAC 7-41, that is required for the student's case conference committee to determine eligibility or the student's special education or related service needs
  - c. Obtains information for the case conference committee to use in making determinations under 511 IAC 7-40- 6(b)(1).

6. Conducts the initial educational evaluation and convenes the case conference committee within fifty (50) instructional days of the date its licensed personnel receives the written parental consent **except**:
  - a. When a student has participated in a process that assesses the student's response to scientific, research based interventions described in 511 IAC 7-40-2, in which case the time frame is twenty (20) instructional days.
  - b. When a child is transitioning from early intervention (Part C) to early childhood special education (Part B), in which case the evaluation is completed and the case conference committee convened to ensure that the child receives special education services by his or her third birthday.
  - c. When the parent of a student repeatedly fails or refuses to produce the student for the evaluation. d. When a student enrolls in a school of another public agency after the relevant time frame in 511 IAC 7-40-5(a) has begun, and prior to completion of the evaluation, if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.
7. Ensures that, after an educational evaluation has been completed, the multidisciplinary team compiles the team's findings into an educational evaluation report.
8. Ensures that, for a student with the suspected disability of autism spectrum disorder, the educational evaluation report includes the results of the multidisciplinary team's assessments, observations, and collection of information as aligned to the characteristics of autism spectrum disorder.
9. Ensures that, for a student with a suspected learning disability, the educational evaluation report includes:
  - a. Documentation of the requisite notice and notice content as described in 511 IAC 7-40-2(f) for a student who has participated in a process that assesses the student's response to scientific, research based interventions
  - b. The instructional strategies used and the student centered data collected.
  - c. A synthesis of the required educational evaluation components in 511 IAC 7-41-12 in relationship to:
    - i. Whether the student does not achieve adequately for the student's age or to meet state grade level standards in one (1) or more of the areas identified in 511 IAC 7-41-12(a)(1) when provided with learning experiences and instruction appropriate for the student's age or state grade level standards and meets either of the following criteria
      1. The student does not make sufficient progress to meet age or state grade level standards in one (1) or more of the areas identified in 511 IAC 7-41-12(a)(1) when using a process based on the student's response to scientific, research based intervention OR
      2. The student exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the multidisciplinary team to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between academic achievement and global cognitive functioning to meet this requirement.
    - ii. The effects of any of the following factors on the student's achievement:
      1. Visual, hearing, or motor disability.
      2. Cognitive disability.
      3. Emotional disturbance.
      4. Cultural factors.

- 5. Environmental or economic disadvantage.
  - 6. Limited English proficiency.
  - iii. Whether the multidisciplinary team believes the student has a specific learning disability and the basis for having that opinion. The opinion of the multidisciplinary team is utilized by the case conference committee to determine whether the student is eligible for special education. Each member of the multidisciplinary team certifies in writing whether the educational evaluation report reflects the member's opinion. If the report does not reflect the member's opinion, the member submits a separate statement presenting the member's opinion.
10. Provides a copy of the educational evaluation report at no cost to the parent at least five (5) instructional days prior to the scheduled case conference committee meeting if the parent has made such a request pursuant to 511 IAC 7-40-4.
  11. Ensures that an individual who can explain the evaluation results meets with the parent to explain the results at least five (5) instructional days prior to the scheduled case conference committee meeting if the parent has made such a request pursuant to 511 IAC 7-40-4. It further ensures that such meeting is scheduled at a mutually agreed upon date, time, and place and that a copy of the educational evaluation report is provided at no cost to and reviewed with the parent at this meeting.
  12. Provides a copy of the educational evaluation report at no cost to the parent at the case conference committee meeting if the parent has not requested a copy of the report or a meeting to explain the evaluation. If the student is parentally-placed in a nonpublic school, the public agency also provides a copy of the educational evaluation report at no cost to the nonpublic school representative.

## **F. Determination of eligibility**

1. Convenes a case conference committee meeting upon completion of the educational evaluation to determine whether the student is eligible for special education and related services, and, if eligible, the special education and related services necessary to meet the educational needs of the student.
2. Ensures that the case conference committee does not determine that a student is eligible for special education and related services under Article 7 if:
  - a. The determinant factor is:
    - i. a lack of appropriate instruction in reading , including the essential components of reading instruction, which means explicit and systematic instruction in:
      1. phonemic awareness;
      2. phonics;
      3. vocabulary development;
      4. reading fluency, including oral reading skills; and
      5. reading comprehension strategies;
    - ii. lack of appropriate instruction in math; or
    - iii. limited English proficiency; and
  - b. a student does not otherwise meet the eligibility criteria under this rule and 511 IAC 7-41.
3. Ensures that:
  - a. When determining eligibility for special education and related services, the case conference committee considers all of the information contained in the educational evaluation report; and does not rely on any single measure or assessment as the sole criterion for determining eligibility or

appropriate educational services.

- b. If the case conference committee determines that the student only needs a related service, but not special education, it does not determine that the student is eligible for services under Article 7. c. If the case conference committee determines that a student is eligible for special education and related services, it develops an IEP that meets the special education and related service needs of the student in accordance with 511 IAC 7-42.

## **G. Independent educational evaluation**

1. Understands that “independent educational evaluation” means an evaluation conducted by a qualified evaluator whom it does not employ and upon a parent’s request for an independent educational evaluation, provides the parent with information about where an independent educational evaluation may be obtained and its criteria applicable to independent educational evaluations as described in subsection 511 IAC 7-40-7(h).
2. Understands that the parent has the right to an independent educational evaluation if the parent disagrees with the evaluation conducted by the public agency and that it either pays an independent evaluation or otherwise ensures that it is provided at no cost to the parent.
3. Notifies the parent in writing within ten (10) business days of receipt of a parent’s request for an independent educational evaluation that it will pay for the independent evaluation **or** initiates a due process hearing within the same time period to show that its evaluation is appropriate.
4. May ask the parent why the parent objects to its evaluation, but does not require the parent to provide an explanation and does not unreasonably delay providing the independent evaluation at public expense or initiating a due process hearing as a result of the parent's response or lack of response.
5. Understands that a student's parents are entitled to only one (1) independent educational evaluation at public expense each time it conducts an educational evaluation with which the parent disagrees.
6. Understands that:
  - a. If it 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.
  - b. If the parent obtains an independent evaluation at public expense or shares with the public agency an independent educational evaluation obtained at the parent's expense, the case conference committee will consider the results of the evaluation (if it meets the public agency's criteria) in any decision made with respect to the provision of a free appropriate public education to the student; and may be presented by any party as evidence at a due process hearing regarding the student.
  - c. In a due process hearing under 511 IAC 7-45-3 through 511 IAC 7-45-8 on the issue of the public agency’s reimbursement of the parent’s expense for an independent educational evaluation, an independent hearing officer cannot order reimbursement for the evaluation if the hearing officer determines that the evaluation obtained by the parent did not meet the public agency's criteria.
  - d. If an independent hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation is at public expense.
  - e. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluator must be the same as it uses when it initiates an educational evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

- f. It may not impose any criteria, conditions, or timelines, except those described in 511 IAC 7-40-7(j) related to obtaining an independent educational evaluation at public expense.

## **H. Reevaluation**

1. Understands that, once a student is eligible for special education and related services, any subsequent evaluation of the student is reevaluation, even if the student is being evaluated because a different or additional eligibility category is suspected.
2. Considers reevaluation for each student receiving special education and related services at least once every three (3) years, but understands that reevaluation need not occur if the parent and the public agency agree that it is unnecessary.
3. Considers reevaluation if it determines, at any time during the three (3) year cycle, that additional information is needed to address the special education or related services needs of the student or if the student's parent or teacher requests reevaluation.
4. Does not consider the following procedures as reevaluation:
  - a. A test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
  - b. A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.
  - c. A review of existing data regarding a student.
  - d. The collection of progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions described in 511 IAC 7-40-2.
5. Ensures that, if a case conference committee determines at an annual case conference committee meeting that reevaluation is necessary to reestablish eligibility for special education and related services, the reevaluation occurs by the next annual case conference committee meeting. In addition, it does not permit a reevaluation to reestablish eligibility to occur more than once a year, unless the parent and the public agency agree otherwise.
6. Conducts a reevaluation and convenes the case conference committee within 50 instructional days of the date that parental consent for the reevaluation is received by licensed personnel when the case conference committee determines or the parent or teacher requests a reevaluation to determine if the student is eligible for special education under a different or additional eligibility category or to inform the case conference committee of the student's needs.
7. Before it reevaluates or refuses to reevaluate a student, it provides the student's parent with a written notice that includes:
  - a. A statement that it is proposing or refusing to reevaluate the student that includes a description of each evaluation procedure, assessment, record, or report it used as a basis for proposing or refusing to reevaluate the student.
  - b. A description of other factors relevant to the public agency's proposal or refusal to reevaluate the student.
  - c. If it is proposing to reevaluate the student, a description of the reevaluation process and the timeline for conducting the reevaluation and convening the case conference committee meeting.
  - d. If it is refusing to conduct the educational evaluation, an explanation of the parent's right to contest



the agency's decision by requesting mediation in 511 IAC 7-45-2 and/or a due process hearing in 511 IAC 7-45-3.

- e. A statement that a parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1 and how the parent may obtain a copy of the notice of procedural safeguards.
  - f. A list of sources for parents to contact to obtain assistance with understanding the provisions of Article 7.
8. Ensures that the written notice described in paragraph 7 above is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
  9. Ensures and documents in writing that, when the native language or other mode of communication of the parent is not a written language, it takes steps to make sure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication and the parent understands the content of the notice.
  10. Understands that a parent may challenge the public agency's refusal to conduct an initial evaluation by requesting mediation in 511 IAC 7-45-2 and/or a due process hearing in 511 IAC 7-45-3.
  11. Understands that, after receiving the written notice described in paragraph 7 above, the parent of the student must provide consent, as defined in 511 IAC 7-32-17, to licensed personnel before it can conduct the reevaluation.
  12. May pursue mediation and/or a due process hearing pursuant to 511 IAC 7-45-2 and 7-45-3 if the parent refuses to consent to the reevaluation and understands that it does not violate its obligations under Article 7 if it declines to pursue either of these options.
  13. Does not need to obtain written parental consent before conducting the reevaluation if it has made reasonable efforts to obtain the consent and the parent fails to respond. It keeps a record of its attempts to obtain parental consent, including:
    - a. detailed records of telephone calls made or attempted and the results of the calls,
    - b. copies of correspondence sent to the parent and any responses received, and
    - c. detailed records of visits made to the parent's home or place of employment and the results of those visits.
  14. Ensures that, after parental consent is received or the parent fails to respond as described in paragraph 13 above, the case conference committee and other qualified professional as appropriate, with or without a meeting:
    - a. Review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom based, local, or state assessments, and classroom based observations, and observations of teachers and related services providers.
    - b. On the basis of that review, and input from the student's parent, identify what additional data, if any, are needed to determine:
      - i. whether the student continues to have a disability as described in 511 IAC 7-41 and the special education and related service needs of the student,
      - ii. the present levels of academic achievement and functional performance and related developmental needs of the student,

- iii. whether the student continues to need special education and related services, and iv. 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 IEP and/or participate, as appropriate, in the general education curriculum.
15. Notifies the parent in writing if the case conference committee and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in 511 IAC 7-40-8(l), determine that no additional data are needed to determine whether the student continues to be eligible for special education and to determine the student's special education and related service needs and ensures that the written notice describes:
    - a. The determination and the reasons for the determination, and
    - b. The parent's right to request an assessment to determine whether the student continues to be eligible for special education and/or the student's special education and related service needs.
  16. After providing the notice described in paragraph 15 above, does not conduct a reevaluation assessment unless requested to do so by the student's parent.
  17. Administers appropriate assessments and other evaluation measures necessary to produce the additional data determined necessary by the case conference committee and other qualified professionals, as appropriate, after their review of existing evaluation data as described in paragraph 14 above.

## **VIII. ELIGIBILITY CRITERIA**

### **State Regulatory Requirements: 511 IAC 7-41-1 through 7-41-13**

#### **A. Autism spectrum disorder**

1. Understands that autism spectrum disorder is a lifelong developmental disability that includes autistic disorder, Asperger's syndrome, and other pervasive developmental disorders, as described in the current version of the American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders. The disability is generally evident before three (3) years of age and significantly affects verbal, nonverbal, or pragmatic communication and social interaction skills and results in an adverse effect on the student's educational performance. Other characteristics often associated include the following:
  - a. Engagement in repetitive activities and stereotyped movements.
  - b. Resistance to environmental change or change in daily routines.
  - c. Unusual responses to sensory experiences.
2. Understands that autism spectrum disorder is a lifelong developmental disability that includes autistic disorder, Asperger's syndrome, and other pervasive developmental disorders, as described in the current version of the American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders. The disability is generally evident before three (3) years of age and significantly affects verbal, nonverbal, or pragmatic communication and social interaction skills and results in an adverse effect on the student's educational performance. Other characteristics often associated include the following:
  - d. Engagement in repetitive activities and stereotyped movements.
  - e. Resistance to environmental change or change in daily routines.
  - f. Unusual responses to sensory experiences.
3. Understands that autism spectrum disorder does not apply if a student's educational performance is adversely affected primarily by an emotional disability, blindness or low vision, deaf-blindness, or a cognitive disability,

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

4. Ensures that eligibility for special education as a student with autism spectrum disorder is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e) and 511 IAC 7-40-5(f), which includes:
  - a. An assessment of:
    - i. Current academic achievement as defined at 511 IAC 7-32-2.
    - ii. Functional skills or adaptive behavior across various environments from multiple sources.
    - iii. The student's receptive, expressive, pragmatic, and social communication skills that must include at least one (1) of the following:
      1. An individually administered norm-referenced assessment when appropriate for the student.
      2. If adequate information cannot be obtained via an individually administered norm referenced assessment, a criterion-referenced assessment that has been designed or may be adapted or modified for use with students who have autism spectrum disorder and is administered by a professional or professionals with knowledge of assessment strategies appropriate for the student.
  - b. An assessment of motor skills and sensory responses.
  - c. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Motor skills.
    - iv. Responses to sensory experiences.
    - v. Relevant family and environmental information.
    - vi. Patterns of emotional adjustment.
    - vii. Unusual or atypical behaviors.
  - d. A systematic observation of the student across various environments.
  - e. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
    - i. exclude the disabilities listed in subsection (b);
    - ii. determine eligibility for special education and related services; and
    - iii. inform the student's CASE CONFERENCE COMMITTEE of the student's special education and related services needs.

