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December 23, 2014

Dr. Bonnie Gallant
Interim Special Education Director
Idaho State Department of Education
P.O. Box 83720
Boise, ID 83720-0027

RE: Amended Position Paper: Medicaid School-Based Services

Dear Dr. Gallant:

You have asked this office to perform the following work, as set forth in our contract dated November 7, 2014:

1. Scope of Work. The SDE desires that the Contractor perform, and the Contractor agrees to perform, in addition to any other work as may be directed by the SDE, the following:
 - a. The Contractor shall attend meetings and conduct research related to the Memorandum of Understanding Related to School-Based Medicaid between Idaho State Department of Education and the Idaho Department of Health and Welfare.
 - i. By December 18, 2014, provide a written position paper to the Interim Special Education Director that shall include:
 1. an analysis and clarification of the obligation of school districts and local education agencies (LEA) to provide a Free Appropriate Public Education (FAPE);
 2. an analysis and clarification of the impact that a waiver from current Medicaid procedures would have on school districts' and LEAs' obligations under the Individuals With Disabilities Education Act (IDEA), IDAPA rule and the legal obligations set forth by the current Medicaid billing restrictions in Idaho.

This letter is intended to constitute the Position Paper described above and sets forth an analysis and clarification of Idaho school districts' obligation to provide students with disabilities a free appropriate public education (FAPE), as well as provides a basic overview of Medicaid school-based services and an analysis and clarification of the impact that a waiver¹ from current Medicaid procedures would have on the obligations pursuant to the IDEA and the current Medicaid billing restrictions in Idaho.

I. IDEA

A. Historical Overview

In 1970, Congress enacted the Education of the Handicapped Act (EHA). In 1974, influenced by two federal court cases,² Congress expanded the EHA to incorporate the concept of a right to a full educational opportunity for children with disabilities. Congress amended the EHA by enacting the Education for All Handicapped Children Act (EAHCA), commonly known as P.L. 94-142, in 1975. This legislation is often referred to as the "Bill of Rights" for children with disabilities and their families. The legislation incorporated the following six major components:

- A free appropriate public education (FAPE)
- The least restrictive environment (LRE)
- An individualized education program (IEP)
- Procedural due process
- Nondiscriminatory assessment
- Parental participation³

The EAHCA was subsequently amended in 1986. Four years later, in 1990, the EAHCA became the Individuals with Disabilities Education Act (IDEA), which was subsequently amended in 1997 and in 2004.⁴

B. IDEA Eligibility

In order for a student to be found eligible and qualify for special education services, the student must meet the three-prong test; namely, the evaluation data must show that:

¹ Currently Idaho does not have a Medicaid "waiver" for school based services. The use of the term "waiver" is not intended to fall within the Medicaid "waiver" provisions set forth in Sections 1915(b) and 1115. Rather, the issue of a "waiver" is intended to be interpreted as whether an exemption to Medicaid requirements might apply to Idaho school districts.

² *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*, 334 F. Supp. 1257 (E.D. PA 197), and *Mills v. District of Columbia Board of Education*, 348 F. Supp. 866 (D. DC 1972).

³ See, e.g., Project IDEAL, <http://www.projectidealonline.org/v/special-education-public-policy/>

⁴ In 2004 the reauthorization was entitled the Individuals with Disabilities Education Improvement Act of 2004.

1. the eligibility requirements for a specific disability⁵ are met;
2. the disability has an adverse impact on the student's education; and
3. the student needs special education⁶ in order to benefit from education.⁷

Once a student is found to have met the three-prong test, the student is then entitled to an Individualized Education Program (IEP)⁸ in the least restrictive placement (LRE)⁹ at no cost to the parent. The specially designed instruction may include related services, as discussed below, in order to insure that the student with a disability receives a free appropriate public education (FAPE).

C. Related Services - Generally

Related services include such services as:

[T]ransportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility

⁵ The qualifying disability categories under the IDEA consist of autism, cognitive impairment, deaf-blindness, deafness, developmental delay, emotional disturbance, health impairment, hearing impairment, learning disability, multiple disabilities, orthopedic impairment, speech or language impairment: language, speech or language impairment: speech, traumatic brain injury, and visual impairment including blindness. Idaho Special Education Manual 2007, Revised 2009, at 45-63.

