March 10, 2022

Dear Chad,

Thank you so much for your ongoing support. Below are INPEA’s recommendations relating to Article 7 in light of the IDEA study that we recently completed and the United States Education Department’s revised [IDEA Equitable Service Guidance](https://sites.ed.gov/idea/idea-files/questions-and-answers-on-serving-children-with-disabilities-placed-by-their-parents-in-private-schools/#_Toc96077950,citem_342f-08a1) published last month.

1. **Recommendation #1-Revise the Child Count Language in the Indiana Code**

One of the most significant issues raised by INPEA’s statewide IDEA study was the discrepancy between the child count language in the Indiana Administrative Code as compared to the federal Individuals with Disabilities Education Act (IDEA). **511 IAC 7-46-1** provides that each public agency must annually count the number of students that are both eligible and receiving services as of December 1. In contrast, under IDEA, all eligible students are included in the child count regardless of whether or not they are receiving services. See **34 CFR § 300.133 (c)**. Similarly, in the recently revised equitable services guidance from USED, the Answer to **Question N-2** provided that all eligible parentally-placed private school students must be included in the child count, not just those students that receive services through an IEP or service plan. In the Answer to **Question N-3**, the guidance further clarifies that even students that decline the offer of services must be included in the count if they have been found eligible.

INPEA is concerned that as a result of the current language in Article 7, several groups of eligible parentally-placed private school students are being left out of the count because they are not currently receiving services from a school corporation. These groups include: (1) private school students that have declined the offer of special education and related services after an eligibility determination has been made; (2) choice scholarship students that have selected the choice school as the service provider; and (3) preschool students with disabilities that attend a preschool attached to an elementary school that are not receiving services from the local school corporation; and (4) students participating in an ESA program.

**We therefore recommend that 511 IAC 7-46-1 be amended** to state that all eligible students must be included in the December 1 child count. The language relating to receiving services should be deleted.

1. **Recommendation #2- Shift Current Practices Relating to Equitable Services for CSEP Students and Provide Training on Consultation Requirements**

Another question raised by the study was the effectiveness of consultation and the lack of opportunity for private school leaders to provide input regarding the expenditure of the federal proportionate share funds. In particular, private school leaders indicated that they were not able to provide input regarding which students received services since all parentally-placed private school students with disabilities have a right to services under 511 IAC 7-34-1 (d)(4). This lends itself to a blanketed approach in the provision of services.

This is also complicated by the language in **511 IAC 7-49-10 (c)** providing that school corporations are not required to serve choice scholarship students that have selected the choice scholarship school as the service provider. (This language is deleted in the proposed revisions to Article 7 but is still codified in **IC 20-51-4-4.5**.) As a matter of practice, students are asked to waive their right to receive services from their local school corporations if they elect to receive services from their choice school pursuant to a CSEP.

The revised IDEA equitable services guidance addresses the topic of state scholarship students in the Answer to **Question K-3**. It provides that states cannot condition the receipt of a state scholarship on the parent’s revocation of consent for special education services provided by the LEA as equitable services.

INPEA therefore recommends that the Department provide training to school corporations on the consultation requirement and the obligation to consider the needs of all eligible students including CSEP students and ESA students during consultation. Further, INPEA respectfully requests that IDOE work with local school corporations to shift the current practice of requiring CSEP students to waive their right to special education services.

1. **Recommendation # 3- Enforce State and Federal Private School Expenditure Requirements and Provide Training on these Requirements.**

Under IDEA, the state special education funds must supplement but cannot supplant the federal proportionate share funding. **34 CFR § 300.133 (d)**. The Answer to **Question D-4** of the revised IDEA equitable services guidance provides that a state may provide additional special education services using state or local funds, but these services cannot take the place of IDEA equitable services and the federal proportionate share must still be calculated and expended.

Indiana requires school corporations to also set aside a share of the *state* grant for services for parentally-placed private school students based on their child count numbers. See 511 IAC 7-48-3 (a) and (b). Moreover, the state law provides that the private school share of the state special education grant must be spent “exclusive of federal special education funds.” 511 IAC 7-48-3 (b). The Department is responsible for monitoring these expenditures and informing school corporation of any identified noncompliance and any necessary corrective actions. See 511 IAC 7-48-3 (f) and (g).

Taken together, these two requirements means that each school corporation must expend both a proportionate share of the federal and the state grant on services for parentally-placed private school students. Moreover, these funds are not interchangeable and must be separately accounted for. State special education funding cannot be used to replace federal special education funding (per IDEA) and federal special education funding cannot be used to replace state special education funding (per state law).

INPEA requests that IDOE monitor and enforce compliance with the state and federal law private school expenditure requirements. In addition, given the confusion in the field, INPEA requests that IDOE also provide appropriate training to school corporations on these requirements. This training should also cover the difference in allowable uses for these two funding sources since state funds may be used for child find activities per 511 IAC 7-48-3 (c)(1), while federal funds may not be used for this purpose per 511 IAC 7-34-7(i).

Last, INPEA would ask that IDOE recommend that school corporations share, during consultation, the amount of the private school state special education funding that is set aside for private school students. Although this is not currently required under state law, school corporations are required to share the federal proportionate share allocation with private school officials during consultation. 34 CFR 300. 134 (b). Sharing both the federal and the state funding available for special education services for private school students will create greater transparency regarding the required state and federal expenditures and will foster deeper collaboration between private school officials and school corporations.

Thank you for the opportunity to provide this input and thank you for all you do to support nonpublic school students. We welcome the opportunity for further dialogue on these recommendations as well as other actionable items coming out of the study. On behalf of all parentally place private school students, we greatly appreciate your collaboration.

Best regards,



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Executive Director

Indiana Non-Public Education Association