



INDIANA STATE BOARD OF EDUCATION

To: Indiana State Board of Education Members
From: Chad E. Ranney, Deputy General Counsel Indiana State Board of Education
Date: March 7, 2018
RE: The Independence Academy Waiver Request

I. Summary of the Applicable Law.

Pursuant to IC 20-51-4, certain nonpublic schools may qualify for choice scholarship funds. These qualifying schools are referred to as “eligible schools”.¹ However, eligible schools receiving choice scholarship funds that are placed in either of the lowest two grade designations in consecutive years will have their ability to receive choice scholarship funds suspended. Indiana Code 20-51-4-9(a) reads:

(a) Except as provided in subsection (b), the department shall enforce the following consequences for an eligible school that is nonpublic:

(1) If the school is placed in either of the lowest two (2) categories or designations under IC 20-31-8-3 for two (2) consecutive years, the department shall suspend choice scholarship payments for one (1) year for new students who would otherwise use a choice scholarship to attend the school.

(2) If the school is placed in either of the lowest two (2) categories or designations under IC 20-31-8-3 for three (3) consecutive years, the department shall suspend choice scholarship payments for new students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle category or higher category or designation, for two (2) consecutive years.

(3) If the school is placed in the lowest category or designation under IC 20-31-8-3 for three (3) consecutive years, the department shall suspend choice scholarship payments for new students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle category or higher category or designation, for three (3) consecutive years.

(4) Students who:

(A) are currently enrolled at a school described in subdivision (1), (2), or (3); and

(B) qualify for a choice scholarship for the upcoming school year; may continue to receive a choice scholarship at the school.

¹ IC 20-51-1-4.7

“Eligible school” refers to a public or nonpublic elementary school or high school that:

(1) is located in Indiana;

(2) requires an eligible choice scholarship student to pay tuition or transfer tuition to attend;

(3) voluntarily agrees to enroll an eligible choice scholarship student;

(4) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board;

(5) administers the statewide assessment program;

(6) is not a charter school or the school corporation in which an eligible choice scholarship student has legal settlement under IC 20-26-11; and

(7) submits to the department only the student performance data required for a category placement designation under IC 20-31-8-3.

Based on the language contained in IC 20-51-4-9(a), eligible schools are subject to three categories of consequences. Every category of consequence contains four stages: Earn, Learn, Turn, and Return.

<p><u>Earn</u></p> <p>The years the school <u>“earns”</u> the grades that result in choice scholarship suspension.</p>	<p><u>Learn</u></p> <p>The years a school <u>“learns”</u> that it has been placed in Category 1-3 of consequences.</p> <p>Alternatively, when the school <u>“learns”</u> that it has demonstrated sufficient improvement to be taken out of a consequence category.</p>	<p><u>Turn (away)</u></p> <p>The years during which a school’s ability to receive new choice scholarship students is suspended. Thus, the school must <u>“turn”</u> away new students.</p>	<p><u>Return</u></p> <p>The year when new choice scholarship students may <u>“return”</u> to the school.</p>
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Category 1 of Consequences

Year 1 & Year 2	Year 3	Year 4	Year 5
Any combination of D's or F's.	School receives a C or better.	School receives a C or better.	School receives a C or better.
School <u>“earns”</u> Category 1 of Consequences.	School <u>“learns”</u> that it received a second consecutive D or F and that its ability to receive new choice scholarship students will be suspended in Year 4.	As the school received a combination of D and F for two consecutive years (Year 1 and Year 2), the school must <u>“turn”</u> away new choice scholarship students during Year 4. Additionally, the school will <u>“learn”</u> that it received a C in Year 3 and will be able to accept new students in Year 5.	As the school received a C or better in Year 3, new choice scholarship students may <u>“return”</u> to the school.

Category 2 of Consequences

Year 1 & Year 2	Year 3	Year 4 & Year 5	Year 6	Year 7
Any combination of D's or F's.		School receives a C or better.	School receives a C or better.	School receives a C or better.
School <u>“earns”</u> Category 1 of Consequences.	School <u>“learns”</u> that it received a second consecutive D or F and that its ability to receive new choice scholarship students will be suspended in Year 4.	School <u>“learns”</u> that it received a third consecutive D or F in Year 3 and is placed in Category 2 of Consequences. Therefore, the school must <u>“turn”</u> away new choice scholarship students during Year 4 and Year 5.	The school will <u>“learn”</u> that it received a second consecutive C or better during Year 5, and will be able to accept new students in Year 7.	New choice scholarship students may <u>“return”</u> to the school.