⁶ Special education means specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability, including instruction in the classroom, home, hospitals, institutions and other settings. The definition also includes instruction in physical education, speech/language pathology, travel training, and vocational education. Idaho Special Education Manual 2007, Revised 2009 at 73.

⁷ Idaho Special Education Manual 2007, Revised 2009 at 44.

⁸ An Individualized Education Program (IEP) is a written document developed with parent participation and input for each eligible student with a disability and documents the specially designed instruction and related services necessary to provide the student with meaningful educational benefit. Idaho Special Education Manual 2007, Revised 2009 at 73. "Meaningful educational benefit" has been defined by as providing a "basic floor of opportunity," not a "potential-maximizing education." See *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *J.L. v. Mercer Island Sch. Dist.*, 52 IDELR 241, 575 F.3d 1025 (9th Cir. 2009).

⁹ Least restrictive environment requires that, to the maximum extent appropriate, all students with disabilities are to be educated with age appropriate peers. Each school district is required to have an array of services and a continuum of educational setting options available to meet the individual needs of each student. Special classes, separate schools and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily. Idaho Special Education Manual 2007, Revised 2009 at 104.

services and **medical services for diagnostic or evaluation purposes**. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.”¹⁰ (Emphasis added).

The list of related services is illustrative and is not intended to be exhaustive; services not included in the list may qualify as related services if they are necessary for a child to benefit from special education.¹¹

As the list of related services is not all-inclusive, a student’s IEP team could determine that a student is in need of psychosocial rehabilitation (PSR), behavioral intervention, behavioral consultation, and/or personal care services (PCS). If it is determined that such services are necessary in order for the student to benefit from education, those services would be included on the student’s IEP, along with identifying the location and the frequency of the services.

D. Related Services – Medical Services

Although medical services for diagnostic or evaluation purposes may be required to be provided in order for a student to be able to benefit from educational services, school districts are not required to provide therapeutic services performed by a physician. However, school districts are “responsible for providing services necessary to maintain the health and safety of a child while the child is in school, with breathing, nutrition, and other bodily functions (e.g., nursing services, suctioning a tracheotomy, urinary catheterization) if these services can be provided by someone who has been trained to provide the service and are not the type of services that can only be provided by a licensed physician.”¹²

In addition to excluding services that can only be performed by a physician, the IDEA also excludes from the related services definition “a medical device that is surgically implanted, or the replacement of such device.” The IDEA draws a sharp distinction between maintenance services, such as checking and replacing hearing aid batteries, which are covered in the act, and optimization of devices, e.g., mapping of cochlear implants, which are not.¹³

E. Special Education Funding

When the IDEA was enacted, Congress estimated that children with disabilities cost approximately twice as much to educate than children without disabilities.

¹⁰ 34 C.F.R. 300.34(a).

¹¹ See, e.g., *C. v. Missouri State Bd. of Educ.*, 53 IDELR 81 (E.D. Mo. 2009).

¹² *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 29 IDELR 966 (U.S. 1999) and 71 Fed. Reg. 46,571 (2006).

¹³ 34 CFR 300.34 (b)(1); 71 Fed. Reg. 46,571 (2006); *Petit v. U.S. Dep’t of Educ.*, 58 IDELR 241 (D.C. Cir. 2012).

Congress took that estimate into account when it set the maximum federal contribution at 40 percent of the state average per pupil expenditure. However, the IDEA has never been fully funded to the 40 percent, as authorized. For example, in FY 2014, IDEA federal funding covered 16 percent of the estimated excess cost of educating children with disabilities. The shortfall in federal funding is assumed by each state and local school district.¹⁴

The State and school districts also have a “maintenance of effort” requirement, which requires the expenditure of the same amount of state and local funds on special education as was spent in the previous year, either on an aggregate or per capita basis.¹⁵ School districts may not rely on federal funds to meet the maintenance of effort requirement; Medicaid funds are not considered to be state or local funds and are excluded from maintenance of effort calculations.¹⁶

As part of meeting the “maintenance of effort” mandates, school districts are also required to supplement their expenditures for special education and increase the level of state and local funds; school districts are prohibited from supplanting such funds. The federal regulations contain both a state level and a local level nonsupplanting requirement.¹⁷

F. Use of Public Insurance

School districts may use Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under the IDEA, as permitted by the program, with certain exceptions.¹⁸

Title XIX of the Social Security Act of 1965, as amended, controls Medicaid reimbursement.

The use of Medicaid as a source of funding may not result in the reduction of the medical or other assistance programs, or alter the eligibility of a child with a disability under the Medicaid program. School districts are not obligated to participate in the state Medicaid program.

Whenever a school district wishes to bill Medicaid for covered services, the parents must be informed of the following:

¹⁴ <http://febp.newamerica.net/background-analysis/individuals-disabilities-education-act-funding-distribution>.

¹⁵ 34 CFR 300.203.

¹⁶ *Letter to Copenhaver*, 50 IDELR 286 (OSEP 2008).

¹⁷ 34 CFR 300.162; 300.164.

¹⁸ 34 CFR 300.154.

1. the district is required to obtain consent from the parent before using the parent's or child's public benefits or insurance for the first time;
2. parents must be assured that any use of public insurance or benefits will be at no cost to the parent or child, meaning they will not incur a copay or deductible;
3. parents have the right to withdraw their consent at any time; and
4. the district has an obligation to continue providing IDEA services at no cost to the family even if the parents withdraw consent or refuse to consent to the release of information in the first place.¹⁹

II. MEDICAID

A. Historical Overview

Medicaid is a federal-state program that provides health insurance to qualifying low income Americans. Established in 1965 as Title XIX of the Social Security Act, Medicaid is jointly financed by the federal government and individual states. Within the parameters of federal regulations, each state determines the following:

- Who is eligible for Medicaid coverage;
- The type, amount, duration and scope of covered services;
- Which providers can obtain Medicaid reimbursement; and
- How much providers will be paid for their services.²⁰

In 1988, Congress amended the Social Security Act to allow Local Education Agencies²¹ (LEAs) (referred to in this Position Paper as “school districts”) to access Medicaid federal funds for certain “health related services,” which are medically necessary and which are included in the child’s IEP. The language specifically states:

Nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for **medical assistance for covered services furnished to a child with a disability because such services are included in the child’s individualized education program** established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such

¹⁹ *Memorandum to State Directors of Special Education*, 62 IDELR 63 (OSERS 2013).

²⁰ *Medicaid and School Health: A technical Assistance Guide* (Aug. 1997) at 6.

²¹ “Local Education Agencies” in Idaho consist of school districts and state-chartered charter schools. 34 CFR 300.28; IDAPA 08.02.03.117.01.a.

services are included in the child’s individualized family service plan adopted pursuant to part C of such Act.²² (Emphasis added).

While the above-quoted language specifically provides that Medicaid payment is available for medical services contained in a child’s IEP – so long as the child is eligible and the services are otherwise reimbursable under Medicaid – no other education-related statutes obligate Medicaid payments.

In Idaho, students with an IEP under the age of 22 who have a medical diagnosis of a “developmental disability” and who meet ICF/IID²³ level of care or nursing facility level of care can qualify for Medicaid, regardless of family income.²⁴ A developmental disability is defined as a chronic disability, attributable to an impairment such as an intellectual disability, cerebral palsy, epilepsy, autism, or another condition closely related to those listed which requires similar treatment or services, or is attributable to dyslexia resulting from such impairments and results in substantial functional limitations in three or more major life activities, including self-care, receptive and expressive language, learning, mobility, self-direction capacity for independent living, or economic self-sufficiency, and reflects the need for services that are life-long or extended duration, and are individually planned and coordinated.²⁵

B. Medicaid School-Based Services

Since 1993, Idaho has elected to allow school districts to be providers and bill for certain Medicaid services provided to students through their IEP, so long as each school district has a signed Provider Agreement.²⁶ The Department of Health and Welfare (DHW) will reimburse school districts and charter schools for certain rehabilitation and health-related services, including medical or remedial services which are provided under the IDEA.²⁷ Educational services (other than health related services), vocational services and recreational services are specifically excluded from Medicaid coverage.²⁸

²² Section 1903(c) of the Medicare Catastrophic Coverage Act of 1988.

²³ “ICF/IID” is the acronym for “Intermediate Care Facility for Individuals with Intellectual Disabilities.”

²⁴ Idaho refers to this program as the “Katie Beckett” program. This position paper only focuses on those students who are eligible for Medicaid through School-Based Services as set forth in IDAPA 16.03.09.850 *et seq.* However, it is important to recognize that students who are not diagnosed with a developmental disability may qualify for Medicaid services if their families meet certain income requirements. IDAPA 16.03.01 *et seq.*

²⁵ IDAPA 16.03.09.582.02.

²⁶ This Position Paper will not address the Medicaid funding process that is in place other than to recognize that LEAs that are service providers pay the state portion of Medicaid funds. See IDAPA 16.03.09.856.04.

²⁷ IDAPA 16.03.09.580.03.

²⁸ IDAPA 16.03.09.853.01.

Pursuant to Medicaid requirements, in order for health related services to be provided, the services must be medically necessary and be under the recommendation of a physician or practitioner of the healing arts²⁹ (hereinafter referred to as a “medical professional.”) Reimbursement to school districts for services may only be sought for those services received after a signed and dated recommendation or referral is received from a medical professional.³⁰

Additional eligibility requirements exist for school-based services consisting of psychosocial rehabilitation (PSR), behavioral intervention, behavioral consultation, and personal care services (PCS).³¹

C. Provider Agreement

In order for a school district to participate as a provider of services and receive reimbursement through the Medicaid program for those services, it must have a Provider Agreement with DHW.³² The Provider Agreement between each Medicaid provider and the DHW specifically states that the provider is agreeing to provide services in accordance with all applicable federal laws and provisions of statutes, state rules and federal regulations governing reimbursement, as well as the current Medicaid Provider Handbook, any additional terms set forth in the Agreement, and any instructions set forth in provider information releases or other program notices. All of the Medicaid provisions, when reviewed in total, can be daunting and confusing, to say the least.

It is important to recognize that although there are state rules specifically applicable to Medicaid School-Based Services, the Provider Agreement is the same agreement utilized for every provider, regardless whether the provider is a school district or a private company, practitioner, clinic, or other entity.

The Provider Agreement further identifies the record keeping that must occur, requiring that the provider document the Medicaid services for which reimbursement will be claimed at the time the service is provided. Each provider has the sole responsibility to submit accurate claims, and is required to repay the DHW in the event it is determined that a claim was not properly provided, documented or claimed.

²⁹ A “practitioner of the health arts” is defined as “[a] physician’s assistant, nurse practitioner, or clinical nurse specialist who is licensed and approved by the state of Idaho to make such recommendations or referrals for Medicaid services.” IDAPA 16.03.09.850.05.

³⁰ IDAPA 16.03.09.853.02.a.

³¹ IDAPA 16.03.09.852.

³² 42 CFR 431.107.

D. Interagency Agreement

The Idaho State Department of Education (SDE) and the DHW recently signed a Memorandum of Understanding Related to School-Based Medicaid (MOU). The purpose of this MOU “is to define and clarify responsibilities of each agency to ensure a coordinated, comprehensive service delivery system focused on students, age 3-21, who meet qualifications for IDEA and Medicaid School-Based services.”

The MOU further sets forth that the SDE is the lead state agency for the provision of a free appropriate public education (FAPE) for students ages 3-21 who are eligible for special education services pursuant to the IDEA.

As set forth in the MOU, the DHW is the lead state agency “for the provision of School-Based Medicaid policy development, adherence to IDAPA rule in relations to school-based Medicaid and related services, and the fiscal reimbursement of eligible school-based Medicaid services.”

Through the terms of the MOU, the SDE and the DHW have committed to work together to provide quality assurance and desk reviews in order to improve school-based Medicaid implementation. Furthermore, the two state agencies have agreed to collaborate in determining training and technical assistance needs for LEAs and their personnel, and to jointly address LEA implementation concerns.

The MOU also clearly identifies school districts’ responsibilities to comply with the rules governing school-based Medicaid.

E. Medicaid Advisory Committee

As part of the MOU, both the SDE and the DHW have committed to the continuation of the Medicaid Advisory Committee’s meetings at least quarterly in order to review and recommend regulatory or legislative changes, policy implementation, application of rule, and other applicable subjects or issues.

III. DISCUSSION AND ANALYSIS

As the discussion of the IDEA and Medicaid provisions clearly show, Medicaid is a medical model, providing insurance coverage to those individuals who qualify. On the other hand, the IDEA is specifically applicable to public schools, pre-K to 12th grade, or age 21, and provides special education and related services to qualifying students with disabilities. Adding to the confusion of these two laws is the use of similar terminology, which often has different meanings. *See* accompanying terminology chart for examples.

Idaho school districts are required to sign a provider agreement with the DHW, which is the standard agreement signed by all providers. Providers who sign the agreement are held to the same standards and requirements for services, regardless of where the services are provided – *i.e.*, in a school setting or a clinical setting

Medicaid covers services included on a student’s IEP under the following conditions:

- The services are medically necessary and included in a Medicaid covered category, such as speech therapy, physical therapy, etc.
- All other federal and state Medicaid regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions;
- The services are included in the state plan or are available under EPSDT; and
- The medical services must be provided to a Medicaid eligible student.³³

As discussed earlier in this Position Paper, Section 1903(c) of the Medicare Catastrophic Coverage Act of 1988 specifically provides for the inclusion of “medical assistance for covered services furnished to a child with a disability because such services are included in the child’s individualized education program. . .” This language represents the only provision for the use of Medicaid funds in the school setting; no school-based services exemption exists.³⁴ In fact, “Medicaid regulations require that provider qualifications be uniform and standard. This means that states cannot have one set of provider qualifications for school providers and another set of provider qualifications for all other providers.”³⁵ In order for other exemptions to be created, Congress would need to amend the Medicaid laws.

In the comments to the 2006 IDEA regulations, the U.S. Department of Education recognized its longstanding provision that each State may use whatever State, local, Federal and private sources of support that may be available to meet the requirements of the IDEA. The Department further clarified this position when it addressed a commenter’s suggestion that the IDEA be more closely aligned with Medicaid laws and that public benefits or insurance agencies meet the IDEA standards and not the standards for medical environments. In response to these suggestions, the Department of Education stated:

The Act [IDEA] does not give the Department the authority to impose the standards of the Act [IDEA] on public benefits or insurance agencies, when paying for special education. If, however, a third party provider,

³³ Medicaid and School Health: A technical Assistance Guide, (Aug. 1997).

³⁴ While there is a provision that allows for waivers of State plan requirements, the waivers are intended to provide flexibility to States to try new or different approaches to the efficient and cost-effective delivery of health care services, or adapt programs to the special needs of particular areas or groups of beneficiaries. The waiver provisions do not appear to be applicable to school-based Medicaid services. 42 CFR 430.25.

³⁵ *Id.*, at 16.

such as a public benefits or insurance company, is unable to provide funding for services outside a clinical setting or other specific setting, the public agency [school district] cannot use the third party provider's inability to provide such funding as an appropriate justification for not providing a child with a disability FAPE in the LRE. Nothing in part 300 [IDEA regulations] alters the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulation or policy³⁶

As set forth in the above-quoted language, it is clearly recognized by the U.S. Department of Education that Congress did not provide any authority within the IDEA to allow for the amendment or modification of Medicaid services to better align with the IDEA. The end result is that school districts must comply with the terms of the DHW provider agreement and meet all Medicaid requirements as set forth in rule, in order to receive Medicaid reimbursement for the allowable medical services provided in the school setting.

IV. RECOMMENDATIONS

- Continue the Medicaid Advisory Committee and provide on-going training to the committee members regarding the differences between Medicaid (medical model) and the IDEA (educational model) and the billing obligations;
- Continue with the provision of joint training by the DHW and the SDE for school district personnel regarding the differences between Medicaid (medical model) and the IDEA (educational model) and the billing obligations;
- Consider creating user-friendly forms for school personnel to assist with compliance in meeting all components and rules identified in the Medicaid Provider Agreement.

