



INDIANA STATE BOARD OF EDUCATION

To: Indiana State Board of Education
From: Tim Schultz, General Counsel – Indiana State Board of Education
Date: March 6, 2019
RE: **LSA Document #18-421 (Dropout Recovery Educational Services) – Public Comments and Staff Responses**

Recommendation: Adopt the attached final administrative regulations.

1. Office of School Accountability, Indiana Department of Education

(Public Board Meeting – 5/2/2018)

The Indiana Department of Education (“Department”) provided a memorandum to the Indiana State Board of Education (“Board”) at the Board’s May 2, 2018, business meeting. The memorandum is attached to this document.

Board Staff Response: In regards to the comments provided by the Department in the attached memorandum please see Board staff responses below:

Department Comment #1

The Department requested that the Board revise the definition of “dropout recovery educational services” contained in 511 IAC 6.2-11-1(5) to be defined as “courses solely directed at recovering high school credits required to graduate for which a student is deficient.”

The proposed language in 511 IAC 6.2-11-1(5) currently reads as follows:

The term “dropout recovery educational services” refers to any services provided by an eligible school, as defined in IC 20-51-1-4.7, which are directly related to ensuring a student satisfies the graduation requirements contained in IC 20-32-4.

Adopting the Department’s proposed language would be problematic due to the amendment of IC 20-32-4 to include “graduation pathways,” which expands the methods to achieve graduation to options that may not include traditional “courses.” Thus, the proposed definition is simply linked to the “Graduation Requirements” chapter (IC 20-32-4) in Title 20 of the Indiana Code to ensure maximum flexibility.

Department Comment #2

The Department requested that the Board revise the definition of “at-risk” contained in 511 IAC 6.2-11-1(1) to be defined as “an individual who is enrolled in a high school, is not on track to graduate with his/her cohort, and spends two-thirds

of the school day recovering credits.”

The proposed language in 511 IAC 6.2-11-1(1) currently reads as follows:

The term “at-risk” refers to, but is not limited to, an individual who: is at-risk of academic failure; has a history of a drug or alcohol problem; is pregnant or is a parent; has previously come into contact with the juvenile justice system; is at least one (1) year behind the expected grade level for the age of the individual; has limited English proficiency; is a gang member; has dropped out of school (as defined in 511 IAC 6.1-1-2(h)); or satisfies the definition of chronic absenteeism as defined in IC 20-20-8-8.

The proposed language currently in 511 IAC 6.2-11-1(1) was intentionally derived from federal law, known as the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act in 2015, to avoid the possibility that any rules adopted by the Board are inconsistent with federal requirements.

20 U.S.C. 6472 DEFINITIONS.

In this part:

(2) **AT-RISK.**—The term “at-risk”, when used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, dependency adjudication, or delinquency adjudication, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system or child welfare system in the past, is at least 1 year behind the expected grade level for the age of the individual, is an English learner, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.

Department Comment #3

The Department requested that the Board Revise 511 IAC 6.2-11-2 to read as follows:

Certain at-risk students not included in the calculation of school performance

a. An at-risk student enrolled for at least 162 days:

- i. At a public school within a school corporation; or**
- ii. A charter school**

That has entered into a contract with an eligible school to provide dropout recovery educational services may not be included in the calculation of the school’s category or designation of school performance pursuant to I.C. 20- 31-8.

After reviewing the Department’s comment, the language in 511 IAC 6.2-11-2 was

revised by replacing the phrase “performance indicators” with the phrase “accountability indicators.” Furthermore, the proposed language currently in 511 IAC 6.2-11-2 was intentionally derived from federal law, known as the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act in 2015, to reflect federal requirements pertaining to “partial attendance” to avoid the possibility that any rules adopted by the Board are inconsistent with federal requirements for reporting student accountability data.

20 U.S.C. 6311 State Plans

(F) Partial attendance

(i) In the case of a student who has not attended the same school within a local educational agency for at least half of a school year, the performance of such student on the indicators described in clauses (i), (ii), (iv), and (v) of subparagraph (B)--

(I) may not be used in the system of meaningful differentiation of all public schools as described in subparagraph (C) for such school year; and

(II) shall be used for the purpose of reporting on the State and local educational agency report cards under subsection (h) for such school year.

