

Proposed Changes to Article 7 and Impact of Same, Areas That Need Further Clarity and Trends in Article 7 Hearings



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Proposed Changes to Article 7

SECTION 1. 511 IAC 7-32-13 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-13 "Caseload" defined

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

- ~~• (1) The nature and severity of the students' disabilities.~~
- ~~• (2) The type and intensity of services needed as specified in the IEP.~~
- ~~• (3) The chronological ages of the students.~~
- ~~• (4) The total number of students with and without disabilities for whom the teacher has instructional responsibility.~~

Proposed Changes to Article 7

SECTION 20. 511 IAC 7-36-11 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-36-11 Caseload

Sec. 11. The caseload of each teacher, speech-language pathologist, or related services provider shall be limited in number to allow the teacher, speech-language pathologist, or related services provider to implement each assigned student's IEP and shall be determined by the following:

- (1) The nature and severity of the students' disabilities.
- (2) The type and intensity of services needed as specified in the IEP.
- (3) The chronological ages of the students.
- (4) The total number of students with and without disabilities for whom the teacher has instructional responsibility.

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Proposed Changes to Article 7

Impact of this change?

Moves part of the definition of “caseload” to from 511 IAC 7-32-11 to 7-36-11 in order for “caseload” to be a rule that can be enforced by the IDOE. This will make caseloads an area that IDOE investigators or IHOs can enforce through the complaint and/or hearing procedures; whereas, no such enforcement authority currently exists. (Veteran administrators likely remember former versions which had class size limits that have since been removed. This is not a requirement under the IDEA, but one where Indiana will exceed federal requirements if enacted.)

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Proposed Changes to Article 7

SECTION 2. 511 IAC 7-32-21 IS REPEALED.

“Core academic subjects” defined – has been repealed at the request of DOE, as “core academic subjects” is no longer defined by federal law or regulation.

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Proposed Changes to Article 7

SECTION 3. 511 IAC 7-32-44 IS REPEALED.

Repeals the definition of “highly qualified” previously in this section.

The ESSA has omitted the requirement that teachers be “highly qualified.” “Highly qualified” defined – has been repealed at the request of DOE, as “highly qualified” is no longer defined by federal law or regulation.

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Proposed Changes to Article 7

SECTION 4. 511 IAC 7-32-54 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-54 "Intervention" defined

Sec. 54. ~~"Intervener"~~ **"Intervention"** means an individual with knowledge and skill in the mode of communication of a student who is deaf-blind who can communicate to the student what is occurring in the educational setting. **educational program, product, practice, or policy aimed at improving student outcomes in a targeted skill area such as reading, math, or behavior/social and emotional skills.**

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Proposed Changes to Article 7

SECTION 5. 511 IAC 7-32-64 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 64. "Mode of communication" means the method used by the parent or student to communicate, if the parent or student is deaf, hearing impaired, visually impaired, nonverbal, has no written language, or is a nonreader. Methods used may include, but are not limited to, the following:

- (1) Sign language.
- (2) Braille.
- (3) Oral communication.
- (4) ~~Other~~ **Augmentative devices and alternative communication.**

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Proposed Changes to Article 7

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

Sec. 71. "Parentally-placed nonpublic school students with disabilities" means students with disabilities who are enrolled by their parents in nonpublic, **including religious**, schools, home schools, or facilities, ~~including religious schools or facilities, that are day schools or residential schools providing that meet the definition of elementary school in section 33 of this rule~~ **or secondary education as determined under Indiana law. For students three (3) years of age through five (5) years of age, nonpublic schools are schools that meet the definition of an elementary school in section 33 82 of this rule. The term does not apply to students with disabilities who have been placed in a nonpublic school by a public agency.**

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Proposed Changes to Article 7

SECTION 7. 511 IAC 7-32-81 IS REPEALED.

“Scientifically based research” defined – has been repealed at the request of DOE, as “scientifically based research” is no longer defined by federal law or regulation.

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Proposed Changes to Article 7

SECTION 8. 511 IAC 7-32-106 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-106 "Weapon" defined
 Sec. 106. "Weapon" ~~has the meaning given:~~ means:
 (1) "dangerous weapon" under 18 U.S.C. 930(g)(2), which means:
 (A) a weapon;
 (B) a device;
 (C) an instrument;
 (D) a material; or
 (E) a substance;
 animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that the term does not include a pocketknife with a blade of less than two and one-half (2 1/2) inches in length;
 (2) "deadly weapon" under ~~IC 35-41-1-8~~; **IC 35-31.5-2-86**; and
 (3) "firearm" under IC 35-47-1-5.

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Proposed Changes to Article 7

SECTION 9. 511 IAC 7-34-1 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 1. (a) As used in this rule, "Part B funds" means funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

(b) This section and sections 2 through 9 of this rule apply to **parentally-placed nonpublic school** students with disabilities, ~~who have been unilaterally enrolled by the parent in a nonpublic school or facility in the state,~~ including students who reside outside of the state.