V. CONCLUSION

As set forth above, this Position Paper has set forth an analysis and clarification of Idaho school districts' obligation to provide students with disabilities a free appropriate public education (FAPE), and also provided a basic overview of Medicaid school-based services. Additionally, this Position Paper includes a discussion and analysis and provides the conclusion that neither Medicaid mandates nor IDEA requirements contain provisions that allow for the exemption of Idaho school districts from meeting current Medicaid requirements.

³⁶ 71 Fed. Reg. 46,609 (2006).

Dr. Bonnie Gallant
December 23, 2014
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Please do not hesitate to contact me if I can be of further assistance regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Elaine Eberharter-Maki". The signature is written in a cursive style with a small dot above the 'i' in "Maki".

Elaine Eberharter-Maki
Attorney at Law

Comparison of Selected Terminology Between the IDEA and Medicaid

| Term | IDEA Definition | Medicaid Definition |
|--------------------------|---|---|
| Developmental Disability | <p>An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:</p> <ol style="list-style-type: none"> 1. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted. 2. The student is at least 3 years of age but less than 10 years of age. 3. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage. 4. The student meets either of the following two criteria, in one or more of the broad developmental areas listed below. <p>Criteria:</p> <ol style="list-style-type: none"> a. The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the 3rd percentile) b. The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile) <p>Broad Developmental Areas:</p> <ol style="list-style-type: none"> a. cognitive skills (e.g., perceptual discrimination, memory, reasoning, pre-academic, and conceptual development); b. physical skills (i.e., fine, gross, and perceptual motor skills); c. communication skills (i.e., | <p>A chronic disability, attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism, or another condition closely related to those listed which requires similar treatment or services, or is attributable to dyslexia resulting from such impairments and results in substantial functional limitations in 3 or more major life activities, including self-care, receptive and expressive language, learning, mobility, self-direction capacity for independent living, or economic self-sufficiency, and reflects the need for a need for services that are life-long or extended duration, and are individually planned and coordinated. IDAPA 16.03.09.582.02.</p> |

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| | <p>including verbal and nonverbal, and receptive and expressive);</p> <p>d. social or emotional skills; or</p> <p>e. adaptive skills, including self-help skills.</p> <p>5. The student’s condition adversely affects educational performance.</p> <p>6. The student needs special education.”</p> | |
| <p>Serious Emotional Disturbance</p> | <p>Defined in the Idaho Special Education Manual as: Emotional Disturbance:</p> <p>“An evaluation team will determine that a student is eligible for special education services as a student with emotional disturbance when all of the following criteria are met:</p> <ol style="list-style-type: none"> 1. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted. 2. The student has been documented as having an emotional condition consistent with the criteria in this chapter by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker. 3. The student has been observed exhibiting one or more of the five behavioral or emotional characteristics listed in the definition of emotional disturbance. 4. The characteristic(s) has been observed: <ol style="list-style-type: none"> a. for a long period of time (at least 6 months); and b. by more than one knowledgeable observer; and c. in more than one setting; and d. at a level of frequency, duration, and/or intensity that is significantly different from other students’ behavior in the same or similar circumstances. 5. The student’s condition adversely affects educational performance in the area of academics, peer and | <p>Defined in the Children’s Mental Health Services Act, IC 16-2403(13) as: “‘Serious emotional disturbance’” means an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to ‘result in a serious disability’ if it causes substantial impairment of functioning in family, school or community. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance.”</p> |

| | | |
|--|--|---|
| | <p>teacher interaction, participation in class activities, and/or classroom conduct.</p> <p>6. The student needs special education.”</p> | |
| <p>Comprehensive (diagnostic) assessment</p> | <p>Comprehensive evaluation: A student must be evaluated in all areas of suspected disability. The areas in which a student is assessed are determined by the evaluation team.</p> | <p>Evaluation and diagnostic services: evaluations to determine eligibility or the need for health related services. Evaluations must be recommended or referred by a physician or practitioner of hearing arts, be conducted by qualified professionals, be directed toward a diagnosis, and include recommended interventions to address each need.</p> |
| <p>IEP vs. Plan of Care</p> | <p>IEP: The IEP team, of which the parent is always a member, determines the appropriate goals and services that will be provided to the student so that the student can receive meaningful educational benefit.</p> | <p>Plan of Care: The problem list, clinical diagnosis, and treatment plan of care administered by or under the direct supervision of a physician.</p> |