## **B. Blind or low vision**

1. Understands that "Blind or low vision", which may be referred to as a visual impairment, means a disability that even with best correction affects the student's ability to use vision for learning, which adversely affects the student's educational performance. It understands that the term includes a reduced ability or a complete inability to utilize the visual system to acquire information and may include or be limited to a reduction in field of vision.
2. Ensures that eligibility for special education as a student who is blind or has low vision is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of current academic achievement as defined at 511 IAC 7-32-2 and functional skills or adaptive behavior across various environments from multiple sources.
  - b. A social and developmental history that may include, but is not limited to:

- i. Communication skills.
  - ii. Social interaction skills.
  - iii. Motor skills.
  - iv. Responses to sensory experiences.
  - v. Relevant family and environmental information.
- c. An assessment of functional vision and functional literacy as described in 511 IAC 7-42-6(c)(5).
- d. A systematic observation of the student across various environments.
- e. An assessment of motor skills, which may include travel skills.
- f. A written report from an optometrist or an ophthalmologist that includes:
  - i. Etiology and prognosis of the visual dysfunction.
  - ii. Secondary or accompanying visual conditions, such as nystagmus or photophobia, if appropriate
  - iii. Near/distance and corrected/uncorrected acuity measures for left, right, and both eyes, as appropriate.
  - iv. Measures of visual fields for both eyes, if appropriate.
  - v. Recommendations for use of aids, glasses, or lighting requirements, if appropriate.
- g. Any other assessments and information collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

### **C. Intellectual disability**

1. Understands that:
  - a. An intellectual disability is manifested during the developmental period, characterized by significant limitations in cognitive functioning, demonstrated through limitations in adaptive behavior, and adversely affects educational performance.
  - b. A student with a mild intellectual disability has cognitive functioning that generally falls two (2) standard deviations below the mean and manifests delays in adaptive behavior consistent with the mild cognitive disability.
  - c. A student with a moderate intellectual disability has cognitive functioning that generally falls three (3) standard deviations below the mean and manifests delays in adaptive behavior consistent with the moderate cognitive disability.
  - d. A student with a severe intellectual disability has cognitive functioning and adaptive behavior skills that generally falls four (4) or more standard deviations below the mean and manifests delays in adaptive behavior consistent with the severe cognitive disability.
2. Ensures that eligibility for special education as a student with an intellectual disability is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of:
    - i. Cognitive ability and functioning that must include at least one (1) of the following:
      1. An individually administered norm-referenced assessment.
      2. If adequate information cannot be obtained via an individually administered norm referenced assessment, a criterion-referenced assessment that has been designed or may be adapted or modified for use with students who have a cognitive disability; and is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.

- ii. Current academic achievement as defined at 511 IAC 7-32-2.
    - iii. Functional skills or adaptive behavior across various environments from multiple sources.
  - b. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Motor skills.
    - iv. Responses to sensory experiences.
    - v. Relevant family and environmental information.
  - c. Any other assessments and information collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

#### **D. Deaf or hard of hearing**

1. Understands that “Deaf or hard of hearing”, which may be referred to as a hearing impairment, means: a. A disability that, with or without amplification, adversely affects the student's ability to use hearing for developing language and learning, educational performance, and developmental progress. b. The hearing loss may be permanent or fluctuating, mild to profound, or unilateral or bilateral. c. Students who are deaf or hard of hearing may use spoken language; sign language; or a combination of spoken language and signed systems.
2. Ensures that eligibility for special education as a student who is deaf or hard of hearing is determined by the student's case conference committee and that this determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of current academic achievement as defined at 511 IAC 7-32-2, functional skills or adaptive behavior across various environments from multiple sources, and communication conducted in the language or system utilized for the student's instruction; or student's preferred mode of communication that assesses the student's receptive and expressive language skills.
  - b. A social and developmental history that may include, but is not limited to communication skills, social interaction skills, motor skills, responses to sensory experiences, and relevant family and environmental information.
  - c. A written report from an educational or clinical audiologist, otologist, or otolaryngologist with information regarding the etiology of the hearing loss and student's potential requirement for amplification, if appropriate.
  - d. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

#### **E. Deaf-blind**

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

2. Understands that students who are deaf-blind represent a heterogeneous group that includes:
  - a. Students who are both deaf and blind with measured acuities and intellectual and adaptive functioning or estimated acuities and intellectual and adaptive functioning supported by a description of pathology.
  - b. Students with hearing and visual reductions of a mild to severe degree with additional learning or language disabilities that adversely affect educational performance or who have been diagnosed with a chronic or degenerative pathology or a disease that may potentially result in deaf-blindness.
  - c. Students with generalized central nervous system dysfunction who exhibit auditory and visual impairments or deficits in auditory-visual functioning and may demonstrate inconclusive or inconsistent responses during hearing and vision assessments or auditory and visual stimuli in the environment.
3. Does not consider a student who is solely deaf-blind to be a student who has multiple disabilities as defined in 511 IAC 7-41-9.
4. Ensures that eligibility for special education as a student who is deaf-blind is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of:
    - i. Current academic achievement as defined at 511 IAC 7-32-2.
    - ii. Functional skills or adaptive behavior across various environments from multiple sources. iii. Communication conducted in the language or system utilized for the student's instruction; or student's preferred mode of communication that assesses the student's receptive and expressive language skills.
    - iv. Functional vision.
    - v. Functional literacy as described in 511 IAC 7-42-6(c)(5).
  - b. A systematic observation of the student across various environments.
  - c. A social and developmental history that may include, but is not limited to, communication skills, social interaction skills, motor skills, responses to sensory experiences, and relevant family and environmental information.
  - d. An assessment of motor skills, including travel skills.
  - e. A written report from an optometrist or an ophthalmologist that includes the following:
    - i. Etiology and prognosis of the visual dysfunction.
    - ii. Secondary or accompanying visual conditions, such as nystagmus or photophobia, if appropriate.
    - iii. Near/distance and corrected/uncorrected acuity measures for left, right, and both eyes, as appropriate.
    - iv. Measures of visual fields for both eyes, if appropriate.
    - v. Recommendations for use of aids, glasses, or lighting requirements, if appropriate.
  - f. A written report from an educational or clinical audiologist, otologist, or otolaryngologist with information regarding the etiology and prognosis of the hearing loss and student's potential requirement for amplification, if appropriate.
  - g. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's CASE CONFERENCE COMMITTEE of the student's special education and related services needs.

## **F. Developmental delay (early childhood)**

1. Understands that developmental delay is a disability category solely for students who are at least three (3) years of age and not more than eight (8) years of age, or eight (8) years of age but not eligible to enroll in kindergarten. It also understands that developmental delay means a delay of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas:
  - a. Gross or fine motor development.
  - b. Cognitive development.
  - c. Receptive or expressive language development.
  - d. Social or emotional development.
  - e. Self-help or other adaptive development.
2. Ensures that eligibility for special education as a student with a developmental delay is determined by the student's case conference committee and that this determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of the developmental areas listed in paragraph 1 above that includes at least one (1) of the following:
    - i. An individually administered norm-referenced assessment.
    - ii. If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that has been designed or may be adapted or modified for use with students who have a developmental delay or delays and is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
  - b. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Play skills.
    - iv. Motor skills.
    - v. Responses to sensory experiences.
    - vi. Relevant family and environmental information.
    - vii. Patterns of emotional adjustment.
    - viii. Unusual or atypical behaviors.
  - c. Available medical information that is developmentally relevant.
  - d. A vision and hearing screening.
  - e. A systematic observation of the student across various environments.
  - f. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

## **G. Emotional disability**

1. Understands that “Emotional disability” means an inability to learn or progress that cannot be explained by cognitive, sensory, or health factors and that the student exhibits one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:

- a. A tendency to develop physical symptoms or fears associated with personal or school problems.
  - b. A general pervasive mood of unhappiness or depression.
  - c. An inability to build or maintain satisfactory interpersonal relationships.
  - d. Inappropriate behaviors or feelings under normal circumstances.
  - e. Episodes of psychosis.
2. Ensures that eligibility for special education as a student with an emotional disability is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
- a. An assessment of the following current academic achievement as defined at 511 IAC 7-32-2 and emotional and behavioral functioning.
  - b. A social and developmental history that may include, but is not limited to:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Responses to sensory experiences.
    - iv. Relevant family and environmental information.
    - v. Patterns of emotional adjustment.
    - vi. Unusual or atypical behaviors.
  - c. A functional behavior assessment as defined at 511 IAC 7-32-41 that includes an analysis of any interventions used to address the behaviors leading to the referral for the educational evaluation.
  - d. Available medical and mental health information that is educationally relevant.
  - e. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
    - i. address whether the student's inability to learn or progress is caused by cognitive, sensory, or health factors
    - ii. determine eligibility for special education and related services; and
    - iii. inform the student's case conference committee of the student's special education and related services needs.

## **H. Language or speech impairment**

1. Understands that language or speech impairment is characterized by one (1) of the following impairments that adversely affects the student's educational performance:
- a. Language impairments in the comprehension or expression of spoken or written language resulting from organic or nonorganic causes that are nonmaturational in nature. Language impairments affect the student's primary language systems, in one (1) or more of the following components:
    - i. Word retrieval.
    - ii. Phonology.
    - iii. Morphology.
    - iv. Syntax.
    - v. Semantics.
    - vi. Pragmatics.
  - b. Speech impairments that may include fluency, articulation, and voice disorders in the student's speaking behavior in more than one (1) speaking task that are nonmaturational in nature, including impairments that are the result of a deficiency of structure and function of the oral peripheral mechanism.
2. Does not find a student eligible for special education and related services as a student with a language or



speech impairment solely because the student's native language is not English and understands that bilingual or multilingual speakers include students whose speech or language patterns deviate from those of standard English and are characteristic of dialectical differences.

3. Considers student who is bilingual or multilingual may as a student with a language or speech impairment only if the impairment is exhibited in all languages spoken by the student.
4. Does not consider students who are deaf or hard of hearing or students with specific learning disabilities, who have language deficits or auditory processing difficulties, to be eligible for services designed solely for students with language impairments in lieu of services designed for (1) students who are deaf or hard of hearing or students with specific learning disabilities.
5. Understands that severe language or speech impairments may require the use of augmentative communication systems, such as gestures, signed language, communication books or boards, electronic devices or other systems determined by the student's case conference committee.
6. Ensures that eligibility for special education as a student with a language impairment is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of the student's progress in the general education curriculum that includes an analysis of any interventions used to address the academic concerns leading to the referral for the educational evaluation and current academic achievement as defined at 511 IAC 7-32-2.
  - b. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Responses to sensory experiences.
    - iv. Relevant family and environmental information.
  - c. An observation of the student in the student's learning environment to document the student's academic performance in the area or areas of difficulty. The multidisciplinary team:
    - i. may use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation; or
    - ii. have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after the child has been referred for an educational evaluation and parental consent for the educational evaluation has been obtained. In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.
  - d. Available medical information that is educationally relevant.
  - e. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to address the exclusionary factors listed in 511 IAC 7-41-8 (b) and (c), determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.
7. Ensures that eligibility for special education as a student with a speech impairment is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of the student's skills in articulation; fluency; and voice and current academic

achievement as defined at 511 IAC 7-32-2.

- b. A social and developmental history that may include, but is not limited to, the following:
  - i. Communication skills.
  - ii. Social interaction skills.
  - iii. Oral motor skills.
  - iv. Responses to sensory experiences.
  - v. Relevant family and environmental information.
- c. At least one (1) observation of the student's speech completed by a speech and language pathologist.
- d. If an organic cause is the suspected cause of the speech impairment, a statement from a physician with an unlimited license describing the student's medical needs; and any consequent limitations to communication training.
- e. Available medical information that is educationally relevant.
- f. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to address the exclusionary factors listed in 511 IAC 7-40-8(b), determine eligibility for special education and related services; and inform the student's case conference committee of the student's special education and related services needs.

## **I. Multiple disabilities**

- 1. Understands that “Multiple disabilities” means coexisting disabilities, one of which must be a significant cognitive disability. It also understands that the coexisting disabilities are lifelong and interfere with independent functioning, and it is difficult to determine which disability most adversely affects educational performance. It understands that the term does not include deaf-blind.
- 2. Ensures that eligibility for special education as a student with multiple disabilities is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes the following:
  - a. An assessment of:
    - i. Cognitive ability and functioning that must include at least one (1) of the following:
      - 1. An individually administered norm-referenced assessment.
      - 2. If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that has been designed or may be adapted or modified based on the student's disabilities and is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
    - ii. Current academic achievement as defined at 511 IAC 7-32-2.
    - iii. Functional skills or adaptive behavior across various environments from multiple sources.
  - b. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.
    - ii. Social interaction skills.
    - iii. Motor skills.
    - iv. Responses to sensory experiences.
    - v. Relevant family and environmental information.
  - c. A systematic observation of the student across various environments.
  - d. Available medical information that is educationally relevant.
  - e. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs

## **J. Other health impairment**

1. Understands that “Other health impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:
  - a. is due to chronic or acute health problems, such as:
    - i. asthma;
    - ii. attention deficit disorder or attention deficit hyperactivity disorder;
    - iii. diabetes;
    - iv. epilepsy;
    - v. a heart condition;
    - vi. hemophilia;
    - vii. lead poisoning;
    - viii. leukemia;
    - ix. nephritis;
    - x. rheumatic fever;
    - xi. sickle cell anemia; and
    - xii. Tourette syndrome; and
  - b. adversely affects a student's educational performance.
  
1. Ensures that eligibility for special education as a student as other health impaired is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes the following:
  - a. An assessment of current academic achievement as defined at 511 IAC 7-32-2 and functional skills or adaptive behavior across various environments from multiple sources.
  - b. A social and developmental history that may include, but is not limited to communication skills, social interaction skills, motor skills, responses to sensory experiences, and relevant family and environmental information.
  - c. A systematic observation of the student across various environments.
  - d. Available medical information that is educationally relevant.
  - e. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services; and inform the student's case conference committee of the student's special education and related services needs.

## **K. Orthopedic impairment**

1. Understands that an orthopedic impairment is a severe physically disabling condition that adversely affects educational performance and that the term may include impairments caused by any of the following:
  - a. A congenital anomaly.
  - b. A disease, such as poliomyelitis or bone tuberculosis.
  - c. Other causes, such as cerebral palsy, amputations or fractures or burns that cause contractures.
  
2. Ensures that eligibility for special education as a student with an orthopedic impairment is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:
  - a. An assessment of current academic achievement as defined at 511 IAC 7-32-2 and functional skills

- or adaptive behavior across various environments from multiple sources.
- b. A social and developmental history that may include, but is not limited to, the following:
  - i. Communication skills.
  - ii. Social interaction skills.
  - iii. Motor skills.
  - iv. Responses to sensory experiences.
  - v. Relevant family and environmental information.
- c. Available medical information that is educationally relevant.
- d. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

#### **L. Specific learning disability**

1. Understands that “Specific learning disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that adversely affect the student's educational performance, including conditions referred to, or previously referred to, as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. As follows, a specific learning disability:

- a. Manifests itself when the student does not achieve adequately for the student's age or to meet state approved grade level standards in one (1) or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state approved grade level standards:
  - i. Reading disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. It is characterized by difficulties with accurate or fluent, or both, word recognition and by poor spelling and decoding abilities. A reading disability may be due to difficulties in the following:
    - 1. Basic reading skills.
    - 2. Reading fluency skills.
    - 3. Reading comprehension.
  - ii. Written expression disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. Written expression is a complex domain that requires the integration of the following:
    - 1. Oral language.
    - 2. Written language.
    - 3. Cognition.
    - 4. Motor skills.
  - iii. Math disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. The ability to perform mathematical computations and reasoning requires multiple core cognitive processes. A math disability may be due to difficulties in Mathematics calculation or Mathematics problem solving.
  - iv. Oral expression disability, which is a specific learning disability that is neurological in origin; has a continuum of severity; and is characterized by deficits in using expressive language processes to mediate learning of:
    - 1. reading;
    - 2. writing;
    - 3. spelling; or
    - 4. mathematics skills.

- v. Listening comprehension disability, which is a specific learning disability that:
    - 1. is neurological in origin;
    - 2. has a continuum of severity; and
    - 3. is characterized by difficulties in using receptive language processes to mediate learning of reading, writing, spelling, or mathematics skills.
  - b. Can be evidenced through either of the following:
    - i. Insufficient progress to meet age or state approved grade level standards in one (1) or more of the areas identified in subdivision (1) when using a process based on the student's response to scientific, research based intervention.
    - ii. A pattern of strengths and weaknesses in performance or achievement, or both, relative to age, state approved grade level standards, or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between academic achievement and global cognitive functioning to meet this requirement.
  - c. Does not include learning problems that are primarily the result of any of the following:
    - i. A visual, hearing, or motor disability.
    - ii. A cognitive disability.
    - iii. An emotional disability.
    - iv. Cultural factors.
    - v. Environmental or economic disadvantage.
    - vi. Limited English proficiency.
    - vii. Lack of appropriate instruction in reading or math evidenced by:
      - 1. Data demonstrating that prior to, or part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel.
      - 2. Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.
2. Eligibility for special education as a student with a specific learning disability is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e) and 511 IAC 7-40-5(g), which includes the following:
- a. An assessment of current academic achievement as defined at 511 IAC 7-32-2.
  - b. An observation of the student in the student's learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The multidisciplinary team may do either of the following:
    - i. Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation.
    - ii. Have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after the child has been referred for an educational evaluation and parental consent for the educational evaluation has been obtained. In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.
  - c. Available medical information that is educationally relevant.
  - d. A social and developmental history that may include, but is not limited to, the following:
    - i. Communication skills.

- ii. Social interaction skills.
    - iii. Responses to sensory experiences.
    - iv. Relevant family and environmental information.
    - v. Patterns of emotional adjustment.
    - vi. Unusual or atypical behaviors.
  - e. An assessment of progress in the general education curriculum that includes an analysis of any interventions used to address the academic concerns leading to the referral for the educational evaluation.
  - f. Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to address the exclusionary factors listed in 511 IAC 7-12(a)(3); determine eligibility for special education and related services; and inform the student's case conference committee of the student's special education and related services needs.
3. Understands that other assessments and information, collected prior to referral or during the educational evaluation under 511 IAC 7-40-12(b)(6), may pertain to the following:
- a. For difficulties with reading, the following:
    - i. Decoding.
    - ii. Phonological awareness.
    - iii. Phonological memory.
    - iv. Phonological processing.
    - v. Orthographic processing.
    - vi. Reading fluency (rate and accuracy).
    - vii. Reading comprehension.
  - b. For difficulties with written expression, the following:
    - i. Handwriting, which encompasses fine motor skills, visual-motor coordination, visual and working memory, and phonological and orthographic processing.
    - ii. Spelling, which encompasses phonological and orthographic processing and written spelling ability.
    - iii. Composition, which encompasses oral language, reading ability, attention, and memory.
  - c. For difficulties with math:
    - i. nonverbal problem solving,
    - ii. working memory,
    - iii. long-term memory,
    - iv. processing speed and attention.

## **M. Traumatic brain injury**

- 1. Understands that a traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as the following:
  - a. Cognition.
  - b. Language.
  - c. Memory.
  - d. Attention.
  - e. Reasoning.
  - f. Abstract thinking.

- g. Judgment.
- h. Problem solving.
- i. Sensory, perceptual, and motor abilities.
- j. Psychosocial behavior.
- k. Physical functions.
- l. Information processing.
- m. Speech.

2. Does not apply the term to brain injuries that are congenital or degenerative or induced by birth trauma.

3. Ensures that eligibility for special education as a student with a traumatic brain injury is determined by the student's case conference committee and that the determination is based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e), which includes:

- a. An assessment of the following:
  - i. Cognitive ability and functioning that must include at least:
    - 1. An individually administered norm-referenced assessment.
    - 2. If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that has been designed or may be adapted or modified for use with students who have a traumatic brain injury and is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
  - ii. Current academic achievement as defined at 511 IAC 7-32-2.
  - iii. Assessments of functional skills or adaptive behavior across various environments from multiple sources.
- b. A social and developmental history that may include, but is not limited to, the following:
  - i. Communication skills.
  - ii. Social interaction skills.
  - iii. Motor skills.
  - iv. Responses to sensory experiences.
  - v. Relevant family and environmental information.
- c. Available medical information that is educationally relevant
- d. Any other assessments and information collected prior to referral or during the educational evaluation, necessary to determine eligibility for special education and related services and inform the student's case conference committee of the student's special education and related services needs.

## **IX. DETERMINATION OF SPECIAL EDUCATION SERVICES**

### **State Regulatory Requirements: 511 IAC 7-42-1 through 7-42-15**

#### **A. Local procedures and training**

##### **Options Schools:**

- 1. Has written procedures to ensure the appropriate implementation of the case conference committee process, including the following:
  - a. The title or position of the individuals designated as, or who may serve as, the representative of the public agency and a description of the roles and responsibilities of the public agency representative and other public agency personnel before, during, and after the case conference committee meeting.

- b. A description of the following:
    - i. The methods used to assure the parent is provided with adequate notice of the case conference committee meeting.
    - ii. The written notice that must be provided to a parent prior to an initial case conference committee meeting as specified in section 4 of this rule.
    - iii. The methods used to assure the parent understands the proceedings of the case conference committee meeting.
    - iv. The written notice that must be provided to a parent to assure the parent is fully informed of the public agency's proposal to initiate or change, or refusal to initiate or change, the identification or educational placement of the student, or the provision of a free appropriate public education to the student prior to the parent giving or denying permission for the initial provision of services, if applicable, and prior to the public agency implementing the IEP.
2. Provides information and training that addresses the requirements set forth in Article 7 to ensure that public agency staff have the necessary knowledge regarding the following:
    - a. How to arrange and document case conference committee meetings.
    - b. How to develop an IEP, including the required components of an IEP.
    - c. How to serve as the public agency representative, including information about the availability of, and has the authority to commit, resources of the public agency.

**B. Notice of case conference committee meetings**

1. Schedules case conference committee meetings at a mutually agreed upon date, time, and place. If a parent cannot attend in person, it uses other methods to ensure parent participation, including an individual or conference telephone call or video conference.
2. Conducts a case conference committee meeting without a parent in attendance only if the parent chooses not to participate in person or by other methods.
3. When this occurs, it keeps a record of its attempts to arrange a mutually agreed upon date, time, and place for the case conference committee meeting, including:
  - a. Detailed records of telephone calls made or attempted and the results of the calls.
  - b. Copies of correspondence sent to the parent and any responses received.
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
4. Provides parents with adequate notice of the case conference committee meeting in the parent's native language or other mode of communication, early enough to ensure that one (1) or both parents have the opportunity to attend.
5. Sends Notice of the meeting to the following persons:
  - a. The parent, regardless of the age of the student.
  - b. The student of legal age, as defined in 511 IAC 7-32-91, regardless of the purpose of the case conference committee meeting.
  - c. All other persons that must attend the case conference committee meeting as specified in 511 IAC 7-42-3(b) and 3(c).



6. Includes the following in its notice of the case conference committee meeting:
  - a. The date, time, and place of the meeting.
  - b. The purpose of the meeting.
  - c. The name and title or position of the designated public agency representative and a list, by name and title or position, of other expected participants.
  - d. A statement that the parent or public agency may invite any other individual whom the parent or public agency has determined has knowledge or special expertise regarding the student, including related services personnel, as appropriate and that determination of the knowledge or special expertise of any invited individual must be made by the person (parent or public agency) who invited the individual to participate in the case conference committee meeting.
  - e. A statement that, in the case of a child who was previously served under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., an invitation to the initial case conference committee meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.
  - f. An explanation that the student will be invited to the case conference committee meeting when a purpose of the meeting is to develop or revise the transition IEP in accordance with 511 IAC 7-43-4 and 511 IAC 7-42-9 and of any other agency that will be invited to send a representative.

### **C. Case conference committee participants**

1. Designates, for each case conference committee meeting, the public agency representative who:
  - a. Is knowledgeable about the availability of, and has the authority to commit, resources of the public agency; qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities; and knowledgeable about the general education curriculum.
  - b. May be any public agency participant of the case conference committee if the criteria of paragraph (a) above are satisfied.
2. Ensures that the case conference participants include the following:
  - a. The designated public agency representative as described in 511 IAC 7-42-3(a).
  - b. One (1) of the following:
    - i. The student's current teacher of record.
    - ii. In the case of a student with a language or speech impairment only, the speech-language pathologist.
    - iii. For a student whose initial eligibility for special education and related services is under consideration, a teacher licensed in the area of the student's suspected disability.
  - c. Not fewer than one (1) of the student's general education teachers, if the student is or may be participating in the general education environment. For purposes of early childhood, a general education teacher may be:
    - i. A general education teacher who provides services to nondisabled students in the public agency's preschool program or a kindergarten teacher who provides services to nondisabled students if the student is of kindergarten age; or
    - ii. An individual knowledgeable about early childhood development, curriculum, and integrated placement options if the public agency does not have a general education preschool program.
  - d. An individual who can interpret the instructional implications of evaluation results, who may be a member of the case conference committee described in 511 IAC 7-42-3(b)(1) through (3) or 511

IAC 7-42-3(e).