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Proposed Changes to Article 7

SECTION 10. 511 IAC 7-34-4 IS AMENDED TO READ AS FOLLOWS:

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

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

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

(b) The consultation described in subsection (a) must be timely, which means that it occurs during the design and development of special education and related services for students with disabilities in nonpublic schools. ~~or facilities.~~ Consultation must also be meaningful, which requires the public agency to:

- (1) afford all parties a genuine opportunity to express their views and have those views considered by the public agency; and
- (2) discuss the subjects set forth in subsection (c).

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Proposed Changes to Article 7

SECTION 11. 511 IAC 7-34-5 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 5. (f) Special education and related services provided by the public agency to parentally-placed nonpublic school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. ~~except that nonpublic elementary school and secondary school teachers who are providing services under section 7(j) of this rule do not have to meet the highly qualified special education teacher requirements in 511 IAC 7-36-3.~~

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Proposed Changes to Article 7

SECTION 12. 511 IAC 7-34-6 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 6. (a) The procedures for mediation in 511 IAC 7-45-2 and the procedures for due process hearings and appeals in 511 IAC 7-45-3 through 511 IAC 7-45-11 are not available to resolve disputes regarding the requirements set forth in this rule, unless the dispute concerns one (1) of the following issues:

- (1) Child find.
- (2) The appropriateness of an evaluation or reevaluation.
- (3) The determination of eligibility for special education and related services.

(b) A request for a due process hearing regarding the issues set forth in subsection (a) must be sent simultaneously to the superintendent of public instruction and the public agency in which the nonpublic school ~~or facility~~ is located, unless the:

- (1) request for due process concerns the appropriateness of an initial evaluation or the determination of eligibility for special education and related services, or both; and
- (2) initial evaluation and determination of eligibility were conducted by the school district of legal settlement. . . .

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Proposed Changes to Article 7

SECTION 13. 511 IAC 7-34-7 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 7. (b) The public agency, in providing special education and related services to students in nonpublic schools ~~and facilities~~, must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1411(f) as the number of nonpublic school students with disabilities, who are enrolled by their parents in nonpublic schools ~~or facilities~~ within its boundaries, is to the total number of students with disabilities of the same age range.

(d) For students three (3) years of age through five (5) years of age, the public agency, in providing special education and related services to students in nonpublic schools, ~~and facilities~~, must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1419(g) as the number of nonpublic school students with disabilities three (3) years of age through five (5) years of age who are enrolled by their parents in nonpublic schools ~~or facilities that meet the definition of elementary school in 511 IAC 7-32-23~~ within its boundaries, is to the total number of students with disabilities three (3) years of age through five (5) years of age.

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Proposed Changes to Article 7

SECTION 14. 511 IAC 7-34-8 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 8. (d) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the:

- (1) nonpublic school or the student's home to a site other than the nonpublic school; ~~or facility~~; and
- (2) service site to the nonpublic school or the student's home, depending on the timing of the service

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Proposed Changes to Article 7

SECTION 15. 511 IAC 7-34-10 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 10. (a) This section does not require the public agency to pay the cost of education, including special education and related services, of a student with a disability at a nonpublic school ~~or facility~~ if the:

- (1) public agency made a free appropriate public education available to the student; and
- (2) parent elected to place the student in a nonpublic school. ~~or facility.~~

However, the public agency must include the student in the population whose needs are addressed in sections 1 through 9 of this rule.

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Proposed Changes to Article 7

SECTION 16. 511 IAC 7-36-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-2 Special education program personnel

Sec. 2. (a) All personnel employed or contracted by a public agency to provide special education or related services must be appropriately licensed or certified and must have the content knowledge and skills necessary to provide the services for which the individual is employed or contracted in accordance with standards established by the department of education's ~~division of professional standards~~ **office of educator licensing** or other applicable licensing and certification bodies. The person designated as a student's teacher of record shall:

- (1) for kindergarten through grade 12, be appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained; and
- (2) for early childhood, hold an appropriate license to teach early childhood special education.

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Proposed Changes to Article 7

SECTION 16. 511 IAC 7-36-2 IS AMENDED TO READ AS FOLLOWS:

(b) Special education teachers who teach in public elementary and secondary schools must:

~~(1) meet the requirements of subsection (a); and~~
~~(2) with the exception of early childhood special education teachers, be highly qualified according to section 3 of this rule.~~

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

- (1) licensed teachers; or
- ~~(2) highly qualified teachers; or~~
- ~~(3) (2) related services personnel;~~

to assist students in areas that relate to personal, social, and educational needs.

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Proposed Changes to Article 7

SECTION 16. 511 IAC 7-36-2 IS AMENDED TO READ AS FOLLOWS:

(j) Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this article shall be construed to:

- (1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to ~~be highly qualified~~; **meet the requirements described in subsection (a) of this section**; or
- (2) prevent a parent from filing a complaint about staff qualifications with the division of special education under 511 IAC 7-45-1.

