

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 925

PROPOSED

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del. C. §122(d)

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to ensure alignment with current practice. The following sections have been revised: Additional Requirements for Evaluations and Re-Evaluations, Determination of Eligibility, Individualized Education Program (IEP), IEP Team, When IEPs Shall Be In Effect, Development, and Review of IEP, Educational Placement in the Least Restrictive Environment, and High School Graduation. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*. This regulation will be effective July 1, 2024.

The Department will hold public hearings, which are available in person or virtually, on the proposed regulation changes as follows:

Wednesday, January 17, 2024 from 5:00 p.m. - 5:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77022>).

Please register in advance: <https://de-doe.webex.com/weblink/register/r639b03aa022d11f47e7d5db223b6451e>

Monday, February 19, 2024 from 12:00 p.m. - 12:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77023>).

Please register in advance: <https://de-doe.webex.com/weblink/register/rbe0845ce0bbc91bf7932a12839bf1578>

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before March 1, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware. NOTE: IDEA regulations are out for comment for 60 days.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards especially students with disabilities.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected especially students with disabilities.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-making at the local board and school level? The amended regulation does not change the decision-making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon

decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

7. Will the decision-making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

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 U.S.C. §1407(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.

24 DE Reg. 673 (01/01/21)

1.0 Parental Consent

- 1.1 Parental consent for initial evaluation: The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability shall, after providing notice consistent with 14 **DE Admin. Code** ~~926.3.0 and 926.4.0~~ 926, Sections 3.0 and 4.0, obtain informed written consent from the parent of the child before conducting the evaluation.
 - 1.1.1 Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
 - 1.1.2 The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
 - 1.1.3 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
 - 1.1.3.1 Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; the rights of the parents of the child have been terminated in accordance with State law; or the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
 - 1.1.4 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under subsection 1.1, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 14 **DE Admin. Code** 926 (including the mediation procedures or the due process procedures, if appropriate).
 - 1.1.4.1 The public agency does not violate its obligation under 14 **DE Admin. Code** ~~923.11.0~~ 923, Section 11.0 and 14 **DE Admin. Code** ~~925.2.0 through 925.12.0~~ 925, Sections 2.0 through 12.0 if it declines to pursue the evaluation.
- 1.2 Parental consent for services: A public agency that is responsible for making FAPE available to a child with a disability shall obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. If any Delaware agency obtains consent for the initial provision of special education and related services under the child's first IEP, and the child transfers to, or subsequently receives services from, another Delaware public agency, the receiving agency shall not be required to obtain parental consent for the provision of special education and related services.
 - 1.2.1 The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
 - 1.2.2 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services under subsection 1.2, the public agency:

- 1.2.2.1 May not use the procedures in 14 **DE Admin. Code** 926 including the mediation procedures or the due process procedures ~~in order~~ to obtain agreement or a ruling that the services may be provided to the child;
- 1.2.2.2 Will not be considered ~~to be~~ in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
- 1.2.2.3 Is not required to convene an IEP team meeting or develop an IEP for the child.
- 1.2.3 If, at any time ~~subsequent to~~ after the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:
 - 1.2.3.1 May not continue to provide special education and related services to the child, but shall provide prior written notice in accordance with 14 **DE Admin. Code** ~~926.3.0~~ 926, Section 3.0 before ceasing the provision of special education and related services;
 - 1.2.3.2 May not use the procedures in 14 **DE Admin. Code** 926 (including the mediation procedures) or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
 - 1.2.3.3 Will not be considered ~~to be~~ in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
 - 1.2.3.4 Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.
- 1.3 Parental consent for re-evaluations: Subject to subsection 1.3.1, each public agency shall obtain informed parental consent, in accordance with subsection 1.1 prior to conducting any re-evaluation of a child with a disability.
 - 1.3.1 If the parent refuses to consent to the re-evaluation, the public agency may pursue the re-evaluation by using the consent override procedures described in subsection 1.1.4.
 - 1.3.2 The public agency does not violate its obligation under 14 **DE Admin. Code** ~~923.11.0~~ 923, Section 11.0 and ~~925.3.0 through 6.0~~ 925, Sections 3.0 through 6.0 if it declines to pursue the evaluation or re-evaluation.
 - 1.3.3 The informed parental consent described in subsection 1.3 need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent; and the child's parent has failed to respond.
- 1.4 Other consent requirements: Parental consent is not required before reviewing existing data as part of an evaluation or a re-evaluation; or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- 1.5 Each public agency shall establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
- 1.6 A public agency may not use a parent's refusal to consent to ~~one (1)~~ 1 service or activity under this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by these regulations.
- 1.7 If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the re-evaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures in subsections 1.1.4 and 1.3; and
 - 1.7.1 The public agency is not required to consider the child as eligible for services under 14 **DE Admin. Code** ~~923.32.0 through 923.44.0~~ 923, Sections 32.0 through 44.0.
- 1.8 To meet the reasonable efforts requirement of this section, the public agency shall document its attempts to obtain parental consent using the procedures in subsection 9.6.
(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); 14 **Del.C.** §3110)

