



MEMORANDUM

To: Indiana State Board of Education
From: Becky Bowman, Director of Special Education
Date: July 29, 2013
Re: Request for approval of emergency rule to implement SEA 464
Request for approval to initiate permanent rulemaking to implement SEA 464

Senate Enrolled Act 464 provides that certain residential facilities, licensed by the Department of Child Services as a secure private facility, may bill the student's school corporation for basic tuition support and state special education grant funds (as applicable) if the facility provides the educational services to students who were placed in the facility under the written order of a licensed physician. In order to bill the school, the facility must comply with specific notice requirements and provide comparable educational services, including special education and related services. The State Board is charged with adopting rules, including emergency rules, to implement the Act.

The Department's proposed emergency rule is attached. The proposed rule has been vetted with stakeholders including a facility provider, public school special education personnel, and attorneys for both. Several revisions to the originally proposed emergency rule were made as a result of that meeting. The proposed emergency rule addresses the following:

- Section 1: Applicability of emergency rule to students placed in a facility by the written order of a licensed physician and for whom the facility will provide educational services
- Section 2: Definitions of school corporation, facility, and medically placed student
- Section 3: Applicability of certain provisions of 511 IAC 7 (Indiana's special education rules)
- Section 4: Facility's written notification to the school
- Section 5: School's responsibilities upon receiving written notice and for convening a case conference committee upon the facility's request
- Section 6: Requirement that all special education and related service personnel utilized by the facility be appropriately licensed, certified, and/or qualified
- Section 7: Procedure for filing a complaint in the event of alleged noncompliance by the facility
- Section 8: Requirements for reporting student attendance
- Section 9: Requirements for consulting about student transitioning back to school and sharing educational records.
- Section 10: Emergency rule expiration provision

The Department respectfully requests the Board's approval of the proposed emergency rule and for approval to initiate the permanent rulemaking to replace the emergency rule.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Emergency Rule

LSA Document #13-XXX(E)

DIGEST

Temporarily adds provisions to explain and implement the requirements for the education and special education and related services for children who are placed in a facility under the written order of a physician licensed under Indiana Code 25-22.5 and for whom the facility provides educational services. Effective upon filing.

SECTION 1. This document applies to students who have been placed in a facility under the written order of a licensed physician in accordance with IC 20-26-11-11.5 and for whom the facility provides educational services.

SECTION 2. The following definitions apply throughout this document:

(1) "Facility" means a secure private facility licensed under IC 31-27 to operate as a private secure facility under 465 IAC 2-1.

(2) "Medically placed student" means a student as defined in IC 20-26-11-11.5(4) who is placed in the facility under the written order of a physician.

(3) "School corporation" means the Indiana school or charter school that is receiving state tuition support for the student at the time of the student's admission to the facility.

SECTION 3. (a) For a medically placed student, the facility acts *in loco scholae* for all education services, including special education and related services.

(b) The following shall apply with respect to medically placed students who have been identified by a school corporation as being a student with a disability for whom the facility provides special education and related services:

(1) 511 IAC 7-32.

(2) 511 IAC 7-36-10.

(3) 511 IAC 7-38.

(4) 511 IAC 7-43-1.

(5) 511 IAC 7-43-5.

(6) 511 IAC 7-45-1.

SECTION 4. (a) For each medically placed student as defined in this document, the facility shall provide the school corporation with written notice that complies with the requirements of IC 20-26-11-11.5 and this document.

(b) In addition to the notice requirements described in IC 20-26-11-11.5, the facility shall include the name and contact information for the primary contact at the facility.

(c) If a facility fails to timely provide the requisite notice, or the notice otherwise fails to comply with the requirements of IC 20-26-11-11.5, the school corporation shall not be liable for

any per diem accruing between the date of admission and the date the school corporation receives the written notice from the facility.

SECTION 5. (a) Within five (5) business days of the school corporation's receipt of the written notice, the school corporation shall consult with the facility regarding the educational services, including any special education and related services to be provided to the medically placed student.

(b) As part of the consultation, the school corporation shall provide the facility with relevant documents from the medically placed student's education record, including the current individualized education program (IEP) and most recent progress report(s), and the name and contact information for the individual who will serve as the school's primary contact for the medically placed student.

(c) The facility shall immediately provide the medically placed student with the level of educational services comparable to that of a student attending the medically placed student's school corporation. If the medically placed student has an IEP, the facility shall implement the IEP as written within three (3) business days of receiving a copy of the IEP from the school corporation.

(d) When providing the periodic reports to parents on the student's progress toward meeting annual goals, the facility shall provide a copy to the school corporation at the same time.

(e) If the facility believes the medically placed student's IEP needs to be modified, the facility shall request the school convene a case conference committee.

(f) Any modifications to the IEP shall be made in accordance with 511 IAC 7-42.

(g) The facility shall implement the IEP as written.

SECTION 6. (a) All personnel employed or contracted to provide special education or related services to medically placed students 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.

(b) Related service personnel who deliver services in their discipline may not have certification or licensure requirements waived on:

- (1) an emergency;
- (2) a temporary; or
- (3) a provisional basis.

SECTION 7. (a) A complaint that a facility has failed to meet the requirements of this document may be filed as described herein.

(b) Any individual, group of individuals, agency, or organization may file a complaint alleging that a facility has failed to comply with the one or more requirements of this document. The complaint must:

- (1) be in writing;
- (2) include the name and address of the facility;
- (3) include a statement alleging that the facility has violated one or more requirements of this document or 511 IAC 7;
- (4) include the facts on which the alleged violation is based;

- (5) be signed by the complainant or complainants and include contact information of the complainant or complainants; and
- (6) be submitted to the facility and the division of special education.
- (c) If the complaint alleges violations with respect to a specific medically placed student, the complaint must also include the name of the student.
- (d) The division of special education shall investigate the complaint as described in 511 IAC 7-45-1.
- (e) The facility is required to complete any corrective action resulting from the complaint investigation within the timeline prescribed by the complaint investigation report.

SECTION 8. (a) For purposes of 511 IAC 7-46, the school corporation that the medically placed student was attending at the time of admission shall include the student in the school corporation's average daily membership and special education child counts.

(b) The facility shall report the student's attendance to the school as necessary for the school to report the student's attendance to the department.

SECTION 9. (a) If a medically placed student is returning to a school corporation upon discharge from the facility, the facility shall consult with the school corporation regarding the student's educational services and progress during the student's admission to the facility prior to the actual discharge from the facility.

(b) Not later than ten (10) business days of receiving a request from a school corporation for the education records of a medically placed student who has been discharged from the facility, the facility shall provide the requested records to the school corporation.

SECTION 10. This emergency rule expires on the earlier of:

- (1) The date the emergency rule is amended or repealed by a later rule adopted under IC 4-22-2-22.5 through IC 4-22-2-36 or under IC 4-22-2-37.1.
- (2) One (1) year after the date the emergency rule is adopted.