- e. The parent of a student less than eighteen (18) years of age or student of legal age as defined in 511 IAC 7-32-91, unless the parent or student of legal age choose not to participate, as described in 511 IAC 7-42-2(b) of this rule.
3. Ensures that other individuals participate in the case conference committee in the following circumstances:
    - a. When a purpose of the meeting is the initial consideration of the student's eligibility for special education and related services, at least one (1) qualified professional who is a member of the multidisciplinary team that evaluated the student.
    - b. When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in an alternative school or alternative education program under IC 20-30-8, a representative of the alternative school or alternative education program who is authorized to make a recommendation regarding admission to the school and commit resources.
    - c. When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in a state-operated school or state-operated facility, a representative of the state-operated school or state-operated facility who is authorized to make a recommendation regarding admission to the school or facility and commit resources.
    - d. When a purpose of the meeting is to develop an IEP for a student to be placed to in a nonpublic school or facility by a public agency in accordance with section 13 of this rule, the following persons must participate in person or by other methods, including individual or conference telephone calls:
      - i. A representative of the nonpublic school or facility.
      - ii. A representative of the local public agency providing any of the student's special education and related services.
    - e. When the student has been unilaterally enrolled in a nonpublic school or facility by the student's parent, a representative of the nonpublic school or facility. If the representative cannot attend, the public agency must use other methods to ensure participation by the representative of the nonpublic school or facility, including individual or conference telephone calls or video conference.
  4. Invites the following individuals to participate in the case conference committee meeting in the following circumstances:
    - a. In the case of a child who is transitioning from Part C of the Individuals with Disabilities Education Act as described in 511 IAC 7-43-2, it sends an invitation to the initial case conference committee meeting, at the request of the parent, to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.
    - b. When a purpose of the meeting is to develop or revise the transition IEP in accordance with 511 IAC 7-43-4 and 511 IAC 7-42-9, it invites:
      - i. The student. If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered.
      - ii. To the extent appropriate, and with the consent of the parent (or student of legal age as defined in 511 IAC 7-32-91), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.
  5. Permits the participation of other individuals in the case conference committee, at the discretion of the parent or the public agency, who have knowledge or special expertise regarding the student, including related services personnel, as appropriate and understands that the determination of the knowledge and special expertise of any individual described in this subsection is made by the party who invited the individual to participate.

6. Permits the student to participate in any case conference committee meeting at the discretion of the parent.
7. Does not require a member of the case conference committee described in 511 IAC 7-42-3(b)(1) through (b)(4) to attend a case conference committee meeting, in whole or in part, if the parent and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
8. Ensures that a member of the case conference committee described in 511 IAC 7-42-3(b)(1) through (b)(4) is excused from attending a case conference committee meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
  - a. The parent, in writing, and the public agency consent to the excusal, as consent is defined at 511 IAC 7-32-17; and
  - b. The member submits, in writing to the parent and the CASE CONFERENCE COMMITTEE, input into the development of the IEP prior to the meeting, unless the member attends the part of the meeting that involves a modification to or discussion of the member's area of the curriculum or related services.

#### **D. Written notice before initial case conference committee meetings**

1. Provides the parent with the written notice described in 511 IAC 7-42-4(b) not later than five (5) instructional days prior to an initial case conference committee meeting.
2. Ensures that the written notice includes:
  - a. A description of the overall findings of each evaluation, procedure, assessment, record, or report the public agency used as the basis for any proposed action.
  - b. A description of action that may be proposed by the public agency.
  - c. An explanation of why the public agency may propose an action.

#### **E. Case conference committee meetings**

1. Convenes the case conference committee in the following circumstances:
  - a. In accordance with the timelines in 511 IAC 7-40-5(d) after an initial evaluation is conducted and 511 IAC 7-40-8 after a student has been reevaluated.
  - b. Periodically, but not less than annually, for a student previously determined eligible for special education to:
    - i. Review the student's IEP and determine whether the student's annual goals, described in section 6(f)(2) of this rule, are being achieved; and
    - ii. Revise the IEP, as appropriate, to address:
      1. Any lack of expected progress, based on progress monitoring data, toward the annual goals and in the general education curriculum, if appropriate;
      2. The results of any reevaluation conducted under 511 IAC 7-40-8, including any additional data about the student described in 511 IAC 7-40-8(l)(2);
      3. The student's anticipated needs; or
      4. Other matters.
  - c. If either the parent or the public agency believes that a required component of the student's individualized education should be changed to ensure the provision of a free appropriate public education.
  - d. 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.

- e. Within ten (10) instructional days of a disciplinary change of placement to determine whether the student's behavior is a manifestation of the student's disability in accordance with 511 IAC 7-44-5.
  - f. To determine the interim alternative educational setting when public agency personnel remove a student to an interim alternative educational setting in accordance with 511 IAC 7-44-6, unless the setting has been included in the student's IEP or behavioral intervention plan.
  - g. (7) At least every sixty (60) instructional days when the setting in which the student is receiving educational services is the student's home or out-of-school location determined in accordance with section 11 of this rule
2. Understands that a case conference committee meeting does not include:
    - a. Informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology; lesson plans; or coordination of service provision; or b. Preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later case conference committee meeting.
  3. Takes whatever action is necessary when a case conference committee convenes to ensure the parent understands the proceedings of the meeting, including arranging for an interpreter for a parent who is deaf or hard of hearing or whose native language is not English.

## **F. Developing an individualized education program; components and parent copy**

1. Understands that an IEP is a written document for a student who is eligible for special education and related services that is developed by a case conference committee in accordance with 511 IAC 7-42-6 and that Transition IEPs are written documents developed in accordance with 511 IAC 7-43-4 that are in effect for students entering into grade 9 or becoming fourteen (14) years of age whichever occurs first, or earlier if determined appropriate by the case conference committee.
2. Ensures that, when developing a student's IEP, the case conference committee considers the following general factors:
  - a. The strengths of the student.
  - b. The concerns of the parent for enhancing the education of the student.
  - c. The results and instructional implications of the initial or most recent educational evaluation and other assessments of the student.
  - d. The academic, developmental, communication, and functional needs of the student.
3. Ensures that, when developing a student's IEP, the case conference committee also considers the following special factors when applicable:
  - a. Positive behavioral interventions and supports, and other strategies, to address any of the student's behaviors that impede the student's learning or the learning of others.
  - b. Any supports, under 511 IAC 7-35-2, necessary to provide public agency personnel with the knowledge and skills necessary to implement the student's IEP.
  - c. The language needs of a student with limited English proficiency as those needs relate to the student's IEP.
  - d. In the case of a student who is deaf or hard of hearing or a student who is deaf-blind, the student's:
    - i. Language and communication needs;

- ii. Opportunities for direct communications with peers and professional personnel in the student's language and communication mode;
    - iii. Academic level; and
    - iv. Full range of needs including opportunities for direct instruction in the student's language and communication mode.
  - e. Instruction in Braille and the use of Braille for a student who is blind or has low vision or a student who is deaf-blind, unless the case conference committee determines, after a functional literacy assessment (sometimes referred to as a learning media assessment) of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.
  - f. The student's need for assistive technology devices and services.
  - g. The IFSP for students who are transitioning from early intervention programs under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
4. Ensures that, when developing an IEP, the case conference committee determines the special education and related services that will meet the unique needs of the student, regardless of the student's identified disability.
5. Ensures that the general education teacher who is a member of the student's case conference committee, to the extent appropriate, participates in the development of a student's IEP, including the determination of the following:
- a. Appropriate positive behavioral interventions and supports and other strategies for the student.
  - b. Supplementary aids and services, program modifications, and support for school personnel consistent with subsection (f)(4).
6. Ensures that an IEP contains the following:
- a. A statement of the student's present levels of academic achievement and functional performance, including:
    - i. How the student's disability affects the student's involvement and progress in the general education curriculum; or
    - ii. For early childhood education students, as appropriate, how the disability affects the student's participation in appropriate activities.
  - b. A statement of the following:
    - i. Measurable annual goals, including academic and functional goals designed to meet:
      - 1. The student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum (or for early childhood education students, as appropriate, to participate in appropriate activities); and
      - 2. Each of the student's other educational needs that result from the student's disability.
    - ii. For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.
  - c. A description of the following:
    - i. How the student's progress toward meeting the annual goals described in subdivision (2) will be measured.
    - ii. When periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the

issuance of report cards) will be provided.

- d. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
    - i. Advance appropriately toward attaining the annual goals.
    - ii. Be involved in and make progress in the general education curriculum in accordance with subdivision (1) and to participate in extracurricular and other nonacademic activities.
    - iii. Be educated and participate with other students with disabilities and nondisabled students in the activities described in Article 7.
  - e. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education environment and in extracurricular and other nonacademic activities.
  - f. A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
    - i. Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.
    - ii. If the case conference committee determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
      - 1. Of why the student cannot participate in the general assessment;
      - 2. Of why the particular alternate assessment selected is appropriate for the student; and
      - 3. Documenting that the public agency informed the parent that the student's performance will not be measured against grade-level academic achievement standards.
  - g. The projected date for initiation of services and modifications described in 511 IAC 7-42-6(f)(4) and the anticipated length and frequency, location, and duration of services and modifications.
  - h. A statement of the student's need for extended school year services consistent with 511 IAC 7-36-4(c) and 511 IAC 7-36-4(d).
  - i. Identification of the placement in the least restrictive environment as described in section 10 of this rule.
  - j. Beginning not later than one (1) year before the student becomes eighteen (18) years of age, a statement that the student and the parent have been informed that parent's rights under Article 7 will transfer to the student at eighteen (18) years of age in accordance with 511 IAC 7-43-4.
  - k. Written notes documenting the meeting of the case conference committee meeting, including the date and purpose of the meeting, the names and titles of the participants, and the issues discussed during the meeting.
7. Understands that, for a student convicted as an adult under state law and incarcerated in an adult prison:
- a. The requirement in subsection 511 IAC 7-42-6(f)(6) relating to participation of students with disabilities in state and local assessments does not apply; and
  - b. The case conference committee may modify the student's IEP or educational placement without regard to the requirements of this section and section 10 of this rule if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
8. Understands that nothing in this section must be construed to require:
- a. That additional information be included in a student's IEP beyond what is explicitly required in

Article 7; or

- b. The case conference committee to include information under one (1) component of the student's IEP that is already contained under another component of the student's IEP.
9. Provides the parent a copy of the student's IEP at no cost and either provides it to the parent at the conclusion of the case conference committee meeting or mails to the parent at a later date so that the parent receives the IEP no later than ten (10) business days after the date of the case conference committee meeting.
  10. Permits any member of the case conference committee to submit a written opinion regarding the IEP and requires the written opinion to be submitted not later than ten (10) business days after the date of the case conference committee meeting and remain with the student's educational records.

#### **G. Written notice by the public agency and parental consent**

1. Provides the parent with written notice that meets the requirements of 511 IAC 7-42-7(b) before the public agency:
  - a. Proposes to initiate or change the identification or educational placement of the student or the provision of a free appropriate public education to the student; or
  - b. Refuses to initiate or change the identification, educational placement of the student, or the provision of a free appropriate public education to the student.
2. Ensures that the written notice required under 511 IAC 7-42-7(a) includes:
  - a. A description of the action proposed or refused by the public agency.
  - b. An explanation of why the public agency proposed or refused to take the action.
  - c. A description of the following:
    - i. Each evaluation, procedure, assessment, record, or report it used as the basis for its proposed or refused action
    - ii. Other options that the case conference committee considered and the reasons why those options were rejected.
    - iii. Other factors relevant to the agency's proposal or refusal.
  - d. A statement that the parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1 and the means by which a copy of a description of the procedural safeguards can be obtained. The statement must also explain that after a public agency provides written notice regarding a proposed or refused action that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by doing any of the following:
    - i. Requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency.
    - ii. Initiating mediation under 511 IAC 7-45-2.
    - iii. Requesting a due process hearing under 511 IAC 7-45-3.
  - e. A statement that if a parent challenges a proposed IEP prior to its implementation, the public agency must continue to implement the current IEP, except as provided in 511 IAC 7-42-8(e) and 8(f).
  - f. Sources for the parent to contact to obtain assistance in understanding the provisions  
Article 7
3. May use the IEP as part of the written notice as long as the documentation the parent receives meets all the

requirements herein.

4. Ensures that the written notice described herein is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
5. Ensures and documents in writing that, when the native language or other mode of communication of the parent is not a written language, it takes steps to make sure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication and the parent understands the content of the notice.
6. Provides the parent a copy of the written notice described herein at the conclusion of the case conference committee meeting or mails to the parent at a later date so that the parent receives it no later than ten (10) business days after the date of the case conference committee meeting.
7. After providing the written notice for the **initial** provision of special education and related services, obtains the parent's written consent before implementing the student's initial IEP and the initial education placement.
8. May provide the parent with the written notice at the same time it requests parental consent for the initial IEP.
9. Makes reasonable efforts to obtain parental consent, as defined in 511 IAC 7-32-17, for the initial educational evaluation and documents such efforts by keeping a record of its attempts to obtain parental consent, including:
  - a. Detailed records of telephone calls made or attempted and the results of the calls.
  - b. Copies of correspondence sent to the parent and any responses received
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
10. Does not initiate mediation or due process in order to obtain agreement or a ruling that services may be provided to the student when the parent of a student refuses to consent or fails to respond to a request for consent for the initial provision of special education and related services as described in 511 IAC 7-42-7(f).
11. Understands that its actions pursuant to paragraph 10 above will not cause it to be considered to be in violation of the requirement to make available a free appropriate public education to the student
12. Understands that, after it provides written notice regarding a proposed IEP that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by:
  - a. Requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency.
  - b. Initiating mediation under 511 IAC 7-45-2.
  - c. Requesting a due process hearing under 511 IAC 7-45-3.

## **H. Individualized education programs; implementation**

1. Provides services identified in an IEP as soon as the necessary arrangements are completed, but not later



than the following:

- a. Ten (10) instructional days after parental consent to the student's initial IEP is received.
- b. Ten (10) instructional days after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP. However, the public agency must continue to implement the current IEP if the parent challenges the proposed IEP by:
  - i. Requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency;
  - ii. Initiating mediation under 511 IAC 7-45-2; or
  - iii. Requesting a due process hearing under 511 IAC 7-45-3.
- c. For students transitioning from early intervention services to early childhood special education, on the student's third birthday in accordance with 511 IAC 7-43-2.
- d. The initiation date stated in the student's IEP in all other circumstances.

2. Implements an IEP as it is written.

3. Ensures that the student's teacher of record does the following:

- a. Monitors the implementation of the student's IEP.
- b. Ensures that each of the student's teachers, related service providers, paraprofessionals, and any other service providers, who are responsible for implementing the student's IEP have access to a copy of the IEP; are informed of their specific responsibilities related to implementing the IEP; and are informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the student's IEP.
- c. Ensures that the CASE CONFERENCE COMMITTEE is informed of any modifications made to the student's IEP in accordance with 511 IAC 7-42-9(e)(2) and 9(g).
- d. Carry out all other activities identified in 511 IAC 7-32-97.

4. At the beginning of each school year and for each student with a disability, has an IEP as specified in 511 IAC 7-42-5.

5. Ensures that, if a newly enrolled student received special education services from another public agency within the state, and enrolls in this public agency within the same school year, it consults with the student's parent and immediately provides the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, until it either adopts the student's IEP from the previous public agency or develops, adopts, and implements a new IEP that meets the applicable requirements of 511 IAC 7-42.

6. Ensures that, if a newly enrolled student received special education services in another state, and enrolls within the same school year, it consults with the student's parent and immediately provides the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, it conducts an educational evaluation under 511 IAC 7-40, if it determines that this is necessary and develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 511 IAC 7-42.

7. To facilitate the transition of students described in paragraphs 5 and 6 above takes reasonable steps reasonable steps to promptly obtain the student's records, including the IEP, supporting documents, and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled, under 511 IAC 7-38-1(r)(2) and takes reasonable steps to promptly respond to the request from the new public agency, as required by IC 20-33-2-10.

## **I. Review and revision of the individualized education program**

1. Ensures that a student's case conference committee meets periodically, but not less than annually, to do the following:
  - a. Review the student's IEP and determine whether the student's annual goals, described in section 6(f)(2) of this rule, are being achieved.
  - b. Revise the IEP, as appropriate, to address:
    - i. Any lack of expected progress, based on progress monitoring data, toward the annual goals and in the general education curriculum, if appropriate;
    - ii. The results of any reevaluation conducted under 511 IAC 7-40-8, including any additional data about the student described in 511 IAC 7-40-8(l)(2);
    - iii. The student's anticipated needs; or
    - iv. Other matters.
2. Ensures that when conducting a review of the student's IEP, the case conference committee considers the general and special factors described in section 511 IAC 7-42-6(b) and 6(c).
3. Ensures that a general education teacher of the student, as a member of the case conference committee and consistent with 511 IAC 7-42-6(e), participates in the review and revision of the student's IEP.
4. Ensures that the review and revision of an IEP that will be in effect when the student: enters into grade 9 or becomes fourteen (14) years of age, whichever occurs first, or earlier if determined appropriate by the case conference committee is conducted in accordance with 511 IAC 7-42-9 this section and 511 IAC 7-43-4, describing transition IEPs.
5. Permits changes to the IEP to be made, subsequent to the annual case conference committee meeting described in 511 IAC 7-42-9(a) through (d), by the case conference committee at a case conference committee meeting **or** without a case conference committee meeting if the parent and the public agency agree not to convene a case conference committee meeting and to collaboratively develop a written document to amend or modify the student's current IEP.
6. Provides the parent upon request and at no cost, a revised copy of the IEP with the modifications described in 511 IAC 7-42-9(e)(2) incorporated.
7. Ensures that the teacher of record informs the member of the student's case conference committee of any changes made to the student's IEP in accordance with 511 IAC 7-42-9(e)(2).

## **J. Least restrictive environment and delivery of special education and related services**

1. Ensures that, except as provided in 511 IAC 7-42-6(g)(2), it has written policies and procedures to ensure the following:
  - a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities are educated with nondisabled students.
  - b. Special classes, separate schooling, or other removal of students from the general education environment occurs only if the nature and severity of the disability is such that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

- c. The case conference committee determines the placement in which a student will receive services. The student's placement is based on the student's IEP; is reviewed at least annually; and is in the school that the student would attend if not disabled, unless the IEP requires some other arrangement. If another arrangement is required, the placement should be as close as possible to the student's home school.
  - d. A continuum of services, as described in subsection (b)(4) and (b)(5), that is available to meet the individual needs of students with disabilities and makes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general education placement.
  - e. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or quality of services needed.
  - f. 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. g. Special education and related services are delivered in the least restrictive environment determined by the conference committee regardless of the identified disability.
  - h. The provision of services to students with different disabilities at the same time and in the same classroom is permitted.
  - i. 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 notice required by 511 IAC 7-42-6.
  - j. Students with disabilities are not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.
2. Takes steps to make available to students with disabilities the variety of educational programs and services that are made available to nondisabled students served by the public agency, including the following:
- a. Vocational education.
  - b. Art.
  - c. Music.
  - d. Industrial arts.
  - e. Consumer and homemaking education.
  - f. Field trips.
  - g. Convocations.
3. Take steps, including providing students with supplementary aids and services determined appropriate and necessary by the student's case conference committee, to afford students with disabilities equal opportunity for participation in nonacademic and extracurricular services and activities.
4. Ensure that students with disabilities participate with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. Nonacademic and extracurricular services and activities may include the following:
- a. Meals and recess.
  - b. Athletics.
  - c. Recreational activities.
  - d. Special interest groups or clubs sponsored by the public agency.
  - e. Graduation ceremonies.
  - f. Employment of students, including both employment by the public agency and assistance in making outside employment available.

5. Makes physical education, specially designed if necessary, available to all students with disabilities, but is not obligated to make physical education available to students with disabilities if physical education is not available to other students in the same grade.
6. Ensures that physical education is 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.
7. Affords each student with a disability the opportunity to participate in the general physical education program available to nondisabled students unless one (1) of the following occurs:
  - a. The student is enrolled full time in a separate facility. The public agency responsible for the education of the student must ensure that the student receives appropriate physical education services in compliance with this section.
  - b. The student needs specially designed physical education, as prescribed in the student's IEP. The public agency must provide the specially designed physical education services directly or make arrangements for those services to be provided through other private or public programs.
8. Makes available a continuum of placement options for students in kindergarten through the school year in which students become twenty-two (22) years of age that includes the following:
  - a. General education classroom with special education and related services provided during the instructional day.
  - b. Resource room with special education and related services provided outside the general education classroom during the instructional day.
  - c. Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day.
  - d. Separate public or nonpublic nonresidential school or facility with special education and related services provided.
  - e. Public or nonpublic residential school or facility with special education and related services provided to students living at the school or facility.
  - f. Homebound or hospital setting with special education and related services provided at the student's home, a hospital, or other noneducational site selected by the public agency.
9. Does not consider the placement options listed in paragraphs 8 above as exclusive placement options, and understands that a student's placement may be a combination of the options listed, as determined appropriate by the case conference committee.
10. Permits the case conference committee to modify the IEP of a student with a disability who is convicted as an adult under state law and incarcerated in an adult facility without regard to the requirements of 511 IAC 7-42-10 where there is demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

#### **K. Instruction for student at student's home or alternative setting**

1. Provides special education and related services by a licensed teacher in the student's home or alternative setting, for reasons other than identified in 511 IAC 7-42-12 when the case conference committee determines it to be the least restrictive environment appropriate to enable the student to benefit from special education and related services. When such a placement is determined, its written notice, described in

511 IAC 7-42-7 includes the reason the student is not attending school, other options tried or considered, and the reasons the other options were rejected.

2. Convenes the case conference committee at least every sixty (60) instructional days to review the IEP and ensures that the case conference committee determines the type, length, frequency, initiation, and duration of special education and related services.

#### **L. Instruction for students with injuries and temporary or chronic illnesses**

1. Provides all students with injuries and temporary or chronic illnesses that preclude their attendance in school, including students who are not eligible for special education and related services, with instruction.
2. Requires that, before instruction for a student unable to attend school can begin, the parent must provide the school corporation with a written statement from a physician (which includes a doctor of osteopathy) with a valid, unlimited license to practice medicine, or a Christian Science practitioner, that states one (1) of the following:
  - a. The student has a temporary illness or injury that will require the student's absence from school for a minimum of twenty (20) consecutive instructional days. If the illness or injury occurs less than twenty (20) instructional days prior to the end of the school year and student needs instruction to meet promotion or graduation requirements, the physician's statement must indicate that the student will be unable to attend school through the end of the current school year.
  - b. The student has a chronic illness or other medical condition that will require the student's absence for an aggregate of at least twenty (20) instructional days over the period of the school year.
3. Provides services in accordance with the student's IEP if the student is eligible for special education and related services and unable to attend school as described in 511 IAC 7-41-12(b), including access to the general education curriculum.
4. May provide instruction through the summer to enable a student to complete a semester to meet promotion requirements.
5. Provides special education and related services by appropriately licensed personnel for students with disabilities. For all other students, instruction is provided by teachers licensed to teach the grade level of the student.
6. Does not permit the use of mediation or due process procedures provided in 511 IAC 7-45 by nondisabled students who receive instruction under this section.

#### **M. Nonpublic school or facility placements by public agencies**

1. Initiates and conducts a case conference committee meeting and develops an IEP in accordance with Article 7 before it places a student with a disability in a nonpublic school or facility.
2. Ensures that a representative of the nonpublic school or facility attends the meeting, and if the representative cannot attend, it uses other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls or video conference.

3. May allow the nonpublic school or facility to initiate and conduct any meetings to review and revise the IEP, but ensures that the parent and the public agency representative are involved in any decision about the student's IEP and agree to any proposed changes in the IEP before those changes are implemented.
4. Remains responsible for compliance with Article 7 even if a nonpublic school or facility implements a student's IEP and ensures that the student is provided with special education and related services in conformance with an IEP that meets the requirements of this rule and at no cost to the parents. It also ensures that the student's education meets the standards applicable to the state's public agencies, including the requirements of Article 7, except for the highly qualified special education teacher requirements in 511 IAC 7-36-3.
5. Ensures that the student has all of the rights of a student with a disability who is served by a public agency.
6. Monitors the compliance of the nonpublic school or facility through written reports, on-site visits, and/or parent questionnaires.
7. Disseminate copies of applicable standards to each nonpublic school or facility in which it has placed a student with a disability.
8. Provides an opportunity for those nonpublic schools and facilities to participate in the development and revision of public agency standards that apply to them.

#### **N. Transportation of students in public or private residential placements**

1. Ensures that the school corporation of legal settlement assumes the cost of transporting students placed in public or private residential facilities by the public agency and pays for the number of round trips as determined appropriate by the case conference committee in accordance with statutory requirements and 511 IAC 7-42.
2. Ensures that the frequency, length, and timing of home visits are mutually agreed upon by the residential facility, the parent, and the school corporation of legal settlement. It also ensures that transportation for the student for home visits is arranged to assure the welfare and safety of the student, including, if necessary, paying the cost for a responsible adult to accompany the student during the travel.
3. Permits a parent to travel to the residential facility in lieu of a student home visit and ensures that the school corporation of legal settlement pays the cost for the parent to travel to the residential facility if the case conference committee determines that the nature or severity of the student's disability precludes home visits, that the residential facility provides family counseling and training essential to the student's educational, emotional, or behavioral progress, or that the student cannot travel home unaccompanied.
4. Ensures that, when a parent travels to the residential facility under paragraph 3 above, the school corporation of legal settlement reimburses or pays for travel-associated costs, such as meals and lodging, in accordance with the policies established for school employees.
5. At the time a residential placement is made, establishes guidelines and procedures concerning transportation and informs the parent of those guidelines and procedures.
6. Includes in its guidelines and procedures the modes of transportation for which payment or reimbursement will be made, the method by which transportation will be paid, the length of advance notice required, and

the travel-associated costs allowed under public agency policy.

## **O. Revocation of consent for special education and related services**

1. Ensures that, at any time after the parent gives consent for the initiation of special education and related services, the parent may revoke that consent by doing the following:
  - a. Putting the revocation of consent in writing.
  - b. Signing the revocation.
  - c. Submitting the written revocation to licensed personnel.
2. Ensure that within ten (10) instructional days of the date licensed personnel receive the parent's written revocation, the public agency must provide the parent with a copy of the written notice described in section 7 of this rule.
3. Understands the public agency is not required to convene a case conference committee or develop an IEP when the public agency receives the parent's written revocation.
4. Understands the public agency may ask the parent why the parent is revoking, but the public agency may not require the parent to provide an explanation, either orally or in writing, as a condition of terminating the provision of special education and related services. The public agency may not use the inquiry to delay or deny the termination of special education and related services.
5. Understands a parent's revocation of consent covers all instruction, services, and supports included in the student's IEP, including, but not limited to, the following:
  - a. Specialized instruction.
  - b. Related services.
  - c. Accommodations
  - d. Adaptations.
  - e. Modifications.
  - f. Supports for the student or personnel on behalf of the student.
  - g. Assistive technology devices and services.
  - h. Placement outside of the general education classroom.
6. Understands a parent may not revoke consent for fewer than all of the special education and related services included in the student's IEP.
7. Understands the public agency may not use mediation or a due process hearing to override the parent's revocation of consent for services.
8. Understands that upon revocation of consent and termination of special education and related services, the student is no longer eligible as a student with a disability and is not entitled to the protections of this article, except as permitted in 511 IAC 7-44-9.
9. Understands the public agency is not required to amend the student's educational records to remove any reference to the student's special education and related services when the parent revokes consent for services. This does not preclude a parent from requesting that the students' educational record be amended in accordance with the procedures contained in 511 IAC 7-38-2.

10. Understands the school shall not be considered to be in violation of the requirement to make a free appropriate public education available to the student when the public agency terminates the special education and related services to the student subsequent to the parent's revocation of consent in accordance with this section.
11. Ensures that if, after revoking consent, a parent wants the student to receive special education and related services, the parent must request an initial evaluation in accordance with 511 IAC 7-40-4 and the case conference committee must determine, in accordance with 511 IAC 7-40-6, if the student is eligible for special education and related services as a student with a disability as defined in 511 IAC 7-32-92.

## **X. RELATED SERVICES; TRANSITIONS; TRANSFER OF RIGHTS**

### **State Regulatory Requirements: 511 IAC 7-43-1 through 7-43-7**

#### **A. Related services**

1. Understands that "Related services" means transportation and developmental, corrective, and other supportive services that are required for a student to benefit from special education. The public agency must provide related services to a student if the student's case conference committee determines that related services are necessary for the student to benefit from special education.
2. May provide related services as direct services by qualified professionals or integrated services by teachers or paraprofessionals acting in accordance with the instructions of qualified professionals.
3. Understands that related services include the following and may include other developmental, corrective, or supportive services if the services are required for a student to benefit from special education:
  - a. Audiological services.
  - b. Counseling services.
  - c. Early identification and assessment of disabilities in children.
  - d. Interpreting services.
  - e. Medical services for the purpose of diagnosis and evaluation.
  - f. Occupational therapy.
  - g. Orientation and mobility services.
  - h. Parent counseling and training.
  - i. Physical therapy.
  - j. Psychological services.
  - k. Recreation, including therapeutic recreation.
  - l. Rehabilitation counseling.
  - m. School health services.
  - n. School nurse services.
  - o. School social work services.
  - p. Transportation.
  - q. Other supportive services.
4. Understands that related services do not include the following:
  - a. A medical device that is surgically implanted, such as a cochlear implant.
  - b. The optimization of a surgically implanted device's functioning, such as mapping for a cochlear



implant.

- c. Maintenance of a surgically implanted device.
- d. The replacement of a surgically implanted device.

5. Understands that nothing in 511 IAC 7-43-1(d)

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

6. Understands and utilizes the descriptions of and service provision requirements set forth in detail in 511 IAC 7-43-1(f) through 7-43-1(u) for the following related services:

- a. Audiological services
- b. Counseling services.
- c. Early identification and assessment of disabilities in children.
- d. Interpreting services.
- e. Medical services for the purpose of diagnosis and evaluation.
- f. Occupational therapy.
- g. Orientation and mobility services.
- h. Parent counseling and training.
- i. Physical therapy.
- j. Psychological services.
- k. Recreation, including therapeutic recreation.
- l. Rehabilitation counseling.
- m. School health services.
- n. School nurse services.
- o. School social work services.
- p. Transportation.

## **B. Review of transition age students**

- 1. Upon obtaining written consent from parents or students of legal age to disclose confidential educational records in accordance with 511 IAC 7-38-1(q)(1), confers with the vocational rehabilitation counselor at least one (1) time per year to review transition age students.
- 2. Obtains written consent, as defined in 511 IAC 7-32-17, from the parent or the student of legal age to invite the vocational rehabilitation counselor to the case conference committee meeting that will take place during the school year before the student's projected final year of school, or earlier, if appropriate, if the public agency and the vocational rehabilitation counselor believe a student may be eligible for and benefit from vocational rehabilitation services.

3. After obtaining the consent described in paragraph 2 above, provides adequate notice to the vocational rehabilitation counselor regarding the case conference committee meeting described in 511 IAC 7-43-3(1) and ensures that the notice to the vocational rehabilitation counselor includes the name, address, age, and identified disability of the student for whom the case conference committee meeting is being conducted.
4. At the case conference committee meeting, verbally advises and provides written materials to the student and parent that describe the array of vocational rehabilitation services that may be available and the process to access those services.

### **C. Transition individualized education program**

1. Utilizes the case conference committee to develop a transition IEP that will be in effect when the student enters into grade 9 or becomes fourteen (14) years of age whichever occurs first, or earlier if determined appropriate by the case conference committee.
2. Does not apply 511 IAC 7-43-4 to a student who has been convicted as an adult under state law and is incarcerated in an adult prison **if** the student's eligibility under Article 7 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.
3. Conducts the review and revision of a transition IEP in accordance with this 511 IAC 7-43-4 and 511 IAC 7-42-9.
4. Ensures that the Notice of Case Conference Committee to develop or revise a transition IEP is done in accordance with 511 IAC 7-42-2.
5. Invites the following members to participate in the case conference committee meeting at which a transition IEP will be developed or revised:
  - a. the student, and, if the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered; and
  - b. to the extent appropriate, and with the consent of the parent (or student of legal age as defined in 511 IAC 7-32-91), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.
6. Ensures that the case conference committee considers the general and special factors described in 511 IAC 7-42-6(b) and 511 IAC 7-42-6(c) when developing or revising a student's transition IEP.
7. Ensures that a general education teacher of the student, as a member of the case conference committee, to the extent appropriate, participates in the development or revision of a student's transition IEP, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and supplementary aids and services, program modifications, and support for school personnel consistent with 511 IAC 7-43-4 (h)(8).
8. Ensures that a transition IEP contains:
  - a. A statement of the student's present levels of academic achievement and functional performance, including the following:

- i. How the student's disability affects the student's involvement and progress in the general education curriculum.
  - ii. Information from age appropriate transition assessments of strengths, preferences, and interests.
- b. Appropriate measurable postsecondary goals, based upon age appropriate transition assessments that are related to:
  - i. training;
  - ii. education;
  - iii. employment; and
  - iv. where appropriate, independent living skills.
- c. Documentation regarding whether the student will pursue a high school diploma as defined in 511 IAC 6-7.1-1(e) or certificate of completion.
- d. The transition services, as defined at 511 IAC 7-32-100, needed to assist the student in reaching postsecondary goals, including the individuals and agencies identified for implementing the transition services.
- e. If appropriate based upon the transition services identified in 511 IAC 7-43-4(h)(4), documentation that the case conference committee reviewed information, and the public agency presented written information to the parent and student, regarding available adult services provided through state and local agencies and other organizations to facilitate student movement from the public agency to adult life. Adult services may include, but are not limited to, services provided by the following:
  - i. A vocational rehabilitation services program.
  - ii. The department of workforce development.
  - iii. The Social Security Administration.
  - iv. The bureau of developmental disabilities services.
  - v. A community mental health center.
  - vi. A community rehabilitation program.
  - vii. An area agency on aging.
- f. A statement of measurable annual goals, including academic and functional goals designed to support and align with the student's postsecondary goals that meet:
  - i. the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
  - ii. each of the student's other educational needs that result from the student's disability.
- g. For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.
- h. A description of the following how the student's progress toward meeting the postsecondary and annual goals described in 511 IAC 7-43-4(h)(6) will be measured and when periodic reports on the progress the student is making toward meeting the postsecondary and annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- i. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
  - i. Advance appropriately toward attaining the postsecondary and annual goals.
  - ii. Be involved in and make progress in the general education curriculum in accordance with 511 IAC 7-43-4(h)(1) and participate in extracurricular and other nonacademic activities.
  - iii. Be educated and participate with other students with disabilities and nondisabled students in the activities described in Article 7.

- j. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education environment and extracurricular and other nonacademic activities.
  - k. A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
    - i. Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.
    - ii. If the case conference committee determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
      - 1. of why the student cannot participate in the general assessment;
      - 2. of why the particular alternate assessment selected is appropriate for the student; and
      - 3. documenting that the public agency informed the parent that the student's performance will not be measured against grade-level academic achievement standards.
  - l. The projected date for initiation of services and modifications described in 511 IAC 7-42-4(h)(8) and the anticipated length and frequency, location, and duration of services and modifications.
  - m. Courses of study to achieve postsecondary goals.
  - n. A statement of the student's need for extended school year services consistent with 511 IAC 7-36-4(c) and 511 IAC 7-36-4(d).
  - o. Identification of the placement in the least restrictive environment as described in 511 IAC 7-42-10.
    - p. Beginning not later than one (1) year before the student becomes eighteen (18) years of age, a statement that the student and the parent have been informed that parent's rights under Article 7 will transfer to the student at eighteen (18) years of age in accordance with 511 IAC 7-43-5 of this rule.
  - q. Written notes documenting the case conference committee meeting including the date and purpose of the meeting, the names and titles of participants, and the issues discussed during the meeting.
9. Does not construe anything in this section to require that additional information be included in a student's transition IEP beyond what is explicitly required in Article 7 or the case conference committee to include information under one (1) component of the student's transition IEP that is already contained under another component of the student's transition IEP.
10. Provides the parent a copy of the student's transition IEP at no cost and either provides it to the parent at the conclusion of the case conference committee meeting or mails to the parent at a later date so that the parent receives the IEP no later than ten (10) business days after the date of the case conference committee meeting.
11. Permits any member of the case conference committee to submit a written opinion regarding the transition IEP and requires the written opinion to be submitted not later than ten (10) business days after the date of the case conference committee meeting and remain with the student's educational records.
12. Reconvenes the case conference committee in the event that a participating agency fails to provide the services described in the transition IEP so that the case conference committee may identify alternative strategies to meet the transition objectives for the student set out in the transition IEP
13. Understands that nothing in Article 7 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.

#### **D. Transfer of rights to student**

1. Transfers all of the rights afforded under Article 7 from the student's parent to the student when the student becomes a student of legal age, as defined in 511 IAC 7-32-91, including a student who is incarcerated in an adult or juvenile, state or local correctional institution, except as provided in 511 IAC 7-43-5(b).
2. Transfers all of the rights afforded under Article 7 to a guardian appointed under IC 29-3 for a student who has reached 18 years of age, unless specifically provided otherwise in the guardianship order.
3. Transfers all of the rights afforded under Article 7 to an educational representative appointed according to the procedures in 511 IAC 7-43-6 for a student who has reached 18 years of age.
4. Informs the student and the parent, at the case conference committee meeting no later than one (1) year before the student becomes 18 years old, that the parent's rights under Article 7 will transfer to the student at eighteen (18) years of age unless a guardianship or an educational representative has been established for the student.
5. Includes a statement in the student's IEP that the student and the parent were informed of the transfer of parental rights in accordance with 511 IAC 7-42-6(f)(10).
6. Provides written notice to the student and the parent at the time the student turns 18 (unless a guardianship or educational representative has been established) that the rights under Article 7 have transferred to the student.
7. Continues to provide all notices required under Article 7 to both the parent and the student after the rights have transferred to the student.

#### **E. Appointment of an educational representative**

1. Understands that, any student eligible for special education and related services who has become eighteen (18) years of age and has not had a guardian appointed under IC 29-3 may have an educational representative appointed to make educational decisions on the student's behalf if the student requests in writing that an educational representative be appointed or is certified as unable to provide informed consent under 511 IAC 7-43-6(f).
2. Appoints a student's parent must be appointed to act as the educational representative under 511 IAC 7-43-6, and if the parent is unavailable, it must appoint a person trained as an educational surrogate parent under 511 IAC 7-39-2 to serve as the educational representative.
3. May appoint an educational representative under 511 IAC 7-43-6 as early as sixty (60) calendar days prior to the student's eighteenth birthday.
4. Is not responsible for the cost of appointing an educational representative.
5. Revokes the appointment of an educational representative if the student who requested that an educational representative be appointed under 511 IAC 7-43-6(a)(1) subsequently requests, in writing, that the

appointment be revoked.