14 DE Reg. 1060 (04/01/11)
20 DE Reg. 172 (09/01/16)
24 DE Reg. 673 (01/01/21)

2.0 Initial Evaluations

- 2.1 Initial Evaluations General: Each public agency shall conduct a full and individual initial evaluation in accordance with Sections 5.0 and 6.0 before the initial provision of special education and related services to a

child with a disability under these regulations. *The initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.*

- 2.2 Request for initial evaluation: Consistent with the consent requirements in Section 1.0, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- 2.3 Procedures for initial evaluation: *Within ~~forty-five (45)~~ 45 school days or ~~ninety (90)~~ 90 calendar days, whichever is less, of receiving written parental consent, the initial evaluation shall be conducted; and the child's eligibility for special education and related services shall be determined at a meeting convened for that purpose.*
 - 2.3.1 The initial evaluation shall consist of procedures to determine if the child is a child with a disability as defined in 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0; and to determine the educational needs of the child.
- 2.4 Exception: The time frame described in subsection 2.3 does not apply to a public agency if:
 - 2.4.1 The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - 2.4.2 A child enrolls in a school of another public agency after the relevant time frame in subsection 2.3 has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability.
- 2.5 The exception in subsection 2.4.2 applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.
- 2.6 Screening for instructional purposes is not evaluation: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered ~~to be~~ an evaluation for eligibility for special education and related services.
(Authority: 20 U.S.C. 1414(a); 14 **Del.C.** §3110)

14 DE Reg. 1060 (04/01/11)

24 DE Reg. 673 (01/01/21)

3.0 Re-evaluations

- 3.1 General: A public agency shall ensure that a re-evaluation of each child with a disability is conducted in accordance with 14 **DE Admin. Code** ~~925.4.0 through 925.12.0~~ 925, Sections 4.0 through 12.0 if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a re-evaluation; or if the child's parent or teacher requests a re-evaluation.
- 3.2 Limitation: A re-evaluation conducted under subsection 3.1 may occur not more than once a year, unless the parent and the public agency agree otherwise; and shall occur at least once every ~~three (3)~~ 3 years, unless the parent and the public agency agree that a re-evaluation is unnecessary.
- 3.3 *A public agency shall initiate a re-evaluation when varied and multiple data sources indicate that a child's performance has improved such that the child may no longer require special education and related services.*
(Authority: 20 U.S.C. 1414(a)(2); 14 **Del.C.** §3110)

24 DE Reg. 673 (01/01/21)

4.0 Evaluation Procedures

- 4.1 Notice: The public agency shall provide notice to the parents of a child with a disability, in accordance with 14 **DE Admin. Code** ~~926-3-0~~ 926, Section 3.0, that describes any evaluation procedures the agency proposes to conduct.
- 4.2 Conduct of evaluation: In conducting the evaluation, the public agency shall:
 - 4.2.1 Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability as defined under 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0, and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); and
 - 4.2.2 *Include an observation in the child's learning environment; and*
 - 4.2.3 Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; but