(ii) In the case of a high school student who has not attended the same school within a local educational agency for at least half of a school year and has exited high school without a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such school year, the local educational agency shall, in order to calculate the graduation rate pursuant to subparagraph (B)(iii), assign such student to the high school--

(I) at which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(II) in which the student was most recently enrolled.

Department Comment #4

The Department requests that the proposed language contained in 511 IAC 6.2-11-3 should be deleted from the proposed rule as the authority for rule making doesn't extend to the graduation rate calculation.

In response to the Department's concerns, 511 IAC 6.2-11-3 has been revised to read as follows:

Sec. 3. For purposes of calculating a school's category or designation of school performance under IC 20-31-8, a public school or charter school in which an at-risk student is enrolled shall exclude at-risk students from the school's "cohort," as defined in IC 20-26-13-2, and graduation rate, calculated pursuant to IC 20-26-13,

if:

- (1) a school corporation or charter school in which the at-risk student is enrolled has entered into a contract with an eligible school to provide dropout recovery educational services to at-risk students; and**
- (2) the at-risk student attends an eligible school and receives dropout recovery educational services from that school for more than one-half (1/2) of the school year.**

Department Comment #5

The Department requests that the proposed language contained in 511 IAC 6.2-11-4 should be deleted from the proposed rule as the language is not necessary.

The language is intended to ensure that parties that participate in the dropout recovery program are on notice that the accountability data for students that participate will continue to be reported for federal accountability purposes.

MEMORANDUM

TO: Indiana State Board of Education
FROM: Office of School Accountability, Indiana Department of Education
RE: Proposed Dropout Recovery Rules
DATE: April 24, 2018

Background

Ind. Code § 20-31-8-4.6(a) provides that a school corporation or charter school that enters into an agreement with an “eligible school” to provide dropout recovery educational services for an at-risk student enrolled with the school corporation or charter school may exclude the at-risk student from any state accountability determinations for the school corporation or charter school. An “eligible school” is defined by Ind. Code § 20-51-1-4.7 as any public or nonpublic elementary or high school that: is located in Indiana; requires an eligible choice scholarship student to pay tuition or transfer tuition to attend the school; voluntarily agrees to enroll a choice scholarship student; is accredited; administers the statewide assessments; is not the school corporation or charter school where the student has legal settlement; and submits data required to calculate a state A-F letter grade. It is important to note here that an eligible school may be another public school, and not just a nonpublic school that specializes in dropout recovery educational programming.

Subsection (b) of Ind. Code § 20-31-8-4.6 charges the Indiana State Board of Education (Board) with rulemaking to carry out subsection (a). The Board is set to take action on final proposed rule language at its May 2, 2018 business meeting.

At the April 4, 2018 business meeting of the Board, Chairperson Dr. McCormick shared that the Indiana Department of Education (Department) would work with Board staff to share the Department’s thoughts and recommendations regarding the proposed rule language to implement Ind. Code § 20-31-8-4.6(a). Department staff sent suggested language to Board staff on April 9, 2018 that outlined its concerns with the current proposed language and recommended changes to address these concerns. Specifically, with the latitude in the current proposed rule language, schools are provided with a strong disincentive to address “at-risk” students with local interventions, and a strong incentive to outsource all services for students deemed “at-risk”. So long as a school does not serve its own at-risk population, there would be no accountability for “at-risk” students. The Department’s recommendations outlined below attempt to address this concern.

511 IAC 6.2-12-1(4)**Proposed Rule Language:**

The proposed rule language defines “dropout recovery educational services” as “any services provided by an eligible school, as defined in IC 20-51-1-4.7, which are directly related to ensuring a student satisfies the graduation requirements contained in IC 20-32-4.”

Discussion:

The proposed language is too broad, given the definition provides that *any* services provided by the eligible school that are related to the satisfaction of graduation requirements may count as “dropout recovery” services. One could interpret this to mean that the regular course and credit requirements within the expected completion timeline of four (4) years may count as dropout recovery educational services given there is no parameter set on the “recovery” portion of the term. Further, there is no indication of whether these services are specific to a certain grade level or grade span. By its definition, an eligible school may be an elementary or high school. Without the inclusion of some parameter on grade level or span in this definition, there is no restriction as to what students may be considered for this exclusion from accountability.

