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An Inside Look at How Indiana Educrats Expand a Federal Law

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An Inside Look at How the Edu-Bureaucracy Quietly Expands the Requirements of the Federal Law for Individuals with Disabilities

I. Introduction

Does it make sense for government schools to expand their bureaucracy at a time of declining economic vitality in the state economy? It is curious that a significant expansion of Indiana's special education laws by the edu-bureaucracy is now occurring at a time when Indiana taxpayers are facing a property tax crisis. The edu-bureaucracy is about ready to dip deeper into the pockets of Indiana taxpayers. How can this be happening? This article will provide an inside look at how one special interest group works with government bureaucrats to expand educational benefits even in difficult economic times.

II. The Special Education Edu-Bureaucracy and Its Laws

Indiana's special education edu-bureaucracy consists of many players. It includes special education parents, lobbyists, providers of special education services, advocates, educators, and state department of education employees. Special education interest groups are well-organized political machines and have already achieved over the past 30 years many political wins and gains both on the state level and the national level for the people they represent.

What have these political machines accomplished? First, they achieved the passage of the Individuals with Disabilities in Education Act, the federal statute governing special education services in the nation's public and private schools.¹ This statute is a whopping 405 pages long in the United States Code Service! Even without the annotations, it is 173 pages long...single spaced. The political machine has also achieved the passage of lengthy federal regulations adopted by the United States Department of Education to assist the federal government in enforcing and implementing the statute.² These federal regulations are 307 pages long...single spaced!

With the passage of the federal law, the Indiana General Assembly felt it was necessary to jump into the act of regulating special education in Indiana's public and private schools. The Indiana legislature has added to the pile of laws governing special education by passing 181 statutes dealing with special education, about 53 pages worth...single spaced.³ The Indiana State Board of Education has also entered into the special education compliance business. The State Board passed its own version of IDEA called Article 7 which was last updated in 2002.⁴ These rules are 98 pages long...single spaced.

Thus, Congress, the United States Department of Education, the Indiana General Assembly, and the Indiana State Board of Education have enacted laws totaling 531

pages...single spaced, to govern special education in public and private schools in Indiana. But they are not done. The U.S. Congress in 2004 passed the Individuals with Disabilities Education Improvement Act (IDEIA).⁵ In response to the new IDEIA, staff members of the 30 employee Indiana Department of Education's Division of Exceptional Learners have been meeting for almost two years with the 24 member State Advisory Council on the Education of Children with Disabilities to rewrite the State Board of Education's Article 7. The proposed rewrite, with comments, is 184 pages long...single spaced!

How can all this happen? Why is there a continual expansion of the laws and regulations governing educational services for Indiana's disabled children? One answer is that the State Advisory Council on the Education of Children with Disabilities is full of special education advocates, service providers, and special education parents.⁶ Both sides of the current discussion of the revision of Article 7, the Division of Exceptional Learners and the Advisory Council, consist of educators and special education advocates. Where are the representatives of the business community? Where are the representatives of taxpayer groups? There are none required by Indiana statute. If one examines the membership of the advisory council as posted on the Department of Education's web site,⁷ it does not appear that there are any members from the business community or any members whose primary interest would be to contain costs.

The almost two-year Article 7 revision process is yet another example of how long the government bureaucracy takes to implement change. However, this is not the major problem. The revision process is being done publicly, but is not transparent. First, who is revising Article 7? The answer is that the special education interest group is in complete control of the process. Business and taxpayer representatives simply are not part of the process. The edu-bureaucracy is rewriting Article 7, not Indiana taxpayer representatives.

Further, if a person other than an informed educator or special education advocate would try and find out what is going on in the Article 7 revision discussions, the Department of Education has made it very difficult to obtain the information. Nowhere does this information appear on the "Hot Topics" or "Current News" on the home-page of the DOE web site. In fact, one would have to go the DOE home page and make no less than four clicks of pull-down menus, and make a wild guess by choosing among dozens of options.⁸ Thus, the information needed is buried well in the abyss of the DOE web site. The citizens of Indiana will be well served by a process that is more inclusive of all Indiana citizens and one that is much more transparent than currently exists.

III. Indiana's Proposed Rewrite to Article 7 Expands the Federal Law

What is little known outside of the edu-bureaucracy is that the Article 7 revision, if accepted by the State Board of Education, will have many areas that will have expanded the requirements of the IDEIA. Thus, *Indiana will end up with many more regulations that expand the scope of the federal law.* The current Article 7 is also being expanded by the proposed rewrite. Here are 25 examples of that expansion:

1. **FAPE Until Age 22 Required.** Under the current Article 7, schools were required to serve students and provide them with a free and appropriate education (FAPE) until graduation, withdrawal from school, or until the student reaches age 22, whichever is first. Under the proposed rewrite, the student may continue until the end of the school year during which the student reaches age 22. When age 22 becomes the standard, how long will it be until we see the end of the school year that the “child” reaches age 23, and 24, and so on?

2. **Choice of Who Can Evaluate Eliminated.** For students who attend non public schools outside their own school corporation in which they have legal settlement, parents under the proposed rewrite of Article 7 can require either the school corporation within which the private school is located, or the school corporation of legal settlement (the student’s own resident school corporation) to conduct an evaluation of the student. Comments to the federal regulations state that the local school corporation (of legal settlement) may assume the responsibility itself, contract with another public agency, or make other arrangements to have the evaluation performed.⁹ The proposed Article 7 would eliminate the option for schools to have the discretion to enter into agreements with neighboring public schools to coordinate evaluation services.¹⁰

3. **Offering of More Government Services Required.** The change of one word can lead to a significant expansion of the government schools’ services, and lead to more costs for the taxpayers. IDEA provides that special education and related services will be *apportioned* if federal funds are insufficient to serve all parentally placed private school children.¹¹ The proposed Article 7 requires that special education and related services will be *offered* to all nonpublic school students with disabilities if the proportionate amount of federal funds is insufficient to serve all nonpublic school students with disabilities.¹² Thus, Article 7 as proposed will require the expenditure of more Indiana taxpayer funds than required by the federal government.¹³

4. **Additional Consultation and Collaboration Services Required.** The proposed Article 7 requires consultation and collaboration services be provided to parentally placed students in nonpublic schools who are eligible for special education and related services. These services include, *but are not limited to*, the following:

- (a) development of a service plan;¹⁴
- (b) periodic communication between the teacher of record and the nonpublic school regarding the goals contained in the student’s service plan;
- (c) periodic reports from the teacher of record to the student’s parent specifying how the student is progressing toward the goals contained in the student’s service plan;¹⁵ and
- (d) collaboration, which may include opportunities for professional development on a variety of topics listed in proposed Article 7.¹⁶

IDEA has no comparable provision requiring these services to non public school students. This proposal will cause significant paperwork and will require a considerable expenditure of time by public school personnel. The more paperwork, the higher the personnel cost as more people may be employed than otherwise necessary. A high paperwork burden can also shift the time and attention of special education teachers from teaching to paperwork compliance.

5. More Litigation Likely over Issue of Proper Support for School Personnel.

Federal law requires each school district to carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing Sec. 300.114 and are provided with technical assistance and training necessary to assist them in this effort.¹⁷

Proposed Article 7 adds the requirement that schools must provide the necessary knowledge and skills to implement each student's individualized education program.¹⁸ Proposed Article 7 would also require that a student's case conference committee must consider whether any "support" is necessary to provide school personnel with the knowledge and skills necessary to implement the student's individualized education program. If the case conference committee determines that "supports" are necessary the committee must document the types of supports that will be provided and the general intent of the supports, which can be related to school personnel, the student, or both.¹⁹ Despite the numerous definitions contained in proposed Article 7, nowhere does it define what "supports" are. It is not clear whether this is a back door attempt to get training in as a requirement, but it does appear to do so. Given that nearly all of the due process hearing requests filed by parents' attorneys seek review of whether school personnel are properly trained, inserting this language is very problematic for schools. This proposed addition may increase the costs of litigation and result in case conference committees being in control of staff development. They may require the school to spend money that it may not have for staff development.²⁰

6. Advisory Councils "Encouraged". Proposed Article 7 states that school district's are "encouraged" to establish a local parent advisory council with the goals of "supporting" student and family membership in the school community, inviting parents of students with disabilities to "participate" on school decision making committees, and fostering "effective communication" with families focused on student learning and developing.²¹ There is no comparable language in the federal law and parent advisory councils are not required or encouraged. It would not be good public relations for the school district to refuse to establish such a council. The council can and will likely serve as an effective lobbying group at the local level may well end up asking for more and more government services paid for by Indiana taxpayers. Thus, if the special education lobby group can't accomplish everything it needs at the state level, perhaps they can bring pressure to bear on local school leaders to get what they want.

7. Instructional Space and Emergency Plans Regulated. Proposed Article 7 regulates the amount of instructional space a school is to provide for special education students.²² It also regulates the development of emergency preparedness plans.²³ There is

no federal comparable language in IDEA.²⁴ The potential problem of such language that appears to be innocuous is that it is micromanagement of school operational details and presents more procedural issues with which schools must comply. This entangles schools in more potential litigation over an area that is not mandated by the federal law.

8. **Copy Fees For Educational Records Prohibited.** IDEA allows the school to charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.²⁵ Proposed Article 7 expands the federal law by requiring free copies of a student's educational evaluation report or individualized education program to be provided to parents.²⁶ Although this is not a great cost item to a school, this is yet just one more example of how the department of education micromanages schools and how the special education interest group has nickled and dimed the government for more benefits.

9. **Required Response to Intervention Expanded.** Although proposed Article 7 doesn't require the schools to establish and maintain an integrated and focused system of prevention, assessment, intervention, problem solving, and referral for students who are experiencing problems that adversely affect educational performance, the State Board of Education has required this under its rule.²⁷ When the school assesses the student's response to scientific, research-based intervention the proposed language requires a detailed and lengthy notification to parents that includes

- (a) DOE's policies regarding the amount and nature of student performance data that will be collected and the general education services that will be provided;
- (b) strategies for increasing the student's rate of learning; and
- (c) the parent's right to request an educational evaluation to determine eligibility for special education and related services.²⁸

It is helpful to compare the requirements of the proposed Article 7 and the federal regulations.²⁹ The federal regulation is a mandate for schools to do "response to interventions" (RTI) for students suspected of having a learning disability. Where proposed Article 7 expands the required RTI is the reference under the proposed Article 7 to another state board of education regulation in Article 4.³⁰ What is incorporated by reference (Article 4) is much broader than the federal RTI requirements. Article 4 requires schools to provide "student assistance services" which includes certain prevention, assessment, intervention, and referral activities for all students. The intervention activities include providing brief individual and group counseling to students and families who need help with personal concerns or developmental problems, and providing consultation services to school staff and parents regarding strategies for helping students cope with personal and social concerns.³¹ The requirements concerning prevention, assessment, intervention, and referral services have nothing to do with what the current research suggests is needed for RTI for students with learning disabilities.

Yet there are more big changes to this section. Article 7 currently provides that schools may use the student assistance services provided under 511 IAC 4-1.5-5 to determine if a student responds to scientific, research-based instruction in the areas of academic, social-emotional, and behavioral domains. (Again this is a broader focus than defined by IDEA.) The integrated and focused system must include the following:

- (1) Appropriate instruction delivered with documented fidelity, as defined in 511 IAC 7-32-42, to all students in the general education class by qualified personnel.
- (2) Screenings of all students in a general education class using valid and reliable tools to identify students not making progress at expected rates.
- (3) Instruction matched to student need with increasingly intense levels of targeted intervention and instruction for students who do not make satisfactory progress toward age appropriate behaviors or grade level standards.
- (4) Repeated assessments using reliable and valid tools to measure student achievement, which should include reliable and valid curriculum based measures to determine if interventions are resulting in students progressing toward age appropriate behaviors or grade level standards;
- (5) The utilization of student progress monitoring data to make educational decisions regarding the establishment or revision of any or all of the following:
 - (A) Instruction.
 - (B) Instructional targets.
 - (C) Interventions.
 - (D) Referral for an educational evaluation to determine eligibility for special education and related services.
 - (E) Individualized goals.³²

This language seems to mandate specific components of the focused and integrated system that are not mandated by the IDEA. There is also interesting language about the notice that must go out to parents. The IDEA suggests that notice must go out if the student participates in the RTI and that the notice would include: (a) the instructional strategies used and the student-centered data collected; and (2) the documentation that the child's parents were notified about (A) the DOE's policies about the amount and nature of the student performance data that would be collected and the general education services that would be provided; (B) strategies for increasing the child's rate of learning; and (C) the parents' right to request and evaluation.³³

The proposed Article 7 then requires an explanation not found in the federal regulations. Section (5)(D) requires an explanation about the school needing to request an evaluation if the student fails to make progress as "determined by the parent and public agency...", and that the school will provide a written notice before requesting parental consent for an evaluation (which must be done in *twenty* school days). Nowhere is there any comparable

timeline like this under federal law. The only time the federal law requests expedited evaluations is for situations where discipline is involved.

There is no parallel federal language in IDEA. IDEA only contemplates a response to the intervention as a pre-referral activity for students with a suspected learning disability.³⁴ The proposed language simply offers more procedural issues that can entangle schools in more litigation that ends up costing Indiana taxpayers more and more money.

10. Five Day Timeline for Notice Regarding Educational Evaluation Imposed.

Proposed Article 7 provides that a school has only five instructional days after a parent makes a request for an educational evaluation to provide the parent with a written notice that must include:

- (a) a statement that the school is proposing or refusing to conduct the educational evaluation, and a description of each evaluation procedure, assessment, record, or report the school used as a basis for proposing or refusing to conduct the educational evaluation;
- (b) a description of other factors relevant to the school's proposal or refusal to conduct the educational evaluation;
- (c) a description of any evaluation procedures the school proposes to conduct; and
- (d) the parent's right to contest the school's decision to refuse the evaluation by requesting mediation or a due process hearing.

There is no five-day timeline in IDEA. More importantly, five instructional days is insufficient time for information to be gathered, collected, analyzed, and be reduced to writing when determining what testing may or may not be needed. The focus should be on quality - not speed or quantity.

11. Time for Initial Educational Evaluation Reduced. Current Article 7 allows a school *60 instructional* days after the date written parental consent is received to conduct an initial educational evaluation and convene a case conference committee.³⁵ The proposed Article 7 reduces the number of days to *45 instructional days*.³⁶ The federal law permits states to establish their own timeline for this initial evaluation.³⁷ To shorten the timeline by 20 instructional days (a 33% reduction in time) will create undue pressure on local school personnel to merely do a quick and dirty initial evaluation. The focus should be on obtaining accurate data for the evaluation. Quality not speed should be the goal in order to benefit the child in the long run. This reduction in time will also compromise the school staff's ability to develop defensible individual education programs, which will likely lead to more protracted and costly litigation at the expense of taxpayers' wallets. This significant reduction is particularly problematic for schools given the severe shortage of school psychologists. This reduction may even lead to the

employment of more psychologists, thus increasing costs to Indiana taxpayers, assuming that they can even be found.³⁸

12. **Multidisciplinary Team Must Compile Findings Into Report.** After an educational evaluation has been completed, proposed Article 7 requires a single multidisciplinary team to compile the findings of the team into an educational evaluation report.³⁹ There is no comparable language in IDEA. This simply is more bureaucratic paperwork and is an unnecessary step that places further pressures on the school staff to timely complete a thorough initial evaluation, particularly given the fact that many specialists are often involved in the assessment, such as speech therapists, school psychologists, occupational therapists, educational diagnosticians.

13. **50 Instructional Day Timeline Effectively Reduced to 45 Instructional Days.** As a typical example of how the edu-bureaucracy hands down its rules, they are in the proposed provision to Article 7 playing the game “now you see it... now you don’t.” The proposal requires a pre-case conference meeting, if the parent requests a meeting within five instructional days prior to the case conference meeting. This preliminary meeting is to have the results of the evaluation explained prior to the scheduled case conference committee meeting. The school must arrange a meeting with the parent and an individual who can explain the evaluation results. Of course, the parents receive a free copy of the educational evaluation report at the expense of Indiana taxpayers. This pre-meeting effectively reduces the proposed 50 instructional day timeline to 45 instructional days.⁴⁰ There is no comparable language in IDEA.

There is another concern. This requirement may run afoul with the IDEA. The comments to the federal regulations state that the IDEA regulations “require that a group of qualified professionals and the parent determine whether the child is a child with a disability. Therefore, providing documentation of the eligibility determination to a parent prior to a discussion with the parent regarding the child’s eligibility would indicate that the public agency made its determination without including the parent and possibly, qualified professionals, in the decisions.”⁴¹ Indiana requires the eligibility determination to be made by the case conference committee. Thus, having a meeting in advance of the case conference would result in a procedural error because eligibility would be construed as predetermined in advance of the case conference. Alternatively, under federal law, there is not a requirement for the IEP team or the case conference team to make eligibility determinations. Those can be made by a group of qualified professionals and the parent. The Council seems to want it both ways in some odd sort of way. Do we want it like we always have done it or do we want to do it like it is intended under the federal law? As proposed it does neither.