- 4.2.4 May not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.
- 4.3 Other evaluation procedures: Each public agency shall ensure that:
- 4.3.1 Assessments and other evaluation materials used to assess a child under these regulations:
- 4.3.1.1 Are selected and administered so as not to be discriminatory on a racial or cultural basis;
- 4.3.1.2 Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
- 4.3.1.3 Are used for the purposes for which the assessments or measures are valid and reliable;
- 4.3.1.4 Are administered by trained and knowledgeable personnel, including but not limited to, a qualified evaluation specialist who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which the personnel is providing student evaluation services; and
- 4.3.1.5 Are administered in accordance with any instructions provided by the producer of the assessments.
- 4.3.2 Each public agency shall ensure that assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- 4.3.3 Each public agency shall ensure that assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- 4.3.4 The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- 4.3.5 Assessments of children with disabilities who transfer from ~~one~~ 1 public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with subsection 2.4, to ensure prompt completion of full evaluations.
- 4.3.6 In evaluating each child with a disability under Sections 4.0 through 6.0, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the child's educational classifications.
- 4.3.7 Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B); 14 Del.C. §3110)

14 DE Reg. 1060 (04/01/11)

24 DE Reg. 673 (01/01/21)

5.0 Additional Requirements for Evaluations and Re-evaluations

- 5.1 Review of existing evaluation data: As part of an initial evaluation (if appropriate) and as part of any re-evaluation under these regulations, the IEP team and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including:
- 5.1.1 Evaluations and information provided by the parents of the child;
- 5.1.2 Current classroom-based, local, or State assessments, and classroom-based observations; and
- 5.1.3 Observations by teachers and related services providers; and
- 5.1.4 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
- 5.1.4.1 Whether the child is a child with a disability, as defined in 14 DE Admin. Code 922-3-0 922, Section 3.0, and the educational needs of the child; or
- 5.1.4.2 In case of a re-evaluation of a child, whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; or

- 5.1.4.3 In the case of a re-evaluation of a child, whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- 5.2 Conduct of review: The group described in subsection 5.1 may conduct its review without a meeting.
- 5.3 Source of data: The public agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection 5.1.
- 5.4 Requirements if additional data are not needed: If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency shall notify the child's parents of that determination and the reasons for the determination; and notify the parents of their right to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
- 5.4.1 The public agency is not required to conduct the assessment described in subsection 5.4 unless requested to do so by the child's parents.
- 5.5 Evaluations before change in eligibility, *including change in eligibility classification*: Except as provided in subsection 5.5.1, a public agency shall evaluate a child with a disability in accordance with Sections 4.0 through 6.0 before determining that the child is no longer a child with a disability.
- 5.5.1 The evaluation described in subsection 5.5 is not required before the termination of a child's eligibility under these regulations due to the child's graduation from secondary school with a regular diploma, or due to the child reaching their 21st 22nd birthdate.
- 5.5.2 For a child whose eligibility terminates under circumstances described in subsection 5.5.1, a public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. *Local education agencies may use the summary of performance form provided by the Delaware Department of Education.*
- (Authority: 20 U.S.C. 1414(c); 14 Del.C. §3110)

24 DE Reg. 673 (01/01/21)

6.0 Determination of Eligibility

- 6.1 General: Upon completion of the administration of assessments and other evaluation measures, *the child's IEP team* shall determine whether the child is a child with a disability, as defined in 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0, in accordance with subsection 6.3, and shall determine the educational needs of the child. The IEP team shall document its eligibility determination in an evaluation summary report. The public agency shall provide a copy of the evaluation summary report and other reports created to determine eligibility at no cost to the parent.
- 6.2 Special rule for eligibility determination: A child shall not be determined to be a child with a disability under 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0 if the determinant factor for that determination is:
- 6.2.1 Lack of appropriate instruction in reading, meaning lack of instruction in the essential components of reading instruction which are phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies; or
- 6.2.2 Lack of appropriate instruction in math; or
- 6.2.3 Limited English proficiency; and
- 6.2.4 If the child does not otherwise meet the eligibility criteria to be determined a child with a disability as defined in 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0.
- 6.3 Procedures for determining eligibility and educational need: *Eligibility decisions may include historical information to the extent relevant to the child's current needs.* In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 14 **DE Admin. Code** ~~922-3-0~~ 922, Section 3.0, and the educational needs of the child, each public agency shall:
- 6.3.1 Draw upon information from a variety of sources, including, as appropriate, aptitude and achievement tests, *information acquired from proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))* processes, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.

6.4 If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child in accordance with Sections 7.0 through 11.0.

6.5 Educational Classifications in General and Exit Criteria

6.5.1 There are ~~twelve (12)~~ 12 distinct educational classifications: Autism, Developmental Delay, Deaf-Blind (also referred to as “Dual Sensory Impairment”), Emotional Disability, Hearing Impