

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 923

FINAL

REGULATORY IMPLEMENTING ORDER

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. As a result of Senate Bill 229 of the 147th General Assembly, this regulation has been amended in order to clarify the eligibility for extended school year (ESY) reading services for students who are not beginning to read by age seven.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments were related to the reading acquisition piece of the IEP not being presumptive or in line with extended school year services, or providing the team opportunity to decline the services with a specific explanation. The Department of Education (DOE) addressed these concerns by explaining reading acquisition needs to be aligned with other ESY factors; by adding a sentence to target evidence-based reading interventions and by adding that the IEP team must provide written rationale as to why ESY services are or are not being provided.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in order to be in compliance with Senate Bill 229 which amends this regulation based on changes to the state assessment system and provides clarification as to the eligibility for extended school year reading services for students who are not beginning to read by age seven.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of December 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 18th day of December 2014

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
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923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Eligibility for Assistance and Free Appropriate Public Education (FAPE) Requirements

- 1.1 Eligibility for assistance: To maintain eligibility for assistance under Part B of the Act, the DOE shall submit a plan that provides assurances to the Secretary of the U.S. Department of Education that the State has in effect policies and procedures to ensure that the State meets the conditions in 1.2 through 75.0.
(Authority: 20 U.S.C. 1412(a); 14 **Del.C.** §3110)
- 1.2 Free appropriate public education: A free appropriate public education (FAPE) shall be available to all children with disabilities residing in Delaware beginning no later than the child's third (3rd) birthday, or an earlier age as otherwise provided in these regulations, until the receipt of a regular high school diploma or the end of the school year in which the child attains the age of twenty-one (21), whichever occurs first. FAPE shall also be available to children with disabilities who have been suspended or expelled from school, as provided for in this section and 14 **DE Admin. Code** 926.30.4.
 - 1.2.1 Each public agency receiving funds under part of the Act, or receiving state funding for the education of children, shall ensure that FAPE is made available to each eligible child beginning no later than the child's third (3rd) birthday, or an earlier age as otherwise provided in these regulations; and that an IEP is in effect for the child by that date, in accordance with 14 **DE Admin. Code** 925.23.1.
 - 1.2.2 If a child's third (3rd) birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP will begin.
 - 1.2.3 Children advancing from grade to grade: Each public agency shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
 - 1.2.4 The determination that a child described in 1.1 is eligible under these regulations, shall be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.
(Authority: 20 U.S.C. 1412(a)(1)(A); 14 **Del.C.** §3110)

15 DE Reg. 351 (09/01/11)

2.0 Limitation Exception to FAPE for Certain Ages

- 2.1 General: The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
 - 2.1.1 Reserved
 - 2.1.2 Reserved
 - 2.1.3 Children with disabilities who have graduated from high school with a regular high school diploma.
 - 2.1.3.1 The exception in 2.1.3 does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.
 - 2.1.3.2 Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with 14 **DE Admin. Code** 926.3.0.
 - 2.1.3.3 As used in 2.1.3, 2.1.3.1 and 2.1.3.2, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
 - 2.1.4 Children with disabilities who are eligible under 34 CFR §§300.800 through 300.818 (preschool grants), but who receive early intervention services under Part C of the Act.

- 2.2 Documents relating to exceptions. The State shall assure that the information it has provided to the Secretary of the United States Department of Education regarding the exceptions in this section, as required by 34 CFR §300.700 (for purposes of making grants to States under these regulations), is current and accurate.
(Authority: 20 U.S.C. 1412(a)(1)(B)-(C); 14 **Del.C.** §3110)

14 DE Reg. 1057 (04/01/11)

3.0 FAPE, Methods and Payments

- 3.1 The State may use whatever State, local, Federal, and private sources of support are available to it to meet the requirements of these regulations. For example, if it is necessary to place a child with a disability in a residential facility, the State may use joint agreements between the agencies involved for sharing the cost of that placement.
- 3.2 Nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
- 3.3 Consistent with 14 **DE Admin. Code** 925.23.2, each public agency shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.
(Authority: 20 U.S.C. 1401(8), 1412(a)(1); 14 **Del.C.** §3110).

4.0 Residential Placement

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the child.
(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B); 14 **Del.C.** §3110)

5.0 Assistive Technology

- 5.1 Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 14 **DE Admin. Code** 922.3.0, are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services.
- 5.1.1 On a case by case basis, the use of school purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.
(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i); 14 **Del.C.** §3110)

6.0 Extended School Year Services

- 6.1 General: Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with 6.2.
- 6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child.
- 6.3 In implementing the requirements of this section, a public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.
- 6.4 Definition, as used in this section:
"Extended School Year Services" means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP and at no cost to the parents of the child; and meets the standards of the DOE.
- 6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.*
- 6.5.1 *Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature or severity of the child's disability.*
- 6.5.2 *Regression and recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are*

required, the team should consider that this criterion focuses on children who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

6.5.3 *Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.*

6.5.4 *Reading acquisition: For a child who is not beginning to read by age seven, or who is beyond age seven and not yet beginning to read, the team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goal(s) related to reading will not be achieved. [If extended school year services are needed related to reading acquisition, the IEP team must describe the evidence-based interventions that will be provided to address the child's reading deficits.]*

6.5.4.1 *For purposes of the extended school year services (ESY) determination, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.*

6.5.45 *Vocational factor: For children ages 16-20 whose IEPs contain vocational or employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.*

6.5.56 *Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.*

6.6 *Extended school year services are to be based on needs and goals or objectives found within the child's IEP of the school year, though activities may be different.*

6.7 *This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified on the child's IEP.*

6.8 *The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.*

6.9 *Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.*

6.10 *Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.*

6.11 *In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.*

Non-regulatory Note: Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.

(Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

11 DE Reg. 181 (08/01/07)

7.0 Non Academic Services; Transportation

7.1 *Each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.*

7.2 *Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.*

7.3 Transportation: *Transportation of all children to and from school shall be provided in accordance with 14 Del.C. Ch. 29.*

7.3.1 *When special transportation needs are identified in the IEP of a child with a disability, transportation shall be deemed a related service. Transportation provided to accommodate a related service shall be at the expense of the LEA or other public agency, including, but not limited to, the costs of travel to and from school and between schools, and any required specialized equipment.*

7.3.2 *Transportation incidental to the educational program of a child with a disability shall not be at the expense of the public agency, including, but not limited to work study arrangements, cooperative work arrangements, and extracurricular activities.*

7.3.3 *Travel arrangements shall be made in consultation with the public agency's transportation representative when unusual requirements are necessary for a child with a disability.*

(Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

8.0 Physical Education

Each public agency shall comply with the following:

8.1 General: Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

8.2 Regular physical education: Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to non disabled children unless:

8.2.1 The child is enrolled full time in a separate facility; or the child needs specially designed physical education, as prescribed in the child's IEP.

8.3 Special physical education: If specially designed physical education is prescribed in the child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

8.4 Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this section.

(Authority: 20 U.S.C. 1412(a)(5)(A); 14 Del.C. §3110)

9.0 Full Educational Opportunity; Length of School Day; Compulsory School Attendance

9.1 *Full educational opportunity: Each public agency shall ensure full educational opportunity is offered to its eligible children with disabilities.*

9.2 *Length of school day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve (12) shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for at least 5 hours per week of instruction.*

9.2.1 Provision of fewer hours of instructional time than required by these regulations is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by decision of the IEP team after disclosure of the above standards to the child's parents, guardian, and/or Relative Caregiver.

9.3 *Compulsory school attendance: Compulsory school attendance requirements shall be in accordance with 14 Del.C. §2702 and §705, and shall apply to children with disabilities between the ages of five (5) and sixteen (16). Attendance of children with disabilities under or over the compulsory school attendance age range, as provided in 14 Del.C. §2702, shall be determined by the IEP team and subject to the eligibility criteria and procedural safeguards provided in these regulations.*

(Authority: 20 U.S.C. 1412(a)(2); 14 Del.C. §3110)

10.0 Program Options; Vocational and Career Technical Programs and Services

10.1 Each public agency shall ensure children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. *Each public agency shall provide assurances to the DOE it will assist in fulfilling the transitional service requirement of these regulations.*

10.2 Vocational Education and Career Technical Programs and Services: *Vocational and career technical programs and services shall be provided to children with disabilities as determined appropriate by each child's IEP team. Each public agency shall ensure the provision of a vocational and career technical program in the least restrictive environment permitting children with disabilities equal access to:*

10.2.1 *Recruitment, enrollment and placement activities and the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.*

10.2.2 *Supplementary services to children with disabilities, including:*

10.2.2.1 *Codification of curriculum, equipment and facilities as needed;*

10.2.2.2 *Supportive personnel;*

10.2.2.3 *Instructional aids and devices;*

10.2.2.4 *Guidance, counseling and career development staff who are associated with the provision of such special services*

10.2.2.5 *Counseling services designed to facilitate the transition from school to post school employment and career opportunities;*

10.2.2.6 *Regular career technical programs with supportive services as identified by the IEP team; and*

10.2.2.7 *Special education career technical programs.*

10.2.3 *An appropriate career technical education to children with disabilities, including access to Career Pathways, through the availability of a continuum of career technical education programs, including, but not limited to:*

10.2.3.1 *Regular career technical programs with no supportive services;*

10.2.3.2 *Regular career technical programs with supportive services as identified by the IEP team;*

10.2.3.3 *Special education career technical programs;*

10.2.3.4 *Self contained career technical programs; and*

10.2.3.5 *Community based job training programs.*

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1); 14 **Del.C.** §3110)

11.0 Child Find and Identification of Eligible Individuals

11.1 General: As used in these regulations, identification has two (2) purposes: to identify those individuals who require special education; and to identify individuals who need general education interventions. Except as noted in 11.1.1 regarding parentally placed private school children, each LEA and any other public agency responsible for the education of children with disabilities shall establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate all children residing within the confines of the LEA or other public agency, including children with disabilities who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services.

11.1.1 Each LEA or other public agency shall further establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the school district served by the LEA in accordance with this section and 31.0 (Child Find for Parentally Placed Private School Children with Disabilities).

11.2 Children with developmental delay: The following provisions apply with respect to implementing the child find requirements of this section:

11.3 The definition of developmental delay adopted by the State under 14 **DE Admin. Code** 925.6.7 applies to children aged three (3) through nine (9).

11.4 An LEA is not required to adopt and use the term developmental delay for children within its boundaries.

11.5 If an LEA uses the term developmental delay for children, the LEA shall conform to both the State's definition of that term and to the age range that has been adopted by the State (i.e., ages three (3) through nine (9)).

11.6 Other children in child find: Child find also shall include children who are suspected of being a child with a disability as defined in 14 **DE Admin. Code** 922.3.0 and in need of special education, even though they are advancing from grade to grade; and highly mobile children, including migrant children.

11.7 Health, hearing, vision and orthopedic screening shall be conducted as specified in 14 **DE Admin. Code** 815.

11.8 Rule of Construction. Nothing in these regulations requires that children be classified by their disability so long as each child who has a disability that is listed in 14 **DE Admin. Code** 922.3.0 (in the definition of child with a

disability) and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

11.9 Problem Solving in General Education and Instructional Support Teams

11.9.1 Problem solving in general education classroom and instructional support teams: *The identification and child find procedures required in 11.0, shall include a systematic problem solving process to examine the nature and severity of an educationally related problem. These procedures shall primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process shall include:*

11.9.1.1 *Description of problem: The presenting problem or behavioral concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behavioral concern are defined in a problem statement that describes the differences between the demands of the educational setting and the individual's performance.*

11.9.1.2 *Data collection and problem analysis: A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid for the concern addressed, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.*

11.9.1.3 *Intervention design and implementation: Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.*

11.9.1.4 *Progress monitoring: Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.*

11.9.1.5 *Evaluation of intervention effects: The effectiveness of interventions is evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance and rate of progress toward meeting grade level expectations.*

11.9.2 *The identification and child find procedures required in 11.0, shall also include procedures to establish, and to refer students to, school or program based instructional support teams. The agency's procedures shall include the following requirements:*

11.9.2.1 *The instructional support team shall include members collectively qualified to assist in the identification of instructional and behavioral intervention strategies for learning and behavioral problems and needs.*