6. Understands that, in order to appoint an educational representative under 511 IAC 7-43-6(a)(2), two (2) persons described in 511 IAC 7-43-6(g) must, based on personal examination or interview, certify in writing that the student is incapable of providing informed consent and that the student has been informed of this decision. As used in this section, “incapable of providing informed consent” means that the student is unable to do the following:
  - a. Understand on a continuing or consistent basis the nature, extent, and probable consequences of a proposed educational program or option.
  - b. Make a rational evaluation on a continuing or consistent basis of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program.
  - c. Communicate such understanding in a meaningful way.
7. Requires that persons who certify in writing that a student is incapable of providing informed consent must not be related to the student and must be:
  - a. A physician with an unlimited license.
  - b. A licensed nurse practitioner.
  - c. A licensed clinical psychologist.
  - d. A licensed psychologist.
  - e. A licensed school psychologist.
  - f. A licensed clinical social worker.
8. Requires that at least one (1) of the persons providing certification described in 511 IAC 7-43-6(f) not be employed by the public agency serving the student.

## **F. Summary of performance**

1. Provides a student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals, when a student:
  - a. graduates with a high school diploma as defined in 511 IAC 6-7.1-1(e);
  - b. leaves high school with a certificate of completion; or
  - c. exceeds the age eligibility for special education and related services under Article 7.
2. May provide a student with a summary of performance when the student withdraws from high school after an exit interview is conducted, and the student's parent and principal consent to the withdrawal as specified in IC 20-33-2-28.5(b).
3. Understands that leaving high school with a certificate of completion or withdrawal from high school as described in IC 20-33-2-28.5 does not extinguish a student's eligibility for special education and related services.
4. Includes in its summary of performance:
  - a. Basic demographic information about the student.
  - b. Postsecondary goals that take into account the student's educational program and reflect the interests, preferences, and strengths of the student.
  - c. A summary of the student's academic achievement and functional performance. Information that can be used to prepare the summary includes, but is not limited to, the following:

- i. An academic transcript.
- ii. Academic assessment results.
- iii. Assessments of functional skills or adaptive behavior that explain a student's ability to live, work, and access the community.
- d. Work force readiness assessments, career exploration internships, cooperative education experiences, or workforce credentials under IC 20-32-4-4(6)(A).
- e. Recommendations to assist the student in meeting postsecondary goals, including accommodations, modifications, or assistive technology utilized by the student and identified by the student as particularly helpful or necessary to meet academic or functional goals, or both.

## XI. DISCIPLINE PROCEDURES

### State Regulatory Requirements: 511 IAC 7-44-1 through 7-44-10

#### A. Removals in general

1. Is not required to provide services to a student with a disability during any of the first ten (10) cumulative instructional days of removal in a school year, for violating a code of student conduct, if services are not provided to a nondisabled student who has been similarly removed.
2. Treats the removal of a student for any part of a day as a day of removal.
3. Does not treat a short-term removal of a student pursuant to the student's IEP as a removal under this 511 IAC 7-44
4. Treats a suspension as a removal, **except** for an in-school suspension if, during the in-school suspension, the student has the opportunity to:
  - a. progress appropriately in the general curriculum;
  - b. receive the special education services specified in the student's IEP; and
  - c. participate with nondisabled students to the extent the student would have in the student's current placement.
5. Treats suspension from the bus as a removal if bus transportation is part of the student's IEP, and it does not provides transportation in an alternative manner.
6. Counts a removal under 511 IAC 7-44 as a suspension as defined in IC 20-33-8-7 and ensures that its suspension procedures comply with Indiana statutes and Article 7.
7. Complies with the requirements of 511 IAC 7-44-4 and 7-44-5 when a student is removed for more than ten (10) consecutive instructional days in a school year.
8. Determines if a student's removal constitutes a change of placement in accordance with 511 IAC 7-44-2 when a student is removed for more than ten (10) cumulative instructional days in a school year,
9. Complies with the requirements of 511 IAC 7-44-4 and 7-44-5 if it determines that the student's removal for more than ten cumulative instructional days constitutes a change of placement.

10. Complies with the requirements of 511 IAC 7-44-3 if it determines that the student's removal for more than ten cumulative instructional does not constitute a change of placement.

## **B. Disciplinary change of placement**

1. Treats a removal or a series of removals from a student's current educational placement as a change of placement under 511 IAC 7-44 in the following situations:
  - a. The removal is for more than ten (10) consecutive instructional days.
  - b. The student is subjected to a series of removals that constitute a pattern because:
    - i. the series of removals cumulate to more than ten (10) instructional days in a school year;
    - ii. the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
    - iii. of such additional factors as the length of each removal, cumulative amount of time the student has been removed, and proximity of the removals to one another.
2. Determines on a case-by-case basis whether a series of removals under 511 IAC 7-44-2(a)(2) constitutes a pattern that results in a change of placement for the student.
3. May consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other requirements in 511 IAC 7-44, is appropriate for a student with a disability who violates a code of student conduct. It understands that unique circumstances may include the student's disciplinary history and ability to understand consequences, the supports provided to the student prior to violating a code of student conduct, and other relevant considerations.
4. Does not need parental consent for a disciplinary change of placement under 511 IAC 44.
5. Understands that, if the parent of a student with a disability who disagrees with a decision regarding a student's change of placement under this rule may request mediation in accordance with 511 IAC 7-45-2 and/or a due process hearing in accordance with 511 IAC 7-45-3 or 511 IAC 7-45-10.
6. Understands that, upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-45-10.
7. Understands that, in reviewing a decision regarding change of placement, an independent hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this rule.

## **C. Removals of more than 10 cumulative days that do not result in a change of placement**

1. Ensures that, when a student has been removed for more than ten (10) cumulative school days that does not constitute a change of placement, school personnel, in consultation with at least one (1) of the student's teachers, determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting and progress toward meeting the goals set out in the student's IEP.
2. May provide the services required by 511 IAC 7-44-3(a) in an interim alternative education setting.



#### **D. Removals of more than 10 consecutive days or 10 cumulative days that result in a change of placement**

1. Understands that a change of placement occurs when a student has been removed for more than ten (10) consecutive instructional days in the same school year or ten (10) cumulative instructional days in the same school year if the removals constitute a pattern that results in a change of placement under 511 IAC 7-44-2(a)(2).
2. Notifies the parent on the date it decides to make a removal that results in a change of placement and provides them with the notice of procedural safeguards described in 511 IAC 7-37-1.
3. Documents its reasonable efforts to notify parents of the decision and provide them with the notice of procedural safeguards.
4. Mails the notice of the change of placement and the notice of procedural safeguards to the parent on the first business day following its decision if it is unable to notify the parent on the date the decision is made.
5. Conducts a manifestation determination in accordance with 511 IAC 7-44-5.

#### **E. Manifestation determinations**

1. Convenes a case conference committee meeting within ten (10) instructional days of any decision to change the placement of a student with a disability for violating a code of student conduct, and utilizes the case conference committee to determine whether the student's behavior is a manifestation of the student's disability.
2. Ensures that the case conference committee reviews all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent, to determine if the conduct in question was:
  - a. caused by, or had a direct and substantial relationship to, the student's disability; or
  - b. the direct result of the public agency's failure to implement the student's IEP.
3. Considers the conduct to be a manifestation of the student's disability if the case conference committee determines that either of the conditions in 511 IAC 7-44-5(b)(1) or (b)(2) were met.
4. Immediately takes steps to remedy any IEP deficiencies if the case conference committee determined that the student's conduct was the direct result of the public agency's failure to implement the IEP.
5. Ensures that, if the case conference committee determined that the student's conduct was a manifestation of the student's disability, the case conference committee either:
  - a. Conducts a functional behavioral assessment, unless the public agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or
  - b. If a behavioral intervention plan already has been developed, reviews the behavioral intervention plan and modifies it, as necessary, to address the behavior.

6. Returns the student to the placement from which the student was removed, except as provided in 511 IAC 7-44-6 or the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.
7. Applies the relevant disciplinary procedures to the student in the same manner and for the same duration as those procedures would be applied to students without disabilities if the case conference committee determines the student's conduct was not a manifestation of the student's disability.
8. Ensures that the case conference committee, in the event it determines the student's conduct was not a manifestation of the student's disability, determines the appropriate services to be provided during any removal that are needed to enable the student to:
  - a. Continue to participate in the general education curriculum, although in another setting.
  - b. Progress toward meeting the goals set out in the student's IEP.
  - c. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
9. Provides the services identified by the case conference committee in paragraph 8 above, and understands that the services may be provided in an interim alternative education setting if the case conference committee determines an interim alternative setting to be appropriate.
10. Understands that:
  - a. The parent of a student with a disability who disagrees that the student's conduct was not a manifestation of the student's disability may request mediation in accordance with 511 IAC 7-45-2 and/or a due process hearing in accordance with 511 IAC 7-45-3 or 511 IAC 7-45-10.
  - b. Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing under 511 IAC 7-45-10.
  - c. In reviewing a decision with respect to the manifestation determination, an independent hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the student's conduct was a manifestation of the student's disability.

#### **F. Interim alternative educational setting; weapons, drugs, and serious bodily injury**

1. Permits the principal or the principal's designee to remove a student to an interim alternative educational setting for not more than forty-five (45) instructional days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student, while at school, on school premises, or at a school function under the jurisdiction of the department of education or a public agency:
  - a. Carries a weapon to school or possesses a weapon
  - b. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or
  - c. Has inflicted serious bodily injury upon another person;
2. Notifies the parent when this removal occurs and provides them with a copy of the notice of procedural safeguards as specified in 511 IAC 7-44-4.
3. Conducts a manifestation determination as specified in 511 IAC 7-44-5.

4. May keep the student in the interim alternative educational setting even if the case conference committee determines the student's conduct to be a manifestation of the student's disability.
5. Utilizes the case conference committee to determine the interim alternative educational setting and appropriate services needed to enable the student to do the following:
  - a. Continue to participate in the general education curriculum, although in another setting.
  - b. Progress toward meeting the goals set out in the student's IEP.
  - c. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
6. Understands that:
  - a. the parent of a student with a disability may challenge the interim alternative education placement by requesting mediation in accordance with 511 IAC 7-45-2 and/or a due process hearing in accordance with 511 IAC 7-45-3 or 511 IAC 7-45-10.
  - b. The department of education shall arrange for an expedited hearing under 511 IAC 7-45-10. The student's placement during an expedited due process hearing is governed by 511 IAC 7-44-8. c. In reviewing a decision under this section to place the student in an interim alternative educational setting, the independent hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this rule.

#### **G. Substantial likelihood of injury to student or others**

1. May request an expedited due process hearing to determine an appropriate placement for a student if it believes that maintaining the student in the current educational placement (the student's placement prior to a removal) is substantially likely to result in injury to the student or others.
2. Understands that:
  - a. The student's placement during an expedited due process hearing is governed by 511 IAC 7-44-8.
  - b. The hearing officer, in accordance with 511 IAC 7-45-7, must hear the matter and make a determination regarding the student's placement.
  - c. In making the determination, an independent hearing officer may order a change of placement to an appropriate interim alternative educational setting for not more than forty-five (45) instructional days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
  - d. Nothing in this 511 IAC 7-44-7l prohibits it from seeking injunctive relief to remove a student with a disability from school or change a student's current educational placement if it believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or others.

#### **H. Placement of the student during due process hearings or appeals of disciplinary action**

1. Subsequent to a parent's request for a hearing or appeal to challenge a removal or the manifestation determination, maintains a student's placement in an interim alternative educational setting pending the decision of the independent hearing officer or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise.

2. Maintains a student in an interim alternative educational setting pending the decision of the hearing officer or the expiration of the 45 instructional days (whichever comes first and unless the parent and the public agency agree otherwise) if the student is placed in an interim alternative educational setting under 511 IAC 7-44-6 or 7-44-7, and the student's parent opposes the public agency's proposed change in educational placement after expiration of the forty-five (45) instructional days.
3. May request an expedited due process hearing and ask the independent hearing officer to extend the interim alternative education placement if it is unable to resolve the dispute regarding the proposed change of placement after the expiration of the forty-five (45) instructional days, and the public agency maintains that the current placement (the placement prior to removal to the interim alternative education setting) is substantially likely to result in injury to the student or others, the public agency may request the following:

### **I. Protections for students not yet eligible for special education and related services**

1. Understands that, a student who has not been determined eligible for special education and related services under Article 7 but has engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described in 511 IAC 7-44 may assert any of the protections provided for in Article 7 if the public agency had knowledge, as described in 511 IAC 7-44-9(b), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
2. Understands that it is deemed to have knowledge that a student is a student with a disability if any of the following have occurred:
  - a. The parent of the student has expressed concern in writing to licensed personnel of the appropriate public agency, or a teacher of the student, that the student is in need of special education and related services.
  - b. The parent of the student or the public agency has requested an evaluation of the student under 511 IAC 7-40-4.
  - c. The teacher of the student, or other personnel of the public agency, has expressed specific concern about a pattern of behavior demonstrated by the student directly to supervisory personnel of the public agency.
3. Understands that it is not deemed to have knowledge under 511 IAC 7-44-9(b) if any of the following has occurred:
  - a. The parent of the student has not allowed an evaluation of the student under 511 IAC 7-40. b. The parent of the student has refused services under Article 7 or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
  - c. The public agency conducted an educational evaluation, determined that the student was not a student with a disability under Article 7, and provided notice to the student's parents of the determination consistent with 511 IAC 7-42-7.
  - d. The parent of the student has revoked consent for special education and related services in accordance with 511 IAC 7-42-15.
4. Understands that, if it does not have knowledge, in accordance with 511 IAC 7-44-9(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 511 IAC 7-44-9(e) and (f).