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Proposed Changes to Article 7

SECTION 17. 511 IAC 7-36-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-3 Special education teachers

Sec. 3. (a) A special education teacher who teaches in a public elementary, middle, junior high, or high school in the state must ~~be highly qualified as a special education teacher by meeting~~ meet the following requirements:

- (1) The teacher has obtained full state licensure as a special education teacher, including licensure obtained through an alternative route, as described in subsection (b), or passed the state special education teacher licensing examinations and holds a license to teach in the state as a special education teacher.
- (2) The teacher has not had special education licensure requirements waived.
- (3) The teacher holds at least a bachelor's degree.

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Proposed Changes to Article 7

SECTION 17. 511 IAC 7-36-3 IS AMENDED TO READ AS FOLLOWS:

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

- (1) teacher:
 - (A) receives high-quality professional development that is:
 - (i) sustained;
 - (ii) intensive; and
 - (iii) classroom-focused;
 in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (B) participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (C) assumes functions as a teacher only for a specified period of time not to exceed three (3) years; and
 - (D) demonstrates satisfactory progress toward full licensure as prescribed by the state; and
- (2) state ensures, through its licensure process, that the provisions in subdivision (1) are met.

The remaining text of the rule is proposed to be deleted (subsections C through K).

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Proposed Changes to Article 7

SECTION 18. 511 IAC 7-36-7 IS AMENDED TO READ AS FOLLOWS:

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

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

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Proposed Changes to Article 7

SECTION 19. 511 IAC 7-36-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-10 State and local assessments

Sec. 10. (i) If the CCC determines that a student will participate in an alternate assessment, the public agency must ensure that the parent is informed that the student's performance will ~~not~~ be measured against grade-level **aligned alternate** academic achievement standards.

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Proposed Changes to Article 7

SECTION 21. 511 IAC 7-39-1 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 1. (a) The public agency must establish, maintain, and implement written procedures regarding ~~the following:~~

- ~~(1) how the public agency determines a student is in need of an educational surrogate parent.~~
- ~~(2) How eligible persons will be trained to serve as educational surrogate parents.~~

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Proposed Changes to Article 7

SECTION 22. 511 IAC 7-39-2 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 2. (a) The public agency shall establish, maintain, and implement written procedures regarding the assignment of educational surrogate parents that include the following:

- ~~(1) A system to assign for determining the eligibility of individuals to serve as educational surrogate parents.~~
- ~~(2) A system for determining the eligibility of individuals to serve as to assign educational surrogate parents.~~
- ~~(3) A system for training individuals to serve as educational surrogate parents that includes training regarding special education laws and rules.~~
- ~~(b) To meet the training requirements in subsection (a)(3), the public agency must train or contract with another agency or organization to train educational surrogate parents about special education laws and rules in order to develop a pool of educational surrogate parents from which the public agency may draw.~~

~~(4) (h) When a student attends an educational program outside the school corporation of legal settlement and is in need of an educational surrogate parent, the corporation of legal settlement is responsible to ensure an educational surrogate parent is assigned.~~

Proposed Changes to Article 7

SECTION 23. 511 IAC 7-40-3 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 3. (d) When referrals for any student from birth through the school year in which the student becomes twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind and Visually Impaired, ~~the Indiana Soldiers' and Sailors' Children's Home~~, or any other state-operated school by other than the designated representative of the student's public school corporation of legal settlement, the following procedures shall be implemented:

- (1) The state-operated school shall refer the person making the contact back to the public school corporation of legal settlement.
- (2) The referral, evaluation, and CCC meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

- Repealed at the request of DOE, as the Indiana's Soldiers' and Sailors' Children's Home has been closed.

Proposed Changes to Article 7

SECTION 24. 511 IAC 7-40-5 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 5. (g)(2) A synthesis of the required educational evaluation components in 511 IAC 7-41-12 in relationship to the following:

(A) Whether the student:

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

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

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

Proposed Changes to Article 7

SECTION 24. 511 IAC 7-40-5 IS AMENDED TO READ AS FOLLOWS:

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

- (i) Visual, hearing, or motor disability.
- (ii) ~~Cognitive~~ ~~Intellectual~~ disability.
- (iii) Emotional disturbance.
- (iv) Cultural factors.
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

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Proposed Changes to Article 7

SECTION 25. 511 IAC 7-40-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-8 Reevaluation

Sec. 8. (f) A parent's request for a reevaluation must be made to licensed personnel, which is defined in 511 IAC 7-32-58 to mean persons employed by the public agency who are:

- (1) teachers;
- (2) school counselors;
- (3) school psychologists;
- (4) school social workers;
- (5) building principals; and
- (6) other administrators.