11.9.2.2 *The instructional support team process shall ensure that a student's learning and behavioral needs are comprehensively assessed. It shall include consideration, as appropriate, of curriculum based assessment measures, analyses of instructional variables, systematic observations, functional assessments and current health information.*

11.9.2.3 *Baseline and progress monitoring data shall be collected and used to inform intervention strategies.*

11.9.2.4 *All initial referrals to the instructional support team shall be in writing. Written documentation of the instructional support team process shall be maintained for each student.*

11.9.2.5 *The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility for special education services.*

11.9.2.5.1 *When the instructional support team determines the student should be evaluated to determine eligibility for special education services, the team shall forward a written recommendation to an appropriate, designated staff member within ten (10) school days.*

11.9.2.5.2 *Within ten (10) school days of the recommendation, the student's parents shall be notified in writing of the team's recommendation that the student be evaluated for special education services. The notification shall include a request for parental consent for initial evaluation.*

11.9.2.5.3 *Referrals for an individual student that do not contain all required information and documentation, including the data and other evidence described in 11.9.2.2 and 11.9.2.3, may be returned to the instructional support team with a request that they be supplemented. Parental notification of the team's recommendation, and the request for consent for initial evaluation, shall still occur within ten (10) school days of the initial team recommendation.*

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3); 14 **Del.C.** §3110)

11 DE Reg. 1628 (06/01/08)

14 DE Reg. 1057 (04/01/11)

12.0 Individualized Education Programs (IEP):

Each public agency shall ensure that an IEP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, except as provided in 14 **DE Admin. Code** 925.1.2.3.

(Authority: 20 U.S.C. 1412(a)(4); 14 **Del.C.** §3110)

13.0 Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices

13.1 Hearing aids: Each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

13.2 External components of surgically implanted medical devices: Subject to 13.2.1, each public agency shall ensure that the external components of surgically implanted medical devices are functioning properly.

13.2.1 For a child with a surgically implanted medical device who is receiving special education and related services under these regulations, a public agency shall not be responsible for the post surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(Authority: 20 U.S.C. 1401(1), 1401(26)(B); 14 **Del.C.** §3110)

14.0 Least Restrictive Environment (LRE) Requirement

14.1 General: Except as provided in 14 **DE Admin. Code** 925.24.12 (regarding children with disabilities in adult prisons), each public agency shall meet the LRE requirements of 15.0 through 20.0.

14.2 Each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

14.2.1 Additional requirement: No public agency shall make educational placement decisions on the basis of funding sources or amount of funding. Placement decisions shall be based on the unique needs of a child with a disability regardless of the manner or amount of funding available.

14.3 Interagency and Special Programs: *When a child's IEP Team determines the child's needs cannot be met appropriately in the LEA of residence or other public agency, inter-LEA or interagency programs shall be considered within least restrictive environment requirements.*

14.4 Interagency agreements: *A written Interagency Agreement shall be developed between or among LEAs or other public agencies when special education and related services for children with disabilities are provided in whole, or in part, by an LEA or LEAs, other than the LEA of residence.*

14.4.1 *The agreement may be initiated by the LEA, public agency, or the DOE.*

14.4.2 *The DOE shall be a party to the agreement when the services are provided through a special school or program approved by the State Board of Education.*

14.4.3 *Each Interagency Agreement shall include the:*

14.4.3.1 *Title of the agreement;*

14.4.3.2 *Parties involved and their authority to provide special education and related services;*

14.4.3.3 *Purpose of the agreement;*

14.4.3.4 *Roles and responsibilities of each agency, including access to records and record transfer procedures, program implementation, dissemination, training activities, funding amounts and sources;*

14.4.3.5 *End dates and Reauthorization schedule;*

14.4.3.6 *Procedures to resolve disputes regarding program and fiscal issues; and*

14.4.3.7 *Signature and title of each party's authorized administrator.*

14.5 Responsibility for Placement in Interagency Programs: For initial placement, the child's LEA of residence shall be responsible for identification, evaluation, and placement procedures including:

14.5.1 *Setting the date, time, and place of all meetings;*

14.5.2 *Chairing, designating, or agreeing upon a chairperson for all meetings;*

14.5.3 *Communicating the name of the child to be discussed; the date and place of meeting to individuals involved; and*

14.5.4 *Communicating recommendations of staffing to all appropriate staff.*

14.6 *When it is suspected the child's need for special education can only be met in an inter-LEA or interagency program, then an IEP meeting shall be arranged by the LEA of residence. The following procedures for an IEP meeting shall be followed:*

14.6.1 *Representatives of the inter-LEA or interagency program shall participate in the IEP meeting;*

14.6.2 *A representative of the LEA of residence shall be a member of the child's IEP team; and*

14.6.3 *Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's LEA of residence.*

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

15.0 Continuum of Alternative Placements

15.1 Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

15.2 The continuum required in 15.1 shall include the alternative placements listed in the definition of special education under 14 DE Admin. Code 922.3.0 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

16.0 Placements

16.1 In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the LRE provisions of this regulation, including 14.0 through 18.0.

16.2 The child's placement shall be determined at least annually; shall be based on the child's IEP; and shall be as close as possible to the child's home.

16.3 Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled.

16.4 In selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that he or she needs.

16.5 A child with a disability shall not be removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

17.0 Non Academic Settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 7.1 and 7.2, each public agency shall ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

18.0 Children in Public or Private Institutions

Each public agency shall ensure that 14.0 (LRE requirement) is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

19.0 Technical Assistance and Training Activities

Each public agency shall ensure that teachers and administrators are fully informed about their responsibilities for implementing 14.0 (LRE requirement); and are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

20.0 Monitoring Activities

- 20.1 The DOE shall monitor public agencies to ensure that 14.0 (LRE requirement) is implemented by each public agency.
- 20.2 If there is evidence that a public agency makes placements that are inconsistent with 14.0 (LRE requirement), the DOE shall review the public agency's justification for its actions; and assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5); 14 Del.C. §3110)

21.0 Procedural Safeguards

- 21.1 General: Each public agency shall ensure compliance with the requirements of 14 DE Admin. Code 926 to the extent applicable to the agency.
- 21.2 Procedural safeguards identified: Children with disabilities and their parents shall be afforded the procedural safeguards identified in 21.1 of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A); 14 Del.C. §3110)

22.0 Evaluation

Each public agency shall ensure children with disabilities are evaluated in accordance with 14 DE Admin. Code 925.1.0 through 925.12.0.