Department Recommendation on Proposed Rule Language:

The Department recommends the definition of “dropout recovery educational services” specify that: the services must be provided to students in high school, or grades 9 through 12; the student receiving services is not on-track to graduate; and that the services are explicitly for regaining or retrieving credits the student failed to earn on schedule. Given these recommended terms, the Department drafted the following proposed definition for “dropout recovery educational services”:

The term “dropout recovery educational services” refers to courses solely directed at recovering high school credits required to graduate for which a student is deficient.

511 IAC 6.2-12-1(5)

Proposed Rule Language:

The proposed rule language defines “at-risk” as an individual who is at-risk of academic failure, has a history of a drug or alcohol problem, is pregnant or is a parent, has previously come into contact with the juvenile justice system, is at least one (1) year behind the expected grade level for the age of the individual, is a migrant or an immigrant, has limited English proficiency, is a gang member, has dropped out of school (as defined in 511 IAC 6.1-1-2(h)), or satisfies the definition of chronic absenteeism as defined in IC 20-20-8-8. The definition does not limit the term “at-risk” to these conditions.

Discussion:

The proposed language is too broad and too presumptive. Specifically, the first definition of “at-risk” in the proposed language is “an individual who is at-risk of academic failure”. One could apply this definition to virtually any student. For example, a student who receives an “F” on one test during one semester could be viewed as “at-risk of academic failure”. Additionally, the inclusion conditions like migrant status or involvement in a gang categorizes certain students as “at-risk” who may be meeting performance expectations. The inclusion of such terms in the definition of “at-risk” may provide for the unwarranted exclusion of students from a school’s accountability simply by nature of circumstances rather than a true consideration of the student’s academic performance. Further, there is no quantification regarding the services needed to be deemed “at-risk”. As it is currently defined, a student receiving one hour of recovery services per week is considered the same as a student receiving 6 hours of recovery services per day. Lastly, there is no indication of whether these services are specific to a certain grade level or grade span. By its definition, an eligible school may be an elementary or high

school. Without the inclusion of some parameter on grade level or span in this definition, there is no restriction as to what students may be considered for this exclusion from accountability.

Department Recommendation on Proposed Rule Language:

The Department recommends the definition of "at-risk" specify that: the student must be in a high school cohort; the student is not on-track to graduate, given the student's cohort year; and the student receives a certain amount of recovery services. Given these recommended terms, the Department drafted the following proposed definition for "at-risk":

"At-risk student" refers to an individual who:

- i. is enrolled in a high school;*
- ii. is not on track to graduate with his or her cohort; and*
- iii. spends at least two-thirds (2/3) of the school day recovering credits.*

511 IAC 6.2-12-2**Proposed Rule Language:**

The proposed rule language provides the following:

For purposes of calculating the State category or designation of school performance pursuant to IC 20-31-8, a public school or charter school in which an at-risk student is enrolled shall exclude performance indicators of the at-risk student if:

- 1. a school corporation or charter school, in which the at-risk student is enrolled, has entered into a contract with an eligible school to provide dropout recovery educational services to at-risk students; and*
- 2. The at-risk student attends an eligible school and receives dropout recovery educational services from that school for more than one half (1/2) of the school year.*

Discussion:

The proposed rule language provides that only at-risk students enrolled with the school corporation or charter school for at least half of a school year may be excluded from State accountability determinations. This does not align with the Board's current accountability system, which provides that students enrolled for at least 162 days must be included in accountability determinations. This may cause confusion as it pertains to the inclusion or exclusion of certain students.

Department Recommendation on Proposed Rule Language:

The Department recommends the use of the 162 day enrollment condition in order to ensure alignment between the exclusion of students under the proposed rule and the general exclusion of students under the accountability system. Given this recommendation, the Department drafted the proposed language for 511 IAC 6.2-12-2:

An at-risk student enrolled for at least 162 days with:

- 1. a public school within a school corporation; or*
- 2. a charter school*

that has entered into a contract with an eligible school to provide dropout recovery educational services may not be included in the calculation of the school's category or designation of school performance pursuant to IC 20-31-8.