A parent's request for an evaluation may be made verbally or in writing. After a parent makes a request, the public agency has ten (10) instructional days to provide the parent with written notice as specified in subsection (g).

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511 IAC 7-40-8 Reevaluation

Impact of this change?

- Details the types of school employees that qualify as "licensed personnel" to whom a parent must make a request to for a reevaluation. Added as a new subsection located at 7-40-8(f).
- This clarifies the obligation to provide a response to a request for evaluation which school personnel may find helpful. This is not a requirement under the IDEA, but one where Indiana will exceed federal requirements if enacted.

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Proposed Changes to Article 7

SECTION 25. 511 IAC 7-40-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-8 Reevaluation

Sec. 8. ~~(g)~~ (h) The written notice required under subsection ~~(f)~~ (g) must ~~meet the requirements of section 4(f) of this rule.~~ be as follows:

- (1) Written in language understandable to the general public.
- (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that:
 - (A) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (B) the parent understands the content of the notice; and
 - (C) there is written evidence that the requirements in clauses (A) and (B) have been met.

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Proposed Changes to Article 7

SECTION 26. 511 IAC 7-41-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-41-1 Autism spectrum disorder

Sec. 1. (b) Autism spectrum disorder does not apply if a student's educational performance is adversely affected primarily by:

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

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

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Proposed Changes to Article 7

SECTION 27. 511 IAC 7-41-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-41-3 Intellectual disability

Sec. 3. (a) ~~A cognitive~~ **An intellectual** disability:

- (1) is manifested during the developmental period;
- (2) is characterized by significant limitations in ~~cognitive~~ **intellectual** functioning;
- (3) is demonstrated through limitations in adaptive behavior; and
- (4) adversely affects educational performance.

- **Replaces "cognitive" with "intellectual" throughout the rule.**

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Proposed Changes to Article 7

SECTION 28. 511 IAC 7-41-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-41-6 Developmental delay

Sec. 6. (a) Developmental delay is a disability category solely for students who are at least three (3) years of age and ~~not more less than five (5) nine (9) years of age. or five (5) years of age but not eligible to enroll in kindergarten.~~ Developmental delay means a delay of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas:

- (1) Gross or fine motor development.
- (2) Cognitive development.
- (3) Receptive or expressive language development.
- (4) Social or emotional development.
- (5) Self-help or other adaptive development.

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Proposed Changes to Article 7

SECTION 29. 511 IAC 7-41-12 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-41-12 Specific learning disability

Sec. 12. (a) (2) Can be evidenced through either of the following:

(A) Insufficient progress to meet age or state approved grade level standards in one (1) or more of the areas identified in subdivision (1) when using a process based on the student's response to scientific, research based intervention.

(B) A pattern of strengths and weaknesses in performance or achievement, or both, relative to:

- (i) age;
- (ii) state approved grade level standards; or
- (iii) intellectual development;

that is determined by the group to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between academic achievement, intellectual ability and global cognitive functioning achievement to meet this requirement.

(3) Does not include learning problems that are primarily the result of any of the following:

- (A) A visual, hearing, or motor disability.
- (B) A cognitive An intellectual disability.
- (C) An emotional disability.
- (D) Cultural factors.
- (E) Environmental or economic disadvantage.

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Proposed Changes to Article 7

SECTION 30. 511 IAC 7-42-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-3 Case conference committee participants

Sec. 3. (c) (6) When a purpose of the meeting is the development or the annual review of the student's graduation plan as required by IC 20-30-4, the student's school counselor.

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Proposed Changes to Article 7

SECTION 31. 511 IAC 7-42-4 IS AMENDED TO READ AS FOLLOWS:

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

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

(b) The written notice described in subsection (a) must contain the following:

(1) A description and overall findings of each:

- (A) evaluation ~~procedure~~ **procedure**;
- ~~(B) procedure~~ **(B)** assessment;
- ~~(C) (B)~~ **(C)** record; or
- ~~(D) (C)~~ **(D)** report;

the public agency used as a basis for any proposed action.

(2) A description of action that may be proposed by the public agency.

(3) An explanation of why the public agency may propose an action.

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Proposed Changes to Article 7

SECTION 32. 511 IAC 7-42-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-7 Written notice by the public agency and parental consent
 Sec. 7. (a) Written notice that meets the requirements of subsection (b) must be given to the parent of a student with a disability before the public agency:
 (1) proposes to initiate or change the identification or educational placement of the student or the provision of a free appropriate public education to the student; or
 (2) refuses to initiate or change the identification, educational placement of the student, or the provision of a free appropriate public education to the student.
 (b) The written notice required under subsection (a) must include the following:
 (1) A description of the action proposed or refused by the public agency.
 (2) An explanation of why the public agency proposed or refused to take the action.
 (3) A description of the following:
 (A) Each:
 (i) evaluation **procedure**;
~~(ii) procedure;~~
 (ii) assessment;
 (iii) record; or
 (iv) report;
 the agency used as a basis for the proposed or refused action.

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Proposed Changes to Article 7

SECTION 33. 511 IAC 7-42-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-8 Individualized education programs; implementation; termination due to revocation of consent
 Sec. 8. (a) The services identified in an IEP must be provided as follows:
 (1) No later than ten (10) instructional days after parental consent to the student's initial IEP is received.
 (2) On the eleventh instructional day after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP that is subsequent to the initial IEP, unless the parent consents in writing to an earlier implementation date, ~~the public agency must continue to implement the current IEP.~~

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Proposed Changes to Article 7

SECTION 33. 511 IAC 7-42-8 IS AMENDED TO READ AS FOLLOWS:

(3) If the parent challenges the proposed IEP prior to its implementation ~~by the public agency must continue to implement the current IEP until the completion of the meeting, mediation, or hearing requested by the parent under section 7(j) of this rule. Within ten (10) instructional days of the conclusion of that process, the public agency must implement the IEP as revised through the meeting, mediation, or due process hearing, or implement the proposed IEP if no revisions resulted from the parent's challenge.~~
~~(A) requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency;~~
~~(B) initiating mediation under 511 IAC 7-45-2; or~~
~~(C) requesting a due process hearing under 511 IAC 7-45-3.~~
 (4) 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.
 (5) On the initiation date stated in the student's IEP in all other circumstances.

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Proposed Changes to Article 7

Problem?

Cannot implement the proposed IEP if the parent appeals the IHO decision in favor of the school. Student still entitled to "stay put" pending completion of the litigation. This is not clear from the language of the regulation as stated. However, federal preemption controls; therefore, the "stay put" placement remains in place unless parents agree otherwise.

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Proposed Changes to Article 7

SECTION 33. 511 IAC 7-42-8 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 8. (c) The student's teacher of record must do the following:

- (1) Monitor the implementation of the student's IEP.
- (2) Ensure that each of the student's teachers, related service providers, paraprofessionals, and any other service providers, who are responsible for implementing the student's IEP:
 - (A) have access to a copy of the IEP;
 - (B) are informed of their specific responsibilities related to implementing the IEP; and
 - (C) are informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the student's IEP.
- (3) Ensure that the CCC is informed of any modifications made to the student's IEP in accordance with section 9(e)(2) and 9(g) of this rule.
- (4) Beginning in grade 9, communicate at least one (1) time each grading period with the student's parent concerning the student's progress toward the student's selected diploma, as required by IC 20-32-4-11.**

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Proposed Changes to Article 7

SECTION 34. 511 IAC 7-42-13 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 13. (d) Even if a nonpublic school or facility implements a student's IEP, responsibility for compliance with this article remains with the public agency. The public agency must ensure that the student:

- (1) is provided:
 - (A) special education and related services:
 - (i) in conformance with an IEP that meets the requirements of this rule; and
 - (ii) at no cost to the parents; and
 - (B) an education that meets the standards applicable to the state's public agencies, including the requirements of this article, ~~except for the highly qualified special education teacher requirements in 511 IAC 7-26-3;~~ and
- (2) has all of the rights of a student with a disability who is served by a public agency.

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Proposed Changes to Article 7

SECTION 35. 511 IAC 7-43-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-1 Related services

Sec. 1. (n) Physical therapy:(2) must be provided:

(A) by a:

- (i) licensed physical therapist; or
- (ii) certified physical therapist assistant under the direct supervision of a licensed therapist; and

(B) only upon referral or order of a licensed:

- (i) physician;
- (ii) podiatrist;
- (iii) psychologist;
- (iv) chiropractor; or
- (v) dentist;

or as **required otherwise permitted** by state law governing licensing of physical therapists.

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Proposed Changes to Article 7

SECTION 36. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-4 Transition individualized education program

Sec. 4. (e) ~~The members of the CCC who must participate in the development or revision of a transition IEP are specified in 511 IAC 7-42-3(d)(2), which states that the public agency and must invite the following individuals to participate in the CCC to develop or revise the transition IEP:~~ **public agency must ensure the participation of the student's school counselor in the development or revision of a transition IEP**

- (1) The student, and, if the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. ~~and~~
- (2) To the extent appropriate, and with the consent of the parent (or student of legal age as defined in 511 IAC 7-32-91), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.