14. **Re-evaluation Cannot Occur Without Consent of Parents.** Current Article 7 provides that parental consent is not required to review existing data as part of a reevaluation.⁴² The proposed Article 7 requires the consent of the parents before the school can review the existing data.⁴³ Thus, the discretion to review the data if the school believes it to be appropriate is taken away regardless of the reasonableness of the parents’ position. There is no comparable federal law provision.

15. Case Conference Committee Must Convene Within 10 Instructional Days After Enrollment. The proposed Article 7 requires that schools convene the case conference committee within 10 instructional days of the enrollment date of a student who has been receiving special education in another state or another district within the state.⁴⁴ Schools must obtain from the previous school a copy of the student's prior IEP and evaluation and then hold the case conference to decide how the new school will implement the new IEP. To comply with this rule the new school must rely on the cooperation of a third party, i.e. the previous school. This is particularly problematic when the new school must deal with large urban out-of-state school districts. Other schools at the beginning of the school year may not send the information needed within the time frame, due to their being busy dealing with the start of their school year. Getting records is difficult and can easily result in noncompliance - not a good way to start a solid client relationship between the new school and the student and his or her parents.

16. School Cannot Revise the IEP Without Parent Consent. Under the proposed Article 7, if the parent of a student refuses to consent to a revised individualized education program that changes the student's placement along the continuum of placement options set forth in the Indiana State Board of Education's regulations, the school cannot implement the revised individualized education program. Instead, the school may initiate mediation or request a due process hearing.⁴⁵ This provision is applied regardless of the urgency of the needed revision of the individualized education program. Having this requirement in Article 7 will cause schools to negotiate educational services with parents and will likely result in inappropriate IEP's that are not defensible from an educational viewpoint. These IEP's may not be based upon scientific research. How many schools will "compromise" their professional beliefs just to get the parents off their back and avoid mediation or costly litigation? The proposed language creates even more opportunity for possible disputes between the parents and the school and will be an invitation to even more litigation than now exists. There is no comparable federal law requiring this action.

17. Instruction for Students with Injuries and Temporary or Chronic Illness Required. Both current and proposed Article 7 require schools to provide instruction to all students with injuries and temporary or chronic illnesses that preclude their attendance in school for at least 20 instructional days, *including students who are not eligible for special education and related services.*⁴⁶ These instructional services are not required by IDEA as IDEA does not apply to students who are not disabled. Complaint investigators have ordered schools to provide costly compensatory education for lack of compliance to this section.⁴⁷ This represents yet another way that the Indiana special education interest groups have successfully lobbied for and have achieved additional services not required by federal law, all at the expense of Indiana taxpayers.⁴⁸

18. Hiring of Special Education Directors Required. Indiana law requires the hiring of a special education director for every school district or every special education cooperative. The number of full-time equivalent (FTE) special education administrators increased 12 percent during the 2001-2005 interval, from 383 in 2001 to 429 in 2005.⁴⁹

These are highly paid central office administrative jobs. The average compensation per FTE administrator in 2001 was \$75,249 rising to \$80,489 in 2005.⁵⁰ Using the \$80,489 average compensation for school year 2004-2005, the total compensation cost to Indiana taxpayers for special education administrators for school year 2004-2005 was \$34,529,781.

Thus, Indiana is paying tens of millions of dollars each year for employment positions whose main responsibility is to serve as the district's compliance officer to make sure the district follows the 531 pages of statutes and regulations that govern special education, as well as the thousands of pages of administrative agency and court decisions that also regulate special education. However, as long as the government continues to insist to micro-manage special education by passing more and more laws with more and more regulations, that end up with more and more administrative agency and court litigation to interpret these laws and regulations, there indeed is a need for special education directors and their compliance role. There is no federal law requiring the employment of special education directors.

19. **State Financial Support for Intensive Services.** To the extent that state funds are appropriated, the department of education is authorized to provide indirect financial support to school districts by paying the excess costs of educating students whose educational needs require intensive special education and related services that are beyond both the school district's continuum of services and the services available through other public funding sources including Medicaid. Intensive services include a public or nonpublic residential program when services in a residential setting are necessary for the student to benefit from special education. Intensive services may also include nonresidential services necessary to enable the student to remain in the community without resorting to residential placement, or to return to the local community without resorting to residential placement, or to return to the local community from a residential placement.⁵¹ It is interesting to note that despite the detail included in the DOE's 51 page financial report set out in their web site, there is no mention as to how much residential placements are costing Indiana taxpayers.⁵² The state budget for the cost of such services described in this paragraph in fiscal year 2006-2007 is \$24,750,000.⁵³ In some cases the level of care exceeds federal requirements while in other cases those on waiting lists receive no care at all.⁵⁴ There is no comparable language in IDEA or the federal regulations.

20. **Comprehensive Plans Required.** Under Indiana law school districts must file with the Indiana Department of Education's Division of Special education a current comprehensive plan specifying how the school district will provide special education and related services in accordance with Indiana's special education rules. The school district must also obtain approval for the division of special education prior to implementing a proposed change to a comprehensive plan that involves certain restructurings.⁵⁵ There is no comparable requirement in IDEA or the federal regulations.

21. **Medication Administration Controlled.** Under IDEA, schools are prohibited from requiring a parent to obtain a prescription for medication for a student as a condition

for attending school, receiving an educational evaluation, or receiving special education and related services. The proposed Article 7 contains this provision but expands IDEA by incorporating other state law requirements pertaining to the administration of medication. Those requirements include, among other provisions, that:

- (a) A school or school board may not:
 - (1) require a teacher or other school employee who is not employed as a school nurse or physician to administer certain medication, drugs, or tests described in statute or administer health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes; or
 - (2) discipline a teacher or other school employee who is not employed as a school nurse or physician and refuses to administer medication, drugs, or tests without the written authority of a pupil's parent or guardian or order of a practitioner required under statute or who refuses to administer health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes.⁵⁶
- (b) The school must keep on file the written permission of a pupil's parent or guardian and the written order of a practitioner.⁵⁷
- (c) If a school employee is not a practitioner or an individual licensed under statute and is responsible for administering injectable insulin or a glucose test by finger prick, the employee must obtain from a practitioner or a registered nurse licensed under statute the training that the practitioner or registered nurse determines is appropriate for providing the service; and before the school employee provides the service, the school must have on file a written statement from the practitioner or registered nurse that indicates the school employee has received the training required under this section.⁵⁸

Many of these requirements are in place for all students, so one could wonder why these requirements are duplicated here. This has just added to the procedural requirements and compliance mechanisms that schools must comply with under the special education laws. Article 7 should be reserved for issues specific to special education programs as intended by the IDEA.

22. **Transition Planning Age Reduced.** The latest revision of IDEA changed the age at which transition planning for life after high school begins from 14 to 16 years of age. However, proposed Article 7 reduces the age that transition planning must begin to age 14. Thus, more time will be spent at a younger age planning for the transition. Surely two years (or more) of transition planning is sufficient. Do children really need four (or more) years of transition planning for life after high school? Some students age 14 are still in

middle school. It would make more sense to make this requirement after they enter high school. Also, most high school freshman are taking the same basic courses and don't select many electives or vocational education courses until their junior year. Why bump this up for special education students? This requirement simply adds to the personnel costs of schools, making them cost even more to the taxpayers.

23. Additional Meeting Required Prior to Case Conference Meeting Held to Review an Evaluation. Proposed Article 7 requires the school to hold a meeting upon a parent's or an emancipated student's request for a meeting prior to the first case conference meeting. This pre-case conference meeting must take place no less than five instructional days prior to the first case conference meeting. It is stated in the proposed rule that this meeting is to allow the parent and student to have the results of an educational evaluation explained to the parent and student. But can't this be done in the first case conference meeting? The more meetings teachers and school leaders are compelled to attend the less time there is available for student instruction and planning for instruction. These meetings are often held with the school psychologist. Thus, this additional meeting takes time that is needed to comply with the shortened timeline to evaluate students, to test students, to compile a report with other evaluators, attend case conferences, prepare the school's response to a request for an evaluation, and to assist with responses to interventions.

The federal regulations permit schools to give notice of the meeting by electronic mail if the public agency makes that option available. This had been in an earlier version of proposed Article 7.⁵⁹ This would include placing a copy of procedural safeguards notice on a school's web site. Notices of procedural rights have to be sent with an initial referral for evaluation upon receipt of a due process request, and must include IDEA discipline procedures. These procedural rights are over 10 pages. Schools also have to give notice of proposals to change identification, evaluation, or educational placement. The Council seems to be eliminating what the federal law is providing as an option to local schools. Many communications with parents and school staff is via email, yet the Council is eliminating this means to serve parents with notices via electronic mail.

Yet there is another change that exceeds the federal requirements - who has to be at a case conference. The only participants under federal law that have to be at a case conference are the child's special education teacher, a general teacher, a person who is qualified to either provide or supervise special education, and the parent. When there is an evaluation, the case conference must also include a person who is qualified to interpret the educational implications of test data. However, Article 7 requires other participants depending on the purpose. The proposed Article 7 seeks to add yet another: a person from the alternative school when that option is being reviewed. This makes little sense. Often when options like this come up the building principal has a very good idea about how to speak to this option. Stopping a case conference or dragging another person in may be a waste of the public's resources. Case conferences already absorb much time and cause teachers to be out of the classroom much too often.

24. **Additional Services Not Related to Disability.** Here is another brewing dispute. Under proposed Article 7-42-6(d) schools will be mandated to provide special education services that do not stem from the child's disability. Thus, if a child might have some areas of problems that are typical of his age but not related to his disability, there is a pedagogical question as to whether or not the school has to provide services not stemming from the disability. The advisory council seems to want to end this debate with 7-42-6(d). This is problematic for schools. For example, is a child who only has speech problems entitled to the expensive services of occupational therapy or physical therapy when it is not related to her disability? The proposed Article 7 requires special education services "regardless of the child's identified disability." This is a new section that was not found under the previous Article 7. Nor are these additional services required by federal law.⁶⁰

25. **"Optional" Training.** Proposed 50IAC 7-40-2(c) appears to make RTI training optional by the school. However, forever schools have used a discrepancy model to determine whether a student was LD or not.⁶¹ The federal law now prohibits schools from using the discrepancy model alone. But a state can go to a RTI model alone for determining eligibility, or use the RTI model with the discrepancy model. It appears that with the new proposed Article 7 the State may not timely be announcing that schools will use only a RTI model. This may throw schools into chaos. Many schools simply aren't ready and aren't going to be ready by fall 2008 to implement this change. This may result in a free- for-all with parent advocates and cause unnecessary conflict and litigation.

IV. Conclusion

The special education edu-bureaucracy consists of many persons who have no responsibility for assuring taxpayers that their funds will be spent effectively and frugally. This special education interest group in Indiana is making decisions that will cause the expenditure of additional taxpayer funds beyond that required by federal law. Nowhere is the old adage more true that "it's easy to spend other peoples' money" than the special education interest group that continues to look for ways to expand the services provided by Indiana's government schools.

Not all the changes and expansions of the federal law are necessarily bad or imprudent. Some are even of minor cost consequence. Many would be done by teachers and school leaders even if not mandated by the bureaucracy. However, what is important to understand is the extent of the top-down management style that pervades the area of special education. Local control of special education by school boards, local school leaders, and teachers is a myth. The system is a highly regulated bureaucratic system with a heavy bent toward conflict and litigation. This is evidenced by the 858 due process complaint investigations conducted by the DOE since year 2000,⁶² and the 98 formal due process hearings before the Board of Special Education Appeals held since 1997. There also has been numerous court cases in Indiana over special education disputes.

As further evidence of this characterization of Indiana's special education governance system, one only need remember the 531 pages of single spaced highly technical laws

passed by Congress and the Indiana General Assembly, with the able aid of the United States Department of Education and the Indiana State Board of Education, all of which not only govern special education, but do so in such detail that the only terms that can be used to describe the system of governance are scientific management⁶³, bureaucratic⁶⁴, and micromanagement.⁶⁵

The edu-bureaucracy's efforts to expand the requirements of the federal law governing special education is particularly difficult to understand in light of the federal requirement that *states are to minimize the number of rules, regulations, and policies* to which the local educational agencies and schools located in the State are subject under the federal IDEA law.⁶⁶ If the edu-bureaucracy argues, as they apparently are, that the proposed Article 7 complies with IDEA's intent that states must *minimize* the number of rules, regulations, and policies that govern the State's special education programs and the professionals who serve students in these programs, perhaps its time for the edu-bureaucracy to be asked to define the word "minimize."

The sad part of all this government regulation, is the message the government schools sends to its hardworking teachers and school building leaders. The message is that "we don't trust you to do what's in the best interest of disabled children." This is demoralizing to them and treats them as uncaring and unskilled workers. This writer has seen countless special education teachers performing their classroom teaching services. These people are saints. All, or nearly all, are competent and caring professionals who have been robbed of the opportunity to use their professional judgment and creativity to a large extent. They worry constantly about compliance with all of the laws that have been handed down from upon high and expend much energy and time in their compliance activities. Instruction and planning for instruction become secondary to compliance. Special education teachers have the most difficult and heart-wrenching jobs in public education. It's too bad the U.S. Congress and the Indiana General Assembly don't want to unleash the power of their passion that they have within them, drawing out their enthusiasm, creativity, and rekindling their desire for innovation in an effort to continually improve their services for this special group of children entrusted to them.

But the system does not have to be like it is. It doesn't have to be an adversarial system pitting teachers and school leaders against their clients – the students and their parents whom they serve. The highly regulated bureaucratic system governing Indiana special education does not have to exist to the detriment of students, parents, teachers, and school building leaders.

A simple and easy reform that would allow teachers and school building leaders to take off their compliance cloaks and put on their new professional cloaks is to do away with nearly all of the statutes and regulations that micromanage special education, and put in the hands of parents a meaningful opportunity to select their children's schools along with the weighted school funding formula. How would parents react if they had the power of choice and could select their children's schools? What would our schools' look like and be like when teachers and school leaders shed their compliance roles, no longer work in an adversarial atmosphere, and devote their entire energy to serving their clients

in the best way their professional judgment allows? Serving their clients to their highest abilities would become job number one. Their jobs would depend on it. Teaching could again become fun!

¹ 20 USCS §§ 1400-1491.

² 34 CFR Parts 300 and 301. Federal Register Vol. 71, No. 156, Monday, August 14, 2006.

³ See. I.C. 11-10-5-1; I.C.20-18-2-9; I.C. 20-19-2-16; I.C. 20-20-34-1—3; I.C. 20-21-1-1—6; I.C. 20-21-2-1—13; I.C. 20-21-3-1—11; I.C. 20-21-4-1—3; I.C. 20-22-1-1—6; I.C. 20-22-2-1—13; I.C. 20-22-3-1—11; I.C. 20-22-4-1—3; I.C. 20-28-1-9; I.C. 20-28-1-11; I.C. 20-35-1-1—7; I.C. 20-35-2-1; I.C. 20-35-3-1; I.C. 20-35-4-1—12; I.C. 20-35-5-1—17; I.C. 20-35-6-1—2; I.C. 20-35-7-1—11; I.C. 20-35-8-1—2; I.C. 20-35-9-1—9; I.C. 20-35-10-1—10; I.C. 20-40-4-1—5; I.C. 20-43-7-1—8; I.C. 20-46-2-1—4; I.C. 21-13-2-1—15.

⁴ 511 IAC 7-17—31.

⁵ 20 USCS §§ 1400-1491.

⁶ I.C. 20-35-3-1 requires the state superintendent to appoint at least 17 members to the state advisory council on the education of children with disabilities. The council, among other duties, is to provide policy guidance concerning special education and related services for children with disabilities. The statute requires three general conditions for members of the council: (1) they be citizens of Indiana; (2) they be representative of the state's population; and (3) *they be selected on the basis of their involvement in or concern with the education of children of children with disabilities* (emphasis added). A fourth major requirement for the council membership is that a *majority of the members must be individuals with disabilities or the parents of children with disabilities* (emphasis added). Finally, the statute requires that members must include: (1) parents of children with disabilities; (2) children with disabilities; (3) teachers (author's note: who undoubtedly will generally be special education teachers); (4) representatives of postsecondary educational institutions that prepare special education and related services personnel; (5) state and local education officials; (6) administrators of programs for children with disabilities; (7) representatives of state agencies involved in the financing or delivery of related services to children with disabilities; (8) representatives of nonpublic schools and freeway schools; (9) one or more representatives of vocational, community, or business organizations concerned with the provision of transitional services to children with disabilities; (10) representatives of the department of corrections; and (11) a representative from the Indiana School for the Blind and Visually Impaired board and a representative from the Indiana School for the Deaf board.

⁷ DOE's web site that lists the current members of the state advisory council can be found at <http://doe.state.in.us/exceptional/advisory/welcome.html>. None appear to be representatives of business or taxpayers. All appear to be special education advocates.

⁸ To find information about the Article 7 rewrite process, first go to <http://www.doe.state.in.us/welcome.html>. Then on that page go to the pull-down menu called "Programs and Services" and click it, which will take you to <http://www.doe.state.in.us/htmls/divisoin.html>. On this page scroll down to list under the "Center for Community Relations and Special Populations and click on the "Division of Exceptional Learners." This will take you to <http://doe.state.in.us/exceptional/welcome.html>. Click on "Special Education" which will take you <http://www.doe.state.in.us/exceptional/advisory/welocme.html>. At the top you will have a choice to click on "Update on the Rewrite of Article 7" or the Proposed Article 7 Language That Has Received Final and/or Preliminary Approval from the State Advisory Council." Both of these will provide information about the Article 7 rewrite. Thus, this is how you find it if you don't know where to go when you find the DOE web site.

⁹ 71 FR 46592.

¹⁰ See 34 CFR . §300.131 and comments to federal regulations at 71 FR 46592; See proposed 511 IAC 7-34-3(b)(3) and (d)

¹¹ 34 CFR 300.134(d).

¹² Proposed 511 IAC 7-34-4(c).

¹³ The argument that the edu-bureaucrats make in support of this expansion of the federal law is that schools get additional pupil count revenue from the state and which are the Indiana tax dollars of Indiana for

servicing special education students in private schools. The edu-bureaucrats argue that the state must make sure that schools aren't getting a "wind fall" by counting these students, then minimally serving them up to the federal proportionate share, and pocketing the state tax dollars. However, this argument does not account for the dollars spent by local schools for services that cannot be calculated into the proportionate share of dollars. Such services that have to be absorbed by the school are the evaluations of children in private school (see above example 2), transportation to special education services, administrative costs, and supplies because there are not state or federal dollars earmarked to these services.

¹⁴ It may be argued that this is inferred by the federal regulations.

¹⁵ While it could be argued that this service is also inferred by the federal regulations, here is another artful, yet subtle, word change from the proposed Article 7 from the federal law. Under 34 CFR 300.138(b) schools must provide a service plan that has all the requirements of an IEP (34 CFR 300.320) which includes a statement of how the student is progressing toward goals. The federal regulation specifically states, "The service plan must, *to the extent appropriate* – (i) meet the requirements of 300.320." (Emphasis added.) But the proposed Article 7 states a "service plan *must* include...." This prevents local decision making and increases costs. Thus, under the federal law, but not the proposed Article 7, periodic reports can be decided as not needed. For example, the teacher of record is the public school teacher. She is not teaching the student. She might be calling the private school teacher weekly or monthly in accordance to the service plan. How is it then that she is to develop periodic reports of how the child is doing on the service plan? Why can't the case conference determine that if progress reports are needed, and if so, those will be left to the discretion of the private school teacher to send out?

¹⁶ Proposed 511 IAC 7-29-1; 511 IAC 7-32-21.

¹⁷ Approved by the Office of Management and Budget under control number 1820-0030 under authority of 20 U.S.C. 1412(a)(5).

¹⁸ Proposed 511 IAC 7-35-3.

¹⁹ Proposed 511 IAC 7-35-3.

²⁰ Schools used to get funds called CSPD money (comprehensive system of personal development). See also the old title and reference to this section from the current Article 7. This money, like the current title to this section will soon be, or is already, gone. Now the title is shifted to be named as "Supports for Public Agency Personnel." In the November 30 version DOE has now added that "supports" are a mandatory special factor to be considered by the case conference. See 7-42-6(b)(c). This does not parallel the special factors under the federal regulations. See 34 CFR 300.324(a)(2). This adds an IEP component not intended by the IDEA. The proposed Article 7 references 34 CFR 300.324(a)(3)(ii) as support for incorporating this additional special factor. However, what is found at that site is the regular education teacher is to provide input into the IEP to help determine "supplementary aids and services, program modifications, and supports for school personnel...." The proposed Article 7 already has a similar site to this federal regulation under 511 IAC 7-42-6(d). While it might seem duplicative, this citation may be misleadingly requiring a component not intended by the IDEA.

²¹ See Proposed 511 IAC 7-36-1.

²² See Proposed 511 IAC 7-36-6.

²³ See 511 IAC 7-36-6(b); 511 IAC 7-6.1-2-2.5.

²⁴ This is a Section 504 issue that we provide comparable facilities for special education students. This section is in there to correct the practices that existed decades ago with special education classes on stages and in closets. Those practices have been corrected and this author knows of no schools doing that any more.

²⁵ See 34 CFR 300.617. The Family Educational Rights & Privacy Act (FERPA at 20 U.S.C. §1232) does not require a copy of records be given to the parent. Schools are required to give parents a copy of the educational evaluation reports 5 days in advance of an evaluation (See proposed Article 7, 511 IAC 7-40-5(i)). It is fair that a copy of what is being discussed at the case conference is copied and given to the parent at that time. Schools are also required to provide prior written notice of the IEP (per federal law) so current Article 7 requires a copy of the case conference report to be sent to the parent within 10 business days of the case conference.

²⁶ Proposed 511 IAC 7-38-1. This is above and beyond the original free copy. FERPA only requires *access*, not that copies be made free of charge.

²⁷ See 511 IAC 7-4-1.5-5. See also Memorandum to State Superintendent's Advisory Committee from Robert A. Marra, Associate Superintendent and Nina Brahm, Education Consultant, Indiana Department of Education, Division of Exceptional Learners, dated September 19, 2007.

²⁸ See Proposed 511 IAC 7-40-2. Subparagraphs (a), (b) and (c) are required by the IDEA regulations. See CFR 300.311(a)(7).