511 IAC 6.2-12-2¹

Proposed Rule Language:

The proposed rule language provides the following:

For purposes of calculating the State graduation rate pursuant to IC 20-26-13, a public school or charter school in which an at-risk student is enrolled shall exclude at-risk students from the school's "cohort," as defined in IC 20-26-13-2, if:

- 1. a school corporation or charter school, in which the at-risk student is enrolled, has entered into a contract with an eligible school to provide dropout recovery educational services to at-risk students; and*
- 2. the at-risk student attends an eligible school and receives dropout recovery educational services from that school for more than one half (1/2) of the school year.*

Discussion:

The rulemaking authority given to the Board under Ind. Code § 20-31-8-4.6(b) provides the Board with rulemaking authority regarding the process of excluding at-risk students receiving dropout recovery services from the State accountability determinations. Therefore, it provides the Board with authority to address how the indicators used to determine an accountability grade may be calculated as it pertains to the inclusion or exclusion of at-risk students. It does not provide the Board with authority to amend the State graduation rate calculation generally. This section of the rule goes beyond the authority granted to the Board to adopt rules to implement Ind. Code § 20-31-8-4.6(a) by incorporating language that would affect the implementation of Ind. Code § 20-26-13. Further, Ind. Code § 20-26-13 provides no rulemaking authority to the Board. By including this language in the proposed rule, the Board is adding another mobility code—"at risk" to the State graduation rate calculation beyond those provided for under Ind. Code § 20-26-13-10.

Department Recommendation on Proposed Rule Language:

The Department recommends this section be stricken from the proposed rule.

511 IAC 6.2-12-3²

Proposed Rule Language:

The proposed rule language provides the following:

An eligible school providing dropout recovery educational services to at-risk students shall report at-risk student performance indicators, including graduation rate data for at-risk students, to the department of education and the school corporation or charter school in which the students are enrolled. The student performance indicators and graduation rate data shall be included in the data that the department of education issues in the state and local educational agency report cards pursuant to 20 U.S.C.A. 6311(h).

¹ The numbering of the proposed rule duplicates section 2, so sections regarding "certain at-risk students not included in the calculation of school performance" and "graduation rate calculation" are currently referred to as section 2. The section on "graduation rate calculation" should be listed as 511 IAC 6.2-12-3.

² The numbering of the proposed rule duplicates section 2, which in turn skews the numbering for subsequent sections. The section on "reporting of at-risk student data" should be listed as 511 IAC 6.2-12-4.

Discussion:

This language is unnecessary given that Indiana's state plan required under the Every Student Succeeds Act and approved by the US Department of Education already requires the inclusion of these "at-risk" students in the federal accountability determinations. Further, 20 U.S.C. § 6311(h) already requires the State to include these "at-risk" students for public reporting purposes.

Department Recommendation on Proposed Rule Language:

The Department recommends this section be stricken from the proposed rule.

Conclusion

The Department's recommendations above center around the general belief that this flexibility to exclude at-risk students from State accountability determinations should only be used in the most extreme circumstances to ensure schools continue to be held accountable for the educational performance and success of enrolled students. The Department's recommendations encourage continued accountability for all students, regardless of whether they are at-risk or exemplary students. Lastly, the Department's recommendations discourage abuse of this flexibility by incorporating more explicit terms and definitions regarding students and services provided to such students.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #18-421 (F)

DIGEST

Adds 511 IAC 6.2-11, concerning dropout recovery, to account for recently enacted legislation. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

511 IAC 6.2-11

SECTION 1. 511 IAC 6.2-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Dropout Recovery

511 IAC 6.2-11-1 Definitions

Authority: IC 20-19-2-8; IC 20-31-8-4.6; IC 20-31-10-1

Affected: IC 20-18-2-15; IC 20-18-2-16; IC 20-19-2-10; IC 20-20-8-8; IC 20-24-1-4; IC 20-24-7-13; IC 20-31-8; IC 20-32-4; IC 20-43-1-7.5; IC 20-43-1-11.5; IC 20-51-1-4.7

Sec. 1. The following definitions apply throughout this rule:

(1) "At-risk" refers to, but is not limited to, an individual who:

- (A) is at-risk of academic failure;
- (B) has a history of a drug or alcohol problem;
- (C) is pregnant or is a parent;
- (D) has previously come into contact with the juvenile justice system;
- (E) is at least one (1) year behind the expected grade level for the age of the individual;
- (F) has limited English proficiency;
- (G) is a gang member;
- (H) has dropped out of school (as defined in 511 IAC 6.1-1-2(h)); or
- (I) satisfies the definition of chronic absenteeism as defined in IC 20-20-8-8.

(2) "Attend" means the physical presence of a student at an eligible school, which has entered into a contract with a school corporation or charter school under IC 20-31-8-4.6(a), with the expectation of receiving dropout recovery education services from the eligible school. Alternatively, if an eligible school enters into a contract with a virtual charter school, as defined by IC 20-24-7-13, a student is considered to "attend" the eligible school if the student satisfies all statutory and regulatory requirements that govern student attendance for virtual charter schools.

(3) "Charter school" has the meaning set forth in IC 20-24-1-4.

(4) "Contract" refers to a written agreement between a school corporation or charter school and an eligible school to provide dropout recovery education services to at-risk students; such contracts must contain, at a minimum, the following:

- (A) A list of services that the eligible school will provide students that attend the dropout recovery educational services while maintaining enrollment at the school corporation or charter school.
- (B) The school corporation or individual school, or both, responsibilities.
- (C) The eligible school's responsibilities.
- (D) Joint school corporation, individual school, and eligible school responsibilities.
- (E) The registration rate, fee, or payment process, or all, that an eligible school will charge a school corporation or charter school to provide dropout recovery education services to at-risk students.
- (F) Any other provisions that a school corporation, charter school, or an eligible school believes are necessary and proper.

(5) "Dropout recovery educational services" refers to any services provided by an eligible school, as defined in IC 20-51-1-4.7, which are directly related to ensuring a student satisfies the graduation requirements contained in IC 20-32-4.

(6) "Eligible school" has the meaning set forth in IC 20-51-1-4.7.

(7) "Enrolled" refers to a student who remains registered with a school corporation or charter school while

attending a dropout recovery education service program at an eligible school offered by way of a contract between a school corporation or charter school and an eligible school under IC 20-31-8-4.6(a).

(8) "Public school" has the meaning set forth in IC 20-18-2-15.

(9) "School corporation" has the meaning set forth in IC 20-18-2-16.

(Indiana State Board of Education; 511 IAC 6.2-11-1)

511 IAC 6.2-11-2 Certain at-risk students not included in the calculation of school performance

Authority: IC 20-19-2-8; IC 20-31-8-4.6; IC 20-31-10-1

Affected: IC 20-19-2-10; IC 20-31-8

Sec. 2. For purposes of calculating the state category or designation of school performance under IC 20-31-8, a public school or charter school in which an at-risk student is enrolled shall exclude the accountability indicators of the at-risk student if:

(1) a school corporation or charter school, in which the at-risk student is enrolled, has entered into a contract with an eligible school to provide dropout recovery educational services to at-risk students; and

(2) the at-risk student attends an eligible school and receives dropout recovery educational services from that school for more than one-half (1/2) of the school year.

(Indiana State Board of Education; 511 IAC 6.2-11-2)

511 IAC 6.2-11-3 Graduation rate calculation

Authority: IC 20-19-2-8; IC 20-31-8-4.6; IC 20-31-10-1

Affected: IC 20-19-2-10; IC 20-26-13; IC 20-31-8

Sec. 3. For purposes of calculating a school's category or designation of school performance under IC 20-31-8, a public school or charter school in which an at-risk student is enrolled shall exclude at-risk students from the school's cohort, as defined in IC 20-26-13-2, and graduation rate, calculated pursuant to IC 20-26-13, if:

(1) a school corporation or charter school, in which the at-risk student is enrolled, has entered into a contract with an eligible school to provide dropout recovery educational services to at-risk students; and

(2) the at-risk student attends an eligible school and receives dropout recovery educational services from that school for more than one-half (1/2) of the school year.

(Indiana State Board of Education; 511 IAC 6.2-11-3)

511 IAC 6.2-11-4 Reporting of at-risk student data

Authority: IC 20-19-2-8; IC 20-31-8-4.6; IC 20-31-10-1

Affected: IC 20-19-2-10

Sec. 4. An eligible school providing dropout recovery educational services to at-risk students shall report at-risk student performance indicators, including graduation rate data for at-risk students, to the department of education and the school corporation or charter school in which the students are enrolled. The student performance indicators and graduation rate data shall be included in the data that the department of education issues in the state and local educational agency report cards pursuant to 20 U.S.C. 6311(h). *(Indiana State Board of Education; 511 IAC 6.2-11-4)*

Notice of Public Hearing