5. Completes an initial evaluation and convenes the case conference committee within 20 instructional days from receiving the parent's written consent when a referral is made for an initial educational 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.
6. During the evaluation proceedings, may maintain the student in the educational placement it determined appropriate, including suspension or expulsion without educational services.
7. Understands that "expedited evaluation" means that it will conduct the evaluation and convene the case conference committee within twenty (20) instructional days from the date of the parent's written consent for the evaluation.
8. Provides copy of the educational evaluation report to the parent at the case conference committee meeting convened to consider the student's identification and eligibility for special education services.
9. Provides special education and related services in accordance with Article 7 if the student is determined to be a student with a disability after the case conference committee considers the educational evaluation and information provided by the parents.

#### **J. Referral to law enforcement and judicial authorities**

1. Is not prohibited by Article 7 from reporting a crime allegedly committed by a student with a disability to appropriate authorities.
2. Understands that nothing in Article 7 prohibits state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
3. Ensures that, when it reports a crime committed by a student with a disability, it transmits copies of the education and disciplinary record of the student only to the extent the transmission is permitted by the Family Educational Rights and Privacy Act (which includes requiring the receiving authorities to certify in writing that the records will not be disclosed to any other parties) and as required by IC 20-33-7-3, without the prior written consent of the parent or the student of legal age for consideration by the appropriate authorities to whom it reports the crime.

## **XII. COMPLAINTS, MEDIATION, AND DUE PROCESS PROCEDURES**

### **State Regulatory Requirements: 511 IAC 7-45-1 through 7-45-11**

#### **A. Complaints**

1. Understands that complaints involve allegations of the public agency's procedural non-compliance with Article 7, IDEA 2004, or the federal regulations implementing the IDEA.
2. Understands that the requirements for filing a complaint with the division of special education, the Division's investigation of such complaints, and the process for reconsideration of complaints are governed

by 511 IAC 7-45-1.

3. May agree with a parent to engage in mediation under 511 IAC 7-45-2 to resolve a complaint, and understands that the mediation must be completed within twenty (20) calendar days from the date the parties agree in writing to engage in mediation.
4. Understands that:
  - a. if it executes a mediation agreement with the parent in order to resolve the complaint, it must forward the mediation agreement to the division of special education.
  - b. if it resolves some, but not all of the complaint issues during the mediation, the division of special education will investigate the unresolved issues.
  - c. Nothing in 511 IAC 7-45-1(a) precludes a complainant from filing a new complaint to seek enforcement of a written agreement entered into by the complainant and public agency under 511 IAC 7-45-1(g)(2) or (g)(3).
  - d. If it fails to respond under 511 IAC 7-45-1 (g), the division of special education will begin investigating the complaint eleven (11) days after the division of special education receives the complaint.
  - e. If it fails to achieve compliance with corrective action required by the department of education, its federal and state funds may be withheld.
  - f. If a written complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, of which one (1) or more are part of that hearing, the department of education shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action is resolved using the time limits and procedures described in 511 IAC 7-45-1.
  - g. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and the department of education shall inform the complainant to that effect.
  - h. A complaint alleging a public agency's failure to implement a due process decision must be resolved by the department of education through the complaint process set forth in 511 IAC 7-45-1.

## **B. Mediation**

1. Understands that:
  - a. mediation may be used to resolve disputes regarding a student's identification and eligibility for services under Article 7, the appropriateness of the educational evaluation or student's proposed or current special education services or placement, any other dispute involving the provision of a free appropriate public education to the student, and reimbursement for services obtained by the parent.
  - b. 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.
  - c. may occur prior to or concurrent with a request for a due process hearing.
  - d. A request for mediation shall not preclude or delay a due process hearing or deny any other rights afforded in Article 7.
  - e. The components of the Division's coordination and assignment of mediators are governed by 511 IAC 7-45-2.
  - f. Each session in the mediation process is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.
  - g. If the parties resolve a dispute through the mediation process, they must execute a legally binding

written mediation agreement that sets forth the parties' resolution.

- h. The written mediation agreement must be signed by the parent and a representative of the public agency who has the authority to bind the agency and state that all discussions that occurred during the mediation process will remain confidential and not be used as evidence in any subsequent due process hearing or civil proceeding.
  - i. A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.
  - j. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal or state court.
  - k. In addition to the enforcement mechanisms in 511 IAC 7-45-2(h), a written, signed mediation agreement under this section is enforceable through the complaint process in 511 IAC 7-45-1, but the use of the complaint process is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or district court of the United States.
2. May establish procedures to offer parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who:
    - a. is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center established under Sections 1471 or 1472 of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.; and
    - b. would explain the benefits of the mediation process and encourage the parents to use the process.
  3. If it developed the procedures described in paragraph 2 above, would seek approval by the division of special education prior to implementation, and would 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 bears the cost of the meetings in accordance with the written procedures.

### **C. Due process hearing requests**

1. Understands that
  - a. a parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is a dispute regarding any of the following:
    - i. A student's identification and eligibility for services under Article 7.
    - ii. The appropriateness of the educational evaluation or student's proposed or current level of special education services or placement.
    - iii. Any other dispute involving the provision of a free appropriate public education for the student.
  - b. The requirements for requesting a due process hearing and the department of education's responsibility for coordinating the hearing process are contained in 511 IAC 7-45-3.
  - c. The due process timelines begin upon the opposing party's receipt of the due process hearing request.
2. Provides information to the parent regarding the availability of free or low cost legal and other relevant services available in the area if the parent requests the information or the parent or the public agency files a due process hearing request.

#### **D. Sufficiency of the request for a due process hearing**

1. Understands that:
  - a. a party may not have a hearing on the issues contained in a due process hearing request until the party or the attorney representing the party files a due process hearing request that meets the requirements of 511 IAC 7-45-3(b).
  - b. the due process hearing request must be deemed sufficient unless the party receiving the due process hearing request notifies the hearing officer and the other party in writing that the request does not meet the requirements set forth in section 3(b) of this rule.
  - c. It must file an allegation that the due process hearing request is insufficient within fifteen (15) calendar days of receipt of the due process hearing request and identify how the request is insufficient.
  - d. The hearing office must rule on the allegation in accordance with 511 IAC 7-45-4(c).
  - e. A party may amend its due process hearing request only if:
    - i. The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request issues through a resolution meeting held under 511 IAC 7-45-6 or
    - ii. the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before the due process hearing is scheduled to begin.
  - f. If a party files an amended due process hearing request, the timelines for the resolution meeting in 511 IAC 7-45-6(a) and the resolution process in 511 IAC 7-45-6(i) begin again with the filing of the amended due process hearing request.
  - g. If the due process hearing request is determined insufficient and not amended, the due process hearing request may be dismissed.

#### **E. Responding to the request for a due process hearing**

1. Must respond to a due process hearing request within ten (10) calendar days of receiving the due process hearing request, send to the other party a response that specifically addresses the issues raised in the due process hearing request.
2. Will send written notice to the parent, if it has not already done so, in accordance with 511 IAC 7-40-4(e) or 511 IAC 7-42-7 regarding the subject matter contained in the parent's due process request, within ten (10) calendar days of receiving the due process hearing request, send a response to the parent that includes the following:
3. Understands that its response under 511 IAC 7-45-5(b) will not be construed to preclude it from asserting, when appropriate, that the parent's due process request was insufficient under 511 IAC 7-45-4.

#### **F. Resolution meeting**

1. Will convene a resolution meeting with the parent and relevant members of the case conference committee within fifteen (15) calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing,
2. Conducts a resolution meeting in accordance with 511 IAC 7-45-6, and includes a representative from the



public agency that has decision making authority.

3. Does not include its attorney in the resolution meeting unless the parent's attorney is present.
4. Keeps a detailed record of its attempts to secure the participation of the parent in the resolution meeting (such as telephone call, correspondence, and visits to home or employment and the results of those attempts).
5. Understands that:
  - a. the purpose of the resolution meeting is for the parent to discuss the due process hearing request; and facts that form the basis of the request so that the it has the opportunity to resolve the dispute that is the basis of the request.
  - b. It does not need to hold the resolution meeting if the parents agree in writing to waive the meeting or use the mediation process described in 511 IAC 7-45-2.
  - c. Mediation does not extend the thirty (30) day resolution process timeline unless the parties agree in writing to extend the process.
  - d. If it is unable to resolve the dispute to the satisfaction of the parent within thirty (30) days of the receipt of the due process hearing request, the forty-five (45) day due process hearing timeline in 511 IAC 7-45-7 commences.
  - e. The forty-five (45) day timeline also commences the day after each of the following events:
    - i. Both parties agree in writing to waive the resolution meeting.
    - ii. After either the mediation or resolution meeting starts, but before the end of the thirty (30) day resolution period, the parties agree in writing that no agreement is possible.
    - iii. Both parties agree in writing to continue the mediation at the end of thirty (30) day resolution period, but later the parent or the public agency withdraws from the mediation process.
  - f. Except as provided in 511 IAC 7-45-6(f), the failure of the parent requesting a due process hearing to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
  - g. If it fails to hold or participate in the resolution meeting within fifteen (15) days of receiving notice of a parent's due process hearing request, the parent may seek the intervention of a hearing officer to begin the forty-five (45) calendar day due process hearing timeline.
  - h. If resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind the agency.
  - i. An executed resolution agreement is enforceable in any state court of competent jurisdiction; or a district court of the United States, as well as the complaint process in 511 IAC 7-45-1, but the complaint process is not mandatory and does not delay or deny a party the right to seek enforcement of the resolution agreement in court.
  - j. Both parties have the opportunity to void the resolution agreement within three (3) business day of executing the agreement by notifying the other party in writing.
6. Will, at the conclusion of the thirty (30) day period in 511 IAC 7-45-6 (f), request that a hearing officer dismiss the parent's due process hearing request if it has been unable to obtain the parent's participation in the resolution meeting despite making documented reasonable efforts to do so.

## **G. Conducting the hearing**

1. Understands that the requirements for conducting a hearing including, but not limited to, procedures, timelines, rights of the parties, disclosure of evidence, presentation of evidence, record of the hearing, the hearing officer's authority and responsibility, and the division's record keeping responsibilities are contained in 511 IAC 7-45-7.
2. Bears 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.
3. May use funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., to pay the costs of conducting the hearing, but does not use the funds to pay attorney's fees or costs of a party.
4. Understands that:
  - a. If the issue of the proceedings involves initial enrollment in a public school, the student, with the consent of the parent, will 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 determines the student's placement as a preliminary matter to the conduct of the due process hearing.
  - b. If the issue of the proceedings involves initial enrollment in a public school for a student who is transitioning from Part C of the Individuals with Disabilities Education Act to Part B of the act, and the student is no longer eligible for Part C services because the student has become three (3) years of age, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B, and the parent consents to the initial provision of special education and related services it will provide those special education and related services that are not in dispute between the parent and the public agency.
  - c. Except as provided in 511 IAC 7-44-8, the student shall remain in the student's current educational placement during a due process hearing, administrative appeal, or judicial proceeding, unless the parties agree otherwise.
  - d. If the proceedings extend beyond the end of the school year and placement includes normal grade advancement. that advancement shall proceed unless normal grade advancement is at issue.
  - e. If the last agreed-upon placement cannot be determined, the independent hearing officer shall determine the student's educational placement.

#### **H. Independent hearing officer qualifications**

This public agency understands that the requirements for hearing officer qualifications are contained in 511 IAC 7-45-8.

#### **I. Judicial review of hearing officer decision**

This public agency understands that any party disagreeing with the decision of the independent hearing officer may file a petition for judicial review with a civil court with jurisdiction. Under IC 4-21.5-5-5, a petition for review by a state or federal civil court must be filed within thirty (30) calendar days after the date the independent hearing officer's written decision is received by the party. Specific requirements related to a judicial review may be found in 511 IAC 7-45-9.

#### **J. Expedited due process hearings and appeals**

1. Understands that a parent may request an expedited due process hearing if the parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-44-3.
2. May request an expedited due process hearing if it maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting.
3. Understands that the requirements for the conduct of the hearing (timelines, rights of the parties, hearing officer's authority and responsibility, presentation of evidence, and decision) are contained in 511 IAC 7-45-10.
4. Understands the requirements for appealing a decision from an expedited hearing are contained in 511 IAC 7-45-9.

#### **K. Attorney's fees**

Understands that it may be responsible for the attorney's fees for a parent who prevails in a due process hearing.

1. Understands that the requirements regarding the award of attorney's fees (notice, court's authority and discretion, how rate is determined, how award of fees is determined) s governed by 511 IAC 7-45-11.
2. Does not use funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., to pay attorney's fees or costs of a party related to an action or procedure under the Individuals with Disabilities Education Act and Article 7.

## **XII. Child Count and Data Collection**

### **State Regulatory Requirements: 511 IAC 7-46-1 through 7-46-4**

#### **A. Federal child count procedures**

1. On December 1<sup>2</sup> of each year, counts the number of students:
  - a. eligible for special education and related services; and
  - b. receiving services on that date.
2. Understands that requirements for the department of education in developing procedures and reporting to the US Department of Education are contained in 511 IAC 7-46-1 and does not include them in its Standards and Procedures document.
3. Understands that the child count report must include the following:
  - a. A count of students enrolled on December 1 in a school or program operated by a public agency that provides students with either:

<sup>2</sup> If December 1 is not a school or program day, the closest instructional day must be used for the count.