

ALERTS

A Brief Analysis Of The Proposed Changes To Indiana's Special Education Rules (Article 7)

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The Indiana State Board of Education (SBOE) is now expected to accept oral comments and vote on adopting proposed revisions to Article 7 during its Dec. 12, 2018, business meeting. The proposed revisions are summarized below with the most notable change analyzed in detail first.

Proposed revision to individualized education programs (IEP); implementation; termination due to revocation of consent, 511 IAC 7-42-8

Currently, a parent may delay the implementation of a proposed IEP by challenging it within ten days of receipt by taking one of the following three actions: 1) requesting and participating in a meeting, 2) initiating mediation, or 3) requesting a due process hearing. While this may sound simple and straightforward, the lack of clarity in the rule has led to numerous problems in practice. For example, can a parent repeatedly request a meeting to indefinitely delay implementation? What is meant by "initiating" mediation? Why does the mediation requirement not specifically say the parent must participate just as the meeting requirement does? And most critically, what happens to the proposed IEP after an unsuccessful meeting or mediation?

The revision seeks to resolve this final question as it provides:

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.

The revision is helpful as it clarifies that after an unsuccessful meeting or mediation, the proposed IEP will be implemented. Unfortunately, the change leaves open a question of timing and does not clarify some of the other stumbling blocks in the current rule.

The revision may still create headaches as it does not clearly state when the proposed IEP becomes the student's current IEP. Specifically, does the proposed IEP become the current IEP the moment the meeting concludes, when the school chooses to implement it in the ensuing 10 days, or at some other time? Being able to determine precisely which IEP is currently in place can be crucial when a due process hearing is filed and stay put is invoked.

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The revision also cites to Section 7(j). That provision describes the three ways a parent can challenge a proposed IEP. While no changes to that section are currently proposed, it too could be fine-tuned to alleviate some of the issues described above, particularly by clarifying what is meant by “initiating” mediation and explicitly requiring “participation” not just in meetings, but also in mediation.

Other Proposed Revisions to Article 7

- 511 IAC 7-40-8, *Reevaluation*. This amendment treats a request for a reevaluation much like a request for an initial evaluation. It specifies which staff members can receive such a request, that a school must respond with a written notice within ten instructional days, and specifies the content of the
- 511 IAC 7-32-13 & 7-36-11, *Caseload*. This amendment moved part of the definition of “caseload” out of the definitions section and into the body of Article 7. This would seem to make a dispute over the caseload of a teacher, SLP, or related service provider more susceptible to complaints and due process hearings.
- 511 IAC 7-42-3, *Case conference committee participants*, and 511 IAC 7-43-4, *Transition individualized education program*. These amendments specifically require the student’s school counselor to participate in certain aspects of the CCC process related to graduation and transition.
- 511 IAC 7-42-8, *Individualized education programs*; implementation; termination due to revocation of consent. This amendment requires schools, beginning in grade 9, to communicate at least one time each grading period with the student’s parent concerning the student’s progress toward the student’s selected diploma.
- 511 IAC 7-43-4, *Transition individualized education program*. This amendment places additional and more specific requirements on the content and timing of a transition IEP and a graduation plan.

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