(Authority: 20 U.S.C. 1412(a)(7); 14 Del.C. §3110)

23.0 Confidentiality of Personally Identifiable Information

Each public agency shall take reasonable steps to ensure the confidentiality of personally identifiable information consistent with 14 DE Admin. Code 927.10.0 through 927.26.0.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §3110)

24.0 Transition of Children from the Part C Program to Preschool Programs

- 24.1 Each public agency shall ensure that children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act; and
- 24.2 By the third (3rd) birthday of a child described in 24.1, or an earlier age as otherwise provided in these regulations, an IEP has been developed and is being implemented for the child consistent with 1.2.1; and each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(Authority: 20 U.S.C. 1412(a)(9); 14 Del.C. §3110)

15 DE Reg. 351 (09/01/11)

25.0 to 28.0 Reserved

29.0 State Responsibility Regarding Children in Private Schools

LEAs, and the DOE as appropriate, shall meet the private school requirements in 30.0 through 48.0.

(Authority: 20 U.S.C. 1412(a)(10); 14 Del.C. §3110)

30.0 Definition of Parentally Placed Private School Children with Disabilities

Definition: “**Parentally Placed Private School Children with Disabilities**” means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school in 14 **DE Admin. Code** 922.3.0, other than children with disabilities covered in 45.0 through 47.0.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

31.0 Child find for Parentally Placed Private School Children with Disabilities

- 31.1 General: Each LEA shall locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with 31.2 through 31.5, and 11.0 and with 14 **DE Admin. Code** 924.1.2.
- 31.2 Child find design: The child find process shall be designed to ensure the equitable participation of parentally placed private school children; and an accurate count of those children.
- 31.3 Activities: In carrying out the requirements of this section, the LEA shall undertake activities similar to the activities undertaken for the agency's public school children.
- 31.4 Cost: The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under 33.0.
- 31.5 Completion period: The child find process shall be completed in a time period comparable to that for students attending public schools in the LEA consistent with 14 **DE Admin. Code** 925.2.0.
- 31.6 Out of State children: Each LEA in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally placed private school children who reside in a State other than the State of Delaware in which the private schools that they attend are located.

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii); 14 **Del.C.** §3110)

32.0 Provision of Services for Parentally Placed Private School Children with Disabilities, Basic Requirement

- 32.1 General: To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with 37.0.
- 32.2 Services plan for parentally placed private school children with disabilities: In accordance with 32.1 and 37.0 through 39.0, a services plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under these regulations.
- 32.3 Record keeping: Each LEA shall maintain in its records, and provide to the DOE, the following information related to parentally placed private school children covered in 30.0 through 44.0: the number of children evaluated; the number of children determined to be children with disabilities; and the number of children served.

(Authority: 20 U.S.C. 1412(a)(10)(A)(i); 14 **Del.C.** §3110)

33.0 Expenditures

- 33.1 Formula: To meet the requirement of 32.1, each LEA shall spend the following on providing special education and related services (including direct services) to parentally placed private school children with disabilities:
 - 33.1.1 For children aged three (3) through twenty-one (21), an amount that is the same proportion of the LEA's total sub grant under section 611(f) of the Act as the number of private school children with disabilities aged three (3) through twenty-one (21) who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three (3) through twenty-one (21).
 - 33.1.2 For children aged (3) through five (5), an amount that is the same proportion of the LEA's total sub grant under section 619(g) of the Act as the number of parentally placed private school children with disabilities aged (3) through five (5) who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged (3) through five (5).
 - 33.1.3 As described in 33.1.2 of this section, children aged three (3) through five (5) are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including

religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 14 **DE Admin. Code** 922.3.0.

- 33.1.4 If an LEA has not expended for equitable services all of the funds described in 33.1.1, 33.1.2 and 33.1.3 by the end of the fiscal year for which Congress appropriated the funds, the LEA shall obligate the remaining funds for special education and related services (including direct services) to parentally placed private school children with disabilities during a carry over period of one (1) additional year.
- 33.2 Calculating proportionate amount: In calculating the proportionate amount of Federal funds to be provided for parentally placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools in 34.0 shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA.
- 33.3 Annual count of the number of parentally placed private school children with disabilities: Each LEA shall after timely and meaningful consultation with representatives of parentally placed private school children with disabilities (consistent with 34.0), determine the number of parentally placed private school children with disabilities attending private schools located in the LEA; and ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
 - 33.3.1 The count shall be used to determine the amount that the LEA shall spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.
- 33.4 Supplement, not supplant: State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally placed private school children with disabilities under these regulations.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

34.0 Consultation

- 34.1 To ensure timely and meaningful consultation, an LEA shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:
 - 34.1.1 Child find: The child find process, including how parentally placed private school children suspected of having a disability can participate equitably; and how parents, teachers, and private school officials will be informed of the process.
 - 34.1.2 Proportionate share of funds: The determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities in 33.2 including the determination of how the proportionate share of those funds was calculated.
 - 34.1.3 Consultation process: The consultation process among the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
 - 34.1.4 Provision of special education and related services: How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of:
 - 34.1.4.1 The types of services, including direct services and alternate service delivery mechanisms; and
 - 34.1.4.2 How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and
 - 34.1.4.3 How and when those decisions will be made;
 - 34.1.4.4 Written explanation by LEA regarding services: How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
- (Authority: 20 U.S.C. 1412(a)(10)(A)(iii); 14 **Del.C.** §3110)

35.0 Written Affirmation

- 35.1 When timely and meaningful consultation, as required by 34.0, has occurred, the LEA shall obtain a written affirmation signed by the representatives of participating private schools.

- 35.2 If the representatives do not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the DOE.
(Authority: 20 U.S.C. 1412(a)(10)(A)(iv); 14 **Del.C.** §3110)

36.0 Compliance

- 36.1 General: A private school official has the right to submit a complaint to the DOE that the LEA did not engage in consultation that was meaningful and timely; or did not give due consideration to the views of the private school official.
- 36.2 Procedure: If the private school official wishes to submit a complaint, the official shall provide to the DOE the basis of the noncompliance by the LEA with the applicable private school provisions in these regulations; and the LEA shall forward the appropriate documentation to the DOE.
- 36.2.1 If the private school official is dissatisfied with the decision of the DOE, the official may submit a complaint to the Secretary of the United States Department of Education by providing the information on noncompliance described in 36.2 and the DOE shall forward the appropriate documentation to the Secretary of the United States Department of Education.
(Authority: 20 U.S.C. 1412(a)(10)(A)(v); 14 **Del.C.** §3110)

37.0 Equitable Services Determined

- 37.1 No individual right to special education and related services. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- 37.2 Decisions: Decisions about the services that will be provided to parentally placed private school children with disabilities in 30.0 through 44.0 shall be made in accordance with 37.4 and 34.1.3.
- 37.3 The LEA shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.
- 37.4 Services plan for each child served in 30.0 through 44.0: If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA shall:
- 37.4.1 Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 38.3; and
- 37.4.2 Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

38.0 Equitable Services Provided

- 38.1 General: The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements under the definition in 14 **DE Admin. Code** 922.3.0.
- 38.2 Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- 38.3 Services provided in accordance with a services plan: Each parentally placed private school child with a disability who has been designated to receive services in 32.0 shall have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in 34.0 and 37.0, it will make available to parentally placed private school children with disabilities.
- 38.3.1 The services plan shall, to the extent appropriate meet the requirements of 14 **DE Admin. Code** 925.20.0 (or for a child ages three (3) through five (5), meet the requirements of 14 **DE Admin. Code** 925.23.0) with respect to the services provided; and be developed, reviewed, and revised consistent with 14 **DE Admin. Code** 925.21.0 through 925.24.0.
- 38.4 Provision of equitable services: The provision of services pursuant to this section and 39.0 through 43.0 shall be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or other entity.

- 38.5 Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and non ideological.
(Authority: 20 U.S.C. 1412(a)(10)(A)(vi); 14 **Del.C.** §3110)

39.0 Location of Services and Transportation

- 39.1 Services on private school premises: Services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- 39.2 Transportation, General: If necessary for the child to benefit from or participate in the services provided under these regulations, a parentally placed private school child with a disability shall be provided transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services.
- 39.2.1 LEAs are not required to provide transportation from the child's home to the private school.
- 39.3 Cost of transportation: The cost of the transportation described in 39.2 may be included in calculating whether the LEA has met the requirement of 33.0.

(Authority: 20 U.S.C. 1412(a)(10)(A);) 14 **Del.C.** §3110

40.0 Due Process Complaints and State Complaints

- 40.1 Due process not applicable, except for child find: Except as provided in 40.2 of this section, the procedures in 14 Del. Admin. Code 926.4.0 through 926.19.0 do not apply to complaints that an LEA has failed to meet the requirements of 32.0 through 39.0 of this Subpart, including the provision of services indicated on the child's services plan.
- 40.2 Child find complaints to be filed with the LEA in which the private school is located: The procedures in 14 **DE Admin. Code** 926.4.0 through 926.19.0 apply to complaints that an LEA has failed to meet the child find requirements in 31.0, including the requirements in 14 **DE Admin. Code** 925.1.0 through 925.12.0.
- 40.2.1 Any due process complaint regarding the child find requirements (as described in 40.2) shall be filed with the LEA in which the private school is located and a copy shall be forwarded to the DOE.
- 40.3 State complaints: Any complaint that an LEA has failed to meet the requirements in 32.0 through 35.0 and 37.0 through 44.0 shall be filed in accordance with the procedures described in 51.0 through 53.0.
- 40.3.1 A complaint filed by a private school official under 36.1 shall be filed with the DOE in accordance with the procedures in 36.2.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110))

41.0 Requirement that Funds not Benefit a Private School

- 41.1 An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- 41.2 The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for meeting the needs of a private school; or the general needs of the students enrolled in the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

42.0 Use of Personnel

- 42.1 Use of public school personnel: An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities to the extent necessary to provide services under 30.0 through 44.0 for parentally placed private school children with disabilities; and if those services are not normally provided by the private school.
- 42.2 Use of private school personnel: An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services in 30.0 through 44.0 if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

43.0 Separate Classes Prohibited

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site; and the classes include children enrolled in public schools and children enrolled in private schools.

44.0 Property, Equipment, and Supplies

- 44.1 A public agency shall control and administer the funds used to provide special education and related services in 37.0 through 39.0, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- 44.2 The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
- 44.3 The public agency shall ensure that the equipment and supplies placed in a private school are used only for Part B purposes; and can be removed from the private school without remodeling the private school facility.
- 44.4 The public agency shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B of the Act purposes.
- 44.5 No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A)(vii); 14 **Del.C.** §3110)

45.0 Children with Disabilities in Private Schools Placed or Referred By Public Agencies

Applicability: Sections 46.0 through 47.0 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B); 14 **Del.C.** §3110)

46.0 Responsibility of Public Agencies

Each public agency that places a child with a disability at a private school or facility shall ensure the child is provided special education and related services in conformance with an IEP that meets the requirements of 14 **DE Admin. Code** 925.20.0 through 925.25.0; and at no cost to the parents; is provided a FAPE; and has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B); 14 **Del.C.** §3110)

47.0 Monitoring by DOE

To monitor compliance of the requirements in 46.0 by public agencies, DOE shall use procedures such as written reports, on site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B); 14 **Del.C.** §3110)

48.0 Placement of Children by Parents when FAPE is at Issue.

- 48.1 General: These regulations do not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 31.0 through 44.0.
- 48.2 Disagreements about FAPE: Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in 14 **DE Admin. Code** 926.4.0 through 926.20.0.
- 48.3 Reimbursement for private school placement: If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing panel finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing panel or a court even if it does not meet the State standards that apply to education provided by the DOE and LEAs.

- 48.4 Limitation on reimbursement: The cost of reimbursement described in 48.3 of this section may be reduced or denied if:
- 48.4.1 At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - 48.4.2 At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in 48.4.1;
 - 48.4.2.1 If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 14 **DE Admin. Code** 926.3.1.1, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- 48.5 Exception: Notwithstanding the notice requirement in 48.4.1 and 48.4.2 the cost of reimbursement shall not be reduced or denied for failure to provide the notice if: the school prevented the parents from providing the notice; the parents had not received notice, 14 **DE Admin. Code** 926.4.0, of the notice requirement in 48.4.1 and 48.4.2 or compliance with 48.4.1 and 48.4.2 would likely result in physical harm to the child; and
- 48.5.1 May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English; or compliance with 48.4.1 and 48.4.2 would likely result in serious emotional harm to the child.
- (Authority: 20 U.S.C. 1412(a)(10)(C); 14 **Del.C.** §3110)

49.0 DOE Responsibility for General Supervision of Procedural Safeguards

- 49.1 The DOE shall ensure that the requirements of these regulations are carried out; and that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency is under the general supervision of the DOE; and meets the educational standards of the DOE (including the requirements of these regulations).
- 49.2 In carrying out these regulations with respect to homeless children, the DOE shall ensure that the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.
- 49.3 The State may carry out its General Supervisory responsibilities through any mechanism or procedure provided in these regulations or other applicable State or federal law, including, but not limited to, 49.5 and 14 **DE Admin. Code** 927 and 928.
- 49.4 Part B of the Act and these regulations do not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.
- 49.5 *In addition to any other authority available under these regulations or State law, DOE may use any of the following activities and mechanisms to identify and correct noncompliance and to document and exercise its general supervisory responsibilities: interagency agreements; compliance monitoring; dispute resolution systems (due process hearings, state complaints and mediation); general project coordination and contracting; specific program evaluations; personnel systems; public dissemination of information; and financial and administrative audits and reporting.*
 - 49.5.1 *Compliance monitoring: DOE may use any reasonable method to collect, analyze and verify information to monitor compliance with Part B and these regulations.*
 - 49.5.1.1 *Monitoring methods may include, but are not limited to, use of offsite review, on site review, letters of inquiry, and follow up and verification of specific activities.*
 - 49.5.1.2 *Potential noncompliance may be identified from any generally reliable source of information, including but not limited to, complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions.*
 - 49.5.1.3 *DOE shall document its monitoring activity through correspondence and reports.*
 - 49.5.1.4 *DOE shall notify a public agency in writing when it identifies noncompliance. The notice shall describe each corrective action which shall be taken, including a reasonable time frame for submission of a corrective action plan, and require that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency shall take to remedy the identified areas of noncompliance.*

49.5.1.5 Within sixty (60) days of receiving a corrective action plan, DOE shall determine whether the plan meets each of the requirements of the preceding paragraph, or if additional information is required from the agency, and notify the agency accordingly

49.5.1.6 *In all events, noncompliance shall be corrected within one (1) year of the date DOE identifies the noncompliance.*

49.5.2 Enforcement: *DOE shall have the authority to enforce legal obligations under these regulations, and to compel the correction of deficiencies in program operations and other identified noncompliance. DOE may enforce its authority by any mechanism available under State or federal law and these regulations, including but not limited to, directing public agencies to correct noncompliance; imposing specific conditions on funding; imposing appropriate sanctions for failing or refusing to correct noncompliance; and withholding funding in whole or part.*

49.5.3 *DOE shall distribute these regulations, required and model forms, guidance, and letters of general notification to all public and private agencies providing services to children with disabilities. DOE shall determine the method of dissemination, which may include regular mail, electronic mail, website postings and distribution at State or county meetings.*

(Authority: 20 U.S.C. 1412(a)(11); 1416; 14 Del.C. §3110)

14 DE Reg. 1057 (04/01/11)

50.0 Implementation of Procedural Safeguards

Each public agency is responsible for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a); 14 Del.C. §3110)

51.0 State Complaint Procedures

51.1 General: The DOE shall resolve any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 53.0 by implementing the State complaint procedures under 51.0 through 53.0; and widely disseminate to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State complaint procedures.

51.2 Remedies for denial of appropriate services: In resolving a complaint in which the DOE has found a failure to provide appropriate services, the DOE, pursuant to its general supervisory authority under Part B of the Act, shall address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and appropriate future provision of services for all children with disabilities.

51.3 Public agency compliance and noncompliance:

51.3.1 A report of the DOE's findings shall be sent to the Chief Administrative Officer of the public agency, the Secretary, and the complaining party.

51.3.2 When the findings of the DOE indicate a public agency's full compliance with Part B of the Act and these regulations, no further action by the DOE shall be taken.

51.3.3 When the findings of the DOE indicate non compliance with Part B of the Act or these regulations, the public agency shall be presented with the DOE's findings and a time frame for corrective action as specified by the DOE. If the public agency completes the specified corrective action within the time frame determined by the DOE, the DOE may nonetheless continue to monitor the public agency and request additional action to ensure full compliance with these regulations.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

52.0 Time Limit and Extension for State Complaint, Final Decision, and Implementation

52.1 Time limit; minimum procedures: Within Sixty (60) days following the DOE's receipt of an adequately detailed complaint under 53.0 the DOE shall:

52.1.1 Carry out an independent on site investigation, if the DOE determines that an investigation is necessary;

52.1.2 Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

52.1.3 Provide the public agency with the opportunity to respond to the complaint, including, at a minimum at the discretion of the public agency, a proposal to resolve the complaint; and an opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 14 DE Admin. Code 926.6.0;