²⁹ See 34 CFR 300.311 and Proposed Article 7, 511 IAC 7-40-2(a).

³⁰ See proposed 511 IAC 7-40-(a) and 511 IAC 4-1.5-5.

³¹ See 511 IAC 4-1.5-5(c)(3).

³² See 50 IAC 7-40-2(a).

³³ See 34 CFR 300.311(a) and specifically(a)(7) which requires the documentation of the determination of eligibility to include certain items, and provides the documentation must include: that if the child has participated in a process that assesses the child's response to scientific, research-based intervention-- (i) the instructional strategies used and the student-centered data collected; and (ii) the documentation that the child's parents were notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) strategies for the child's rate of learning; and (C) the parent's right to request an evaluation.

³⁴ § 300.311

³⁵ 511 IAC 7-25-4(b).

³⁶ 511 IAC 7-40-5(d).

³⁷ 34 CFR 300.301(c).

³⁸ This is compounded by the fact that the Response to Intervention (RTI) is being added to the assessment process under proposed Article 7. Thus, there are more duties being added to school psychologists which will cause a demand for more psychologist time which will cost more money. There is no specific revenue stream to schools for this expense, and costs are subsumed under the dollars schools receive for the additional pupil count.

³⁹ Proposed 511 IAC 7-40-5(e).

⁴⁰ Proposed 511 IAC 7-40-5(j).

⁴¹ See 71 FR 46645.

⁴² 511 IAC 7-25-6(e).

⁴³ Proposed 511 IAC 7-40-8.

⁴⁴ Proposed 511 IAC 7-42-5(a)(4).

⁴⁵ See 511 Proposed 511 IAC 7-42-7(j).

⁴⁶ See 511 IAC 7-27-11 and proposed 511 IAC 7-42-11.

⁴⁷ Complaint investigators work for the Division of Exceptional Learners, which is the division of the Indiana Department of Education that oversees special education in Indiana.

⁴⁸ Schools do get funding from the state for these types of homebound students. DOE uses Article 7 as the vehicle to require these services and to fund these services. It is not clear whether schools are fully recouping the costs for these services.

⁴⁹ See "Special Education Service Delivery in Indiana: Year 2 Study Final Report", March 30, 2007, Center for Evaluation & Education Policy, Bloomington: IN at p. VII, located at DOE's web site and retrieved from <http://doe.state.in.us/exceptional/speced/pdf/2007-04-12-SpecialEdReport.pdf> on December 16, 2007.

⁵⁰ Id.

⁵¹ See Memorandum to State Superintendent's Advisory Committee from Robert A. Marra, Associate Superintendent and Nina Brahm, Education Consultant, Indiana Department of Education, Division of Exceptional Learners, dated September 19, 2007; 511 IAC 7-47; I.C. 20-35-6-2.

⁵² See DOE web site at <http://doe.state.in.us/exceptional/speced/pdf/06-07-StatReport.pdf> for its "**2006-2007 SPECIAL EDUCATION STATISTICAL REPORT**".

⁵³ See 2007-2009 budget by the Indiana General Assembly, HEA 1001, passed April 29, 2007, retrieved from http://www.in.gov/sba/budget/2007_budget/as_passed/pdfs/ap_2007_c_7_5_educ_data.pdf on December 16, 2007.

⁵⁴ See “Program Results: An Outcome-based Evaluation (Probe) Indiana Department of Education Response June 2007”, retrieved at http://www.doe.state.in.us/legwatch/pdf/probe_response.pdf on, December 16, 2007.

⁵⁵ See I.C. 20-35-4-10; 511 IAC 7-17-16; 511 IAC 7-20-1. See also Memorandum to State Superintendent’s Advisory Committee from Robert A. Marra, Associate Superintendent and Nina Brahm, Education Consultant, Indiana Department of Education, Division of Exceptional Learners, dated September 19, 2007.

⁵⁶ See I.C. 34-30-14-1.

⁵⁷ See I.C. 34-30-14-3.

⁵⁸ See I.C. 34-30-14-4.

⁵⁹ It was in the proposed draft prior to December 14, 2007 and could be found at proposed 511 IAC 7-37-2. At the December 14, 2007 meeting of the State Advisory Council it was unexpectedly deleted as an option. See 34 CFR 300.505 for comparable language.

⁶⁰ See 34 CFR 300.320(a). The IDEA only speaks about the IEP identifying “(1) a statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum; (2) a statement of measurable annuals goals, including academic and functional goals designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child’s other educational needs that result from the child’s disability.” This language seems well grounded that the IEP is to be focused on needs that result from the disability.

⁶¹ The discrepancy model looks at the student’s academic performance and it is determined if it is substantially below where it should be considering the student’s ability.

⁶² See DOE Website at http://doe.state.in.us/exceptional/spced/complaint_investigations/welcome.html. retrieved on December 17, 2007.

⁶³ Fredrick Taylor is the father of the scientific management model of management. It is often referred to as “top-down management.” See Taylor, Frederick W. (1911). *Principles of scientific management*. New York: Harper.

⁶⁴ Max Weber was a main proponent of the bureaucratic model of management. Weber’s view was that the ideal organization was a bureaucracy which would have a well defined hierarchy of authority, a division of labor with specialization of workers by their functions, and impersonal relationships between managers and workers. See Weber, M. (1947). *The theory of social and economic organization*, trans. Talcott Parsons. New York: Oxford University Press.

⁶⁵ Micromangement is a model of management that combines scientific management and bureaucratic management models. It is based on lack of trust between management and the workers. It has been defined as interference, involvement, or conflict with a subordinate’s work, performance, or decision making that fosters employee apathy and disrespect. See Jazzar, M. (2005). Tales of micromangement. *American School Board Journal*, 192(8) 31-47.

⁶⁶ See 20 U.S.C. § 1407(a).