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Proposed Changes to Article 7

SECTION 36. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-4 Transition individualized education program

Sec. 4.(h)(3) Documentation ~~regarding whether the student will pursue a diploma as defined in 511 IAC 6-7.1-1(e), or the types of diplomas available for the student to receive;~~ **discussed with the student's parent and the student, if appropriate:**

- (A) ~~high school diploma as defined in 511 IAC 6-7.1-1(e); or the types of diplomas available for the student to receive;~~
- (B) ~~certificate of completion.~~ **the course requirements for each type of diploma;**
- (C) **employment and career options for the student and the type of academic, technical, and vocational preparation necessary to achieve the employment or career; or**
- (D) **the type of diploma the student will seek and courses that allow the student to progress toward the diploma in a timely manner or whether the student will pursue a certificate of completion.**

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Proposed Changes to Article 7

SECTION 36. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-4 Transition individualized education program
 Sec. 4.(h)(10) A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
 (A) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.
 (B) If the CCC determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
 (i) ~~of why the student cannot participate in the general assessment; that the criteria for the alternate assessment have been met;~~
 (ii) of why the particular alternate assessment selected is appropriate for the student; and
 (iii) documenting that the public agency informed the parent that the student's performance will ~~not~~ be measured against grade-level **aligned alternate** academic achievement standards.

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Proposed Changes to Article 7

The word "not" will need to be omitted from 511 IAC 7-43-4(h)(10)(B)(iii) to make it consistent with 511 IAC 7-36-10, which provides:
 Sec. 10. (i) If the CCC determines that a student will participate in an alternate assessment, the public agency must ensure that the parent is informed that the student's performance will ~~not~~ be measured against grade-level **aligned alternate** academic achievement standards.

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Proposed Changes to Article 7

SECTION 36. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-4 Transition individualized education program
 (i) Not later than the date on which the student completes grade 9, the CCC shall further develop the student's graduation plan developed in grade 6 pursuant to IC 20-30-4. The graduation plan must be developed in consultation with the student's school counselor and parent and input from the student. The graduation plan developed in grade 6 shall be further developed, and then reviewed annually, to include the following:
 (1) The subject and skill areas of interest to the student.
 (2) A program of study under the college/technology preparation curriculum adopted by the state board under IC 20-30-10-2 for grades 10, 11, and 12 that meets the interests and aptitude of the student.

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Proposed Changes to Article 7

SECTION 36. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

(3) Assurances that, upon satisfactory fulfillment of the plan, the student:

- (A) is entitled to graduate; and
- (B) will have taken at least the minimum variety and number of courses necessary to gain admittance to a state educational institution.

(4) An indication of assessments (other than ISTEP and the graduation examination) that the student plans to take voluntarily during grade 10 through grade 12, and which may include any of the following:

- (A) The SAT Reasoning Test.
- (B) The ACT test.
- (C) Advanced placement exams.
- (D) College readiness exams approved by the department.
- (E) Workforce readiness exams approved by the department of workforce development established under IC 22-4.1-2.

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Proposed Changes to Article 7

SECTION 37. 511 IAC 7-43-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-7 Summary of performance

Sec. 7. (a) A public agency must provide a student with a summary of the student's academic achievement and functional performance, which must include recommendations on how to assist the student in meeting the student's postsecondary goals, when a student:

- (1) graduates with a **Core 40, or higher**, high school diploma as defined in 511 IAC 6-7.1-1(e);
- (2) leaves high school with a **general diploma or a certificate of completion**; or
- (3) exceeds the age eligibility for special education and related services under this article.

54

Proposed Changes to Article 7

SECTION 38. 511 IAC 7-45-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-1 Complaints

Sec. 1. (m) Either the public agency or the complainant may request reconsideration by the director of the division of special education of any part of a complaint report. A request for reconsideration must be submitted to the division of special education within ~~seven~~ **ten (10)** calendar days of ~~receiving the date the~~ **report is issued**. The request for reconsideration shall:

- (1) be in writing;
- (2) state the specific portion or portions of the report the party believes should be reconsidered with specific facts to support the request; and
- (3) be sent to the director of the division of special education.

55

Proposed Changes to Article 7

SECTION 39. 511 IAC 7-45-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-5 Responding to the request for a due process hearing
 Sec. 5. (b) If the party receiving the due process hearing request is the public agency and it has not sent written notice in accordance with 511 IAC 7-40-4(e) or 511 IAC 7-42-7 to the parent regarding the subject matter contained in the parent's due process request, the public agency must, within ten (10) calendar days of receiving the due process hearing request, send a response to the parent that includes the following:

- (1) An explanation of why the public agency proposed or refused to take the action raised in the due process hearing request.
- (2) A description of the following:
 - (A) Other options considered by the CCC and the reasons why those options were rejected.
 - (B) Each:
 - (i) evaluation **procedure**;
 - ~~(ii) procedure~~;
 - ~~(iii) (ii) assessment~~;
 - ~~(iv) (iii) record~~; or
 - ~~(v) (iv) report~~;

the public agency used as the basis for proposed or refused action.

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Proposed Changes to Article 7

SECTION 40. 511 IAC 7-45-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-7 Conducting the hearing
 Sec. 7. (a) If the due process hearing is requested by the public agency:

- (1) due process hearings shall be conducted;
- (2) a final written decision reached; and
- (3) a copy of the written decision **served electronically or** mailed to each of the parties;

not later than forty-five (45) calendar days after the request is received by the parent.

(b) If the due process hearing is requested by a parent, the hearing shall be conducted, a final written decision reached, and a copy of the written decision **served electronically or** mailed to each of the parties not later than forty-five (45) calendar days after:

- (1) the thirty (30) day resolution period in section 6(f) of this rule; or
- (2) one (1) of the events in section 6(f)(1) through 6(f)(3) of this rule.

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Proposed Changes to Article 7

SECTION 40. 511 IAC 7-45-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-7 Conducting the hearing
 Sec. 7.(m) The independent hearing officer shall **serve the decision electronically to parties in the electronic filing system. If a party is not accessing the electronic filing system, the independent hearing officer shall** mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless a petition for judicial review is filed as described in section 9 of this rule.

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Proposed Changes to Article 7

SECTION 41. 511 IAC 7-49-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-2 Definitions

Sec. 2. The following definitions apply throughout this rule:

(1) "Choice scholarship student" means a student ~~with a disability~~ who has been awarded a choice scholarship under ~~IC 20-51-4-4(2)~~, **IC 20-51-4-4(a)(2)**.

(2) "Choice school" means a nonpublic school designated by the department as an eligible school under IC 20-51-1-4.7 and 512 IAC 4.

(3) "Choice scholarship special education plan" or "CSEP" means the written document developed by the choice scholarship education planning team that describes the special education and related services the choice school will provide to the choice scholarship student **with a disability**.

(4) "Department" means the department of education established by IC 20-19-3-1.

(5) "Division of special education" means the division of special education established by IC 20-35-2-1.

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Proposed Changes to Article 7

SECTION 42. 511 IAC 7-49-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-4 Choice scholarship education plan

Sec. 4. (a) Within ~~a reasonable time~~ **ten (10) instructional days** after ~~the~~ a choice scholarship student **with a disability** enrolls in the choice school, the choice school shall convene a meeting with the parent of the choice scholarship student and school staff to:

(1) determine the choice scholarship student's special education and related service needs; and

(2) develop a CSEP for the choice scholarship student.

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Proposed Changes to Article 7

SECTION 42. 511 IAC 7-49-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-4 Choice scholarship education plan

Sec. 4. (e) For any choice scholarship student **with a disability** returning to the choice school, the student's previous year's CSEP shall be reviewed ~~at the beginning~~ **within ten (10) instructional days of the start of the** school year to inform the planning and development of a CSEP for the current school year if the ~~choice scholarship~~ student selects the choice school as the special education service provider for the current year.

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Proposed Changes to Article 7

SECTION 43. 511 IAC 7-49-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-5 Parent consent

Sec. 5. (h) Not later than ten (10) instructional days from the date the school corporation receives the written notice described in subsection (g), the school corporation shall convene a case conference committee meeting and develop ~~an individual~~ a service plan in accordance with 511 IAC 7-34-5.

- Amended at the request of DOE.

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Proposed Changes to Article 7

SECTION 44. 511 IAC 7-49-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-7 Complaint process

Sec. 7. (a) If a parent of a choice scholarship student believes the choice school is not complying with the requirements of this rule, the parent may file a **written** complaint with the choice school.

(b) If the choice school does not resolve the complaint to the parent's satisfaction, the parent may file a complaint with the department as described in this rule.

(c) The complaint must:

- (1) be in writing;
- (2) include the name and address of the choice school;
- (3) include a statement alleging that the choice school has failed to comply with one (1) or more requirements of this rule;
- (4) include the facts on which the alleged noncompliance is based;
- (5) include a copy of the written complaint filed with the choice school in accordance with subsection (a);**
- ~~(6)~~ be signed by the parent and include the parent's contact information; and
- ~~(6)~~ **(7)** be submitted to the choice school and the division of special education.

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Proposed Changes to Article 7

SECTION 44. 511 IAC 7-49-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-7 Complaint process

(d) If the complaint alleges violations with respect to a specific choice scholarship student **with a disability**, the complaint must also include the name and address of the student.

(e) The division of special education shall investigate the complaint as described in 511 IAC 7-45-1.

(f) The choice school is required to complete any corrective action resulting from the complaint investigation within the timeline prescribed by the complaint investigation report.

(g) Failure of the choice school to complete any prescribed corrective action may negatively impact the choice school's continued eligibility under 512 IAC 4.

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Proposed Changes to Article 7

SECTION 45. 511 IAC 7-49-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-9 Education records

Sec. 9. (a) Not later than ten (10) business days of receiving a request from a choice school for the education records of a choice scholarship student **with a disability** enrolled in the choice school, the school corporation or charter school shall provide the requested records to the choice school.

(b) Subject to subsection (c), and not later than ten (10) business days of receiving a request from a school corporation or a charter school for the education records of a choice scholarship student **with a disability** previously enrolled in the choice school, the choice school shall provide the requested records to the school corporation or charter school.