- 52.1.4 Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or these regulations; and
 - 52.1.5 Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions; and the reasons for the DOE's final decision.
 - 52.2 Time extension; final decision; implementation: The DOE shall permit an extension of the time limit in 52.1 only if:
 - 52.2.1 Exceptional circumstances exist with respect to a particular complaint; or
 - 52.2.2 The parent, individual, or organization and the public agency involved agree to extend the time to engage in mediation or in other alternative means of dispute resolution; and
 - 52.3 **DOE shall** provide procedures for effective implementation of the DOE's final decision, if needed, including technical assistance activities; negotiations; and corrective actions to achieve compliance.
 - 52.4 Complaints filed under this section and due process hearings.
 - 52.4.1 If a written complaint is received that is also the subject of a due process hearing in 14 **DE Admin. Code** 926.7.0, or 926.30.0 through 926.32.0, or contains multiple issues of which one or more are part of that hearing, the DOE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described in 52.1 and 52.2.
 - 52.4.2 If an issue that was raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue; and the DOE shall inform the complainant to that effect.
 - 52.4.3 A complaint alleging a public agency's failure to implement a due process hearing decision shall be resolved by the DOE.
- (Authority: 20 U.S.C.1221e-3; 14 **Del.C.** §3110)

53.0 Filing a Complaint

- 53.1 An organization or individual may file a signed written complaint under the procedures described in 51.0 through 52.0.
 - 53.2 The complaint shall include:
 - 53.2.1 A statement that a public agency has violated a requirement of Part B of the Act or of these regulations;
 - 53.2.2 The facts on which the statement is based, including the time frame in which the incident(s) occurred;
 - 53.2.3 The signature and contact information for the complainant, and legal representative, if any, or of individuals representing a public agency or private organization filing a complaint; and if alleging violations with respect to a specific child:
 - 53.2.3.1 The name and address of the residence of the child;
 - 53.2.3.2 The name of the school the child is attending;
 - 53.2.3.3 In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C.11434a(2))), available contact information for the child, and the name of the school the child is attending;
 - 53.2.3.4 A description of the nature of the problem of the child, including facts relating to the problem;
 - 53.2.3.5 A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed; and
 - 53.2.3.6 *A description of the attempts made to resolve the issue(s) prior to filing the complaint, if any.*
 - 53.2.4 The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received in accordance with 51.0.
 - 53.2.5 The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the DOE.
- (Authority: 20 U.S.C.1221e-3; 14 **Del.C.** §3110)

14 DE Reg. 1057 (04/01/11)

54.0 Methods of Ensuring Services

- 54.1 Establishing responsibility for services: The Secretary shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non educational public agency described in 54.2 and the DOE, in order to ensure that all services described in 54.2 that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute in 54.1.3. The agreement or mechanism shall include the following:

- 54.1.1 An identification of, or a method for defining, the financial responsibility of each agency for providing services described in 54.2 to ensure FAPE to children with disabilities. The financial responsibility of each non educational public agency, including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).
- 54.1.2 The conditions, terms, and procedures under which an LEA shall be reimbursed by other agencies.
- 54.1.3 Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
- 54.1.4 Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in 54.2.
- 54.2 Obligation of non educational public agencies: If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to 54.1, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to 54.1 or an agreement pursuant to 54.4.
 - 54.2.1 A non educational public agency described in 54.2 may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
- 54.3 If a public agency other than an educational agency fails to provide or pay for the special education and related services described in 54.2, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the non educational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in 54.1.
- 54.4 Special rule: The requirements of 54.1 may be met through State statute or regulation; signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or other appropriate written methods as determined by the Secretary and approved by the Secretary of the United States Department of Education.
- 54.5 Children with disabilities who are covered by public benefits or insurance: A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under these regulations, as permitted under the public benefits or insurance program, except as further provided in this section. With regard to services required to provide FAPE to an eligible child under these regulations, the public agency:
 - 54.5.1 May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - 54.5.2 May not require parents to incur an out of pocket expense such as the payment of a deductible or co pay amount incurred in filing a claim for services provided pursuant to these regulations, but pursuant to 54.7, may pay the cost that the parents otherwise would be required to pay;
 - 54.5.3 May not use a child's benefits under a public benefits or insurance program if that use would:
 - 54.5.3.1 Decrease available lifetime coverage or any other insured benefit;
 - 54.5.3.2 Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - 54.5.3.3 Increase premiums or lead to the discontinuation of benefits or insurance; or
 - 54.5.3.4 Risk loss of eligibility for home and community based waivers, based on aggregate health related expenditures; and
 - 54.5.3.5 Shall obtain parental consent each time that access to public benefits or insurance is sought; and notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
 - 54.5.4 Children with disabilities who are covered by private insurance: With regard to services required to provide FAPE to an eligible child under these regulations, a public agency may access the parents' private insurance proceeds only if the parents provide consent.
 - 54.5.5 Each time the public agency proposes to access the parents' private insurance proceeds, the agency shall obtain parental consent in accordance with 54.5.4; and inform the parents that their refusal to permit the

public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

- 54.6 Use of Part B funds: If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under these regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service.
- 54.6.1 To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co pay amounts).
- 54.7 Proceeds from public benefits or insurance or private insurance: Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
- 54.7.1 If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under these regulations, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 63.0 and 14 **DE Admin. Code** 924.3.0.
- 54.8 Construction: Nothing in these regulations should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.
(Authority: 20 U.S.C. 1412(a)(12) and (e); 14 **Del.C.** §3110)

55.0 Hearings Relating to LEA eligibility

The DOE shall not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d) as more fully provided in 14 **DE Admin. Code** 928.5.
(Authority: 20 U.S.C. 1412(a)(13); 14 **Del.C.** §3110)

56.0 Personnel Qualifications

- 56.1 General: Personnel necessary to carry out the purposes of these regulations shall be appropriately and adequately prepared and trained, and shall have the content knowledge and skills to serve children with disabilities, all as established in DOE certification regulations and requirements.
- 56.2 Related services personnel and paraprofessionals: The requirements in 56.1 include qualifications for related services personnel and paraprofessionals. Such requirements shall be interpreted consistent with any State approved or State recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and ensure that related services personnel who deliver services in their discipline or profession:
- 56.2.1 Meet the requirements of 56.2; and
- 56.2.2 Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- 56.2.3 Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of these regulations to be used to assist in the provision of special education and related services under these regulations to children with disabilities.
- 56.3 Qualifications for special education teachers: The qualifications described in 56.1 shall ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.
- 56.4 Policy: In implementing this section, LEAs shall take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under these regulations to children with disabilities.
- 56.5 Rule of construction: Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a public agency or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the DOE as provided for under these regulations.
(Authority: 20 U.S.C. 1412(a)(14); 14 **Del.C.** §3110)

57.0 to 66.0 Reserved

67.0 State Advisory Panel

The Governor's Advisory Council for Exceptional Citizens shall provide policy guidance with respect to special education and related services for children with disabilities in the State.