Category 3 of Consequences

Year 1 & Year 2	Year 3	Year 4, Year 5, Year 6	Year 7	Year 8
Three consecutive F's		School receives a C or better.	School receives a C or better.	School receives a C or better.
School <u>“earns”</u> Category 1 of Consequences.	School <u>“learns”</u> that it received a two consecutive F's and that its ability to receive new choice scholarship students will be suspended in Year 4.	School <u>“learns”</u> that it received a third consecutive F in Year 3 and is placed in Category 3 of Consequences. Therefore, the school must <u>“turn”</u> away new choice scholarship students during Year 4, Year 5, & Year 6.	The school will <u>“learns”</u> that it received a third consecutive C or better during Year 6, and will be able to accept new students in Year 8.	New choice scholarship students may <u>“return”</u> to the school.

II. Requests to Waive or Delay Consequences.

During the 2017 legislative session, the Indiana General Assembly enacted P.L. 251-2017, which, in relevant part, permits eligible schools placed in one of the three categories of consequences to submit a request to the State Board of Education (“Board”) to waive or delay the consequences imposed under IC 20-51-4-9(a). Specifically, P.L. 251-2017 amended IC 20-51-4-9 to include the following provision:

(b) An eligible school may submit a request to the state board to waive or delay consequences imposed under subsection (a) for a particular school year. The state board may grant a request to an eligible school that requests a waiver or delay under subsection **if the eligible school demonstrates that a majority of students in the eligible school demonstrated academic improvement during the preceding school year.** A waiver or delay granted to an eligible school under this subsection is for one (1) school year only. An eligible school must make an additional request under this subsection to the state board to receive further delay or waiver of consequences imposed under subsection (a).

Thus, IC 20-51-4-9 now permits an eligible school to request the ability to avoid consequences and continue accepting new choice scholarship students, despite receiving consecutive D’s or F’s, if the school can show that a majority of the school’s students demonstrated “academic improvement during the preceding school year.” As of the date of this memo, the Board has not adopted a standard to determine if an eligible school has demonstrated academic improvement during the preceding year.

It is important to note that a waiver granted by the Board pursuant to IC 20-51-4-9(b) is for one year only and does not reset a school’s grades. If an eligible school that needs to achieve three consecutive C’s or better is granted a waiver, the school will need to continue requesting waivers until it receives the grades necessary to be taken out of the consequence categories contained in IC

20-51-4-9(a). For example, a school that receives three consecutive F's, could, in its 4th year, request and be granted a waiver. To be taken out of the consequence categories contained in IC 20-51-4-9(a), the school is still required to achieve a C or better for years 5 and 6, unless the school is granted additional waivers for each of those years.²

III. The Waiver Request.

On February 28, 2018, Independence Academy ("IA"), an eligible school under IC 20-51-1-4.7, submitted a revised waiver request to the Board pursuant to IC 20-51-4-9(b). IA is seeking a waiver for the 2018-2019 school year.

IA received an "F" for the 2015-2016 and 2016-2017 school years.³ Because IA has received an "F" for two consecutive years, the school's ability to receive choice scholarship funds for new students has been suspended. Absent a waiver or delay in consequences, IA's ability to receive choice scholarship funds for new students will remain suspended until the school receives a "C" or higher.⁴

IA, "a private day school for students in grades 5-12 with a diagnosis of high-functioning autism or Asperger's syndrome," does not dispute the fact that it received an "F" for the 2016-2017 school year. However, in its revised waiver, IA explains that during the 2016-2017 school year, "77% of IA's thirteen 6th-8th graders achieved typical or high growth in Math and English," and "considering that many students come to IA two to four grade levels behind their neurotypical peers, this progress shows promising results."

To further demonstrate "academic improvement," IA's revised waiver included data from the school's administration of the NWEA Measures of Academic Progress ("MAP") test. According to IA, "IA students exceeded projected growth rates in 8 out of 10, or 80%, of the testing sessions . . ." In addition, IA's revised waiver asks the Board to consider the increase in students making the school's "A" and "B" Honor Roll and the fact that students in all grades made "measurable progress on individualized social and emotional goals," as demonstrated by students' quarterly Progress Reports, which are tracked by each student's teachers.

After reviewing IA's revised waiver, the associated data, and information provided by the Indiana Department of Education, it has been determined that 66.7% of IA's students in grades 6 through 8 did, in fact, demonstrate typical or high growth in English/language arts. Further, 75% of the school's students in grades 6 through 8 demonstrated typical or high growth in mathematics. However, during the 2016-2017 school year, only 19 of the school's 40 students were enrolled in grades 6 through 8, and even fewer obtained a valid test results.

² This example assumes the school earned a "C" in year 4.

³ While IA does not dispute the fact it received an "F" for the 2015-2016 school year, IA does suggest the grade was based on inaccurate data. IA believes its 2016 graduation rate was actually 100%, not zero, as reported initially to the state.

⁴ See IC 20-51-4-9(a)(1).

Supplemental Data Submission: IA has provided the attached supplemental information. The supplemental information and revised waiver argues the school should be responsible for demonstrating academic improvement in a majority of its 32 students, not 40 students.

If the Board determines that IA has demonstrated that a majority of the school's students demonstrated academic improvement during the preceding school year, the Board may grant the school's waiver request.