(c) If the parent of a choice scholarship student **with a disability** is in breach of a contract that conditions release of student records on the payment of outstanding tuition and other fees, the choice school shall within ten (10) business days of the request, provide a requesting school corporation with sufficient verbal information to permit the school corporation to make an appropriate placement decision regarding the student.

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Proposed Changes to Article 7

SECTION 46. 511 IAC 7-49-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-10 Proportionate share

Sec. 10. (a) A school corporation must consider all eligible parentally-placed nonpublic students with disabilities, including choice scholarship students, when determining how it will expend its proportionate share of federal special education funds on services to parentally-placed nonpublic students with disabilities.

(b) A school corporation within whose boundaries the choice school is located may, but is not required, choose to expend part of the proportionate share of federal special education funds on services to choice scholarship students.

(c) The school corporation within whose boundaries the choice school is located is not required to provide special education and related services for any choice scholarship student **with a disability** who has designated the choice school to provide ~~their~~ **the student's** special education services as described in IC 20-51-4-4.5, unless consent was subsequently revoked for the implementation of the CSEP.

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Areas That Need Further Clarity

- Right to an IEE – how old must an evaluation be to challenge it?
- Can a student request an IEE if the school finds that s/he is not eligible?
- Can any limits be placed on the cost of the IEE?
- New dyslexia law (SEA 217) requires that if the student is found eligible, then information about dyslexia must be included in the educational evaluation; however, does this mean the school psychologist must predetermine eligibility?

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Areas That Need Further Clarity

- How much effort is required to contact parent to schedule a case conference at a mutually agreeable date and time before the school can set a date and send notice?
- What is reasonable in terms of the day and time for a case conference?
- Homebound instruction – guidance for providing instruction in the home or other settings
- Placement during due process hearings where student is recommended for expulsion but expulsion process was not complete when hearing request filed

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Trends in Article 7 Hearings

- Increase in discovery:
 - Depositions,
 - Document production and
 - Interrogatories
- Increase in number of days of hearing
- Increase in attorneys and fees
- Cost of litigation born by school even if school wins
- No longer have the BSEA to provide relief from a poorly decided IHO decision

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Trends in Article 7 Hearings

- Hot Topics
 - Child Find and Identification
 - Eligibility
 - Reevaluation
 - Discipline
 - Placement
 - Parent Involvement

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Trends in Article 7 Hearings

<u>Hearing Officers</u>	<u>Mediators</u>
Melody Dilk	Janet Mitchell
Terrance Kinnard	Judith Ripley
Bethany Redinbo	Kate Guerrero
Kristin Anderson	Steven Spence
Dennis Graft	Zoretta Ward-Holloway
Maidena Fulford	Sarah Bowman-Kolacki
James Jacobs	
Tom Huberty	

HEA 1420: Claims Against Public Schools

- HEA 1420 became effective July 1, 2018.
- Added IC 34-13-3.5 which applies to an action brought against a public school under the laws of the United States or Indiana.
 - It does not apply to teacher licensing or collective bargaining issues.
- Provides that an individual may not initiate a civil action or an administrative proceeding against a public school unless the individual submits a written notice to the public school that notifies the public school of the alleged violation and indicates a proposed remedy.

HEA 1420: Claims Against Public Schools

- A proposed remedy must provide the public school with a specific request for relief and allow the public school to offer the individual the relief requested in the written notice before the individual initiates the civil or administrative action.
- Not later than 15 days after the individual submits the notice, the school may remedy the alleged violation or make a written offer to the individual.
- If an individual does not submit the notice before initiating a civil or administrative action, a court or hearing officer shall dismiss the action without prejudice.

HEA 1420: Claims Against Public Schools

Does this law apply to due process hearings under the IDEA and Article 7?

- There are differing opinions as to whether HB 1420 applies to IDEA hearings.
 - Schools may argue that parents must give notice before filing a hearing request.
 - Parents may argue that this provision hinders or delays their ability to request a hearing.

HEA 1420: Claims Against Public Schools

- The new law states that it may not be construed to restrict or limit the rights, procedures, or remedies available to an individual or entity under the federal or state Constitution or another federal law.
- The question is: if parents must first submit a written notice to the school, including the specific proposed remedy, does that requirement limit the rights, procedures, or remedies available to the parent under Article 7 and the IDEA?
 - Only a court can answer the question
 - At least one IHO has ruled that federal law preempts

Intersection: HEA 1420 & "Stay-put"

- It is possible that mandating that the parent give the notice required by HEA 1420 will permit an IEP recommended by the school to which the parent objects to go into effect per 511 IAC 7-42-8 on the 11th instructional day because of HEA 1420's required waiting period for filing an administrative action.
- This could interfere with the parent's right to object to the IEP and maintain the stay put placement (that is, the last agreed upon placement prior to the IEP at issue) pending a decision by the IHO.

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QUESTIONS???

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