(Authority: 20 U.S.C. 1412(a)(21)(A); 14 **Del.C.** §§3110, 3111)

68.0 Membership

- 68.1 General: The Governor's Advisory Council for Exceptional Citizens shall consist of members appointed by the Governor, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including:

- 68.1.1 Parents of children with disabilities (ages birth through twenty-six (26));
- 68.1.2 Individuals with disabilities;
- 68.1.3 Teachers;
- 68.1.4 Representatives of institutions of higher education that prepare special education and related services personnel;
- 68.1.5 State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);
- 68.1.6 Administrators of programs for children with disabilities;
- 68.1.7 Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- 68.1.8 Representatives of private schools and public charter schools;
- 68.1.9 Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- 68.1.10 A representative from the Department of Services for Children, Youth and Their Families (DSCYF), Division of Family Services; and
- 68.1.11 Representatives from the Department of Corrections and the DSCYF's Division of Youth Rehabilitative Services.

- 68.2 Special rule: A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (age birth through twenty-six (26)).

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C); 14 **Del.C.** §§3110, 3111)

69.0 Duties

- 69.1 The Governor's Advisory Council for Exceptional Citizens shall:

- 69.1.1 Advise the DOE of unmet needs within the State in the education of children with disabilities;
- 69.1.2 Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- 69.1.3 Advise the DOE in developing evaluations and reporting on data to the Secretary of the U.S. Department of Education;
- 69.1.4 Advise the DOE in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and
- 69.1.5 Advise the DOE in developing and implementing policies relating to the coordination of services for children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(D); 14 **Del.C.** §3110)

70.0 Suspension and Expulsion Rates

- 70.1 General: The DOE shall examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long term suspensions and expulsions of children with disabilities among LEAs in the State; or compared to the rates for nondisabled children within those agencies.
- 70.2 Review and revision of policies: If the discrepancies described in 70.1 of this section are occurring, the DOE shall review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive

behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 1412(a)(22); 14 **Del.C.** §3110)

71.0 Annual Description of Use of Part B Funds.

On an annual basis, the State shall describe how amounts retained for State administration and State level activities in 14 **DE Admin. Code** 928.4.0 will be used to meet the requirements of these regulations; and how those amounts will be allocated among the activities described in 14 **DE Admin. Code** 928.4.0 to meet State priorities based on input from LEAs.

(Authority: 20 U.S.C. 1411(e)(5); 14 **Del.C.** §3110)

72.0 Access to Instructional Materials

72.1 General: The DOE adopts the National Instructional Materials Accessibility Standard (NIMAS) for the purposes of providing instructional materials to blind persons or other persons with print disabilities.

72.1.1 Rights and responsibilities: The DOE shall coordinate with the National Instructional Materials Access Center (NIMAC) to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

72.1.2 Children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 72.4, or who need materials that cannot be produced from NIMAS files, shall receive those instructional materials in a timely manner.

72.1.3 In order to assist the DOE in meeting its responsibility in 72.1.2, each public agency shall take reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

72.2 Preparation and delivery of files: As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, the DOE shall enter into a written contract with the publisher of the print instructional materials to:

72.2.1 Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

72.2.2 Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

72.2.3 Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

72.3 Assistive technology: In carrying out this section, the DOE, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

72.4 Definitions: In this section and in 14 **DE Admin. Code** 924.10.0:

“Blind Persons or Other Persons with Print Disabilities” means children served under these regulations who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C 135a;

“National Instructional Materials Access Center (NIMAC)” means the center established pursuant to section 674(e) of the Act;

“National Instructional Materials Accessibility Standard (NIMAS)” has the meaning given the term in section 674(e)(3)(B) of the Act;

“Specialized” formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(Authority: 20 U.S.C. 1412(a)(23), 1474(e); 14 **Del.C.** §3110)

73.0 Overidentification and Disproportionality

The State shall have in effect, consistent with the purposes of these regulations and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in the definition of child with a disability in 14 **DE Admin. Code** 922.3.0.

(Authority: 20 U.S.C. 1412(a)(24); 14 **Del.C.** §3110)

74.0 Prohibition on Mandatory Medication

74.1 General: All public agency and LEA personnel are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21

U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation, or receiving services under these regulations.

- 74.2 Rule of construction: Nothing in 74.1 shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services in 11.0 (related to child find).
(Authority: 20 U.S.C. 1412(a)(25); 14 **Del.C.** §3110)

75.0 DOE as Provider of FAPE or Direct Services

In any program or circumstances in which DOE provides FAPE to children with disabilities, or provides direct services to these children, the DOE shall comply with any additional requirements of 14 **DE Admin. Code** 924.1.2, 924.2.0, and 924.6.0 through 924.26.0, as if the DOE were an LEA; and may use amounts that are otherwise available to the DOE under Part B of the Act to serve those children without regard to 14 **DE Admin. Code** 924.2 (relating to excess costs).

(Authority: 20 U.S.C. 1412(b); 14 **Del.C.** §3110)

76.0 to 98.0 Reserved.

99.0 State Administration

- 99.1 Rulemaking. The DOE shall ensure that its rules, regulations, and policies conform to Part B of the Act.
- 99.2 The DOE shall identify in writing to LEAs located in the State and the Secretary of the United States Department of Education any such rule, regulation, or policy as a State imposed requirement that is not required by Part B of the Act and Federal regulations. The Secretary shall also minimize the number of rules, regulations, and policies to which the LEAs and schools located in Delaware are subject under Part B of the Act. Italicized materials in these State regulations identify State statutory or regulatory requirements not otherwise required by Part B of the Act and federal regulations.
- 99.3 Support and facilitation: The DOE's rules, regulations, and policies under Part B of the Act shall support and facilitate LEA and school level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Authority: 20 U.S.C. 1407; 14 **Del.C.** §3110)

10 DE Reg. 1816 (06/01/07)

14 DE Reg. 1057 (04/01/11)

15 DE Reg. 351 (09/01/11)

18 DE Reg. 562 (01/01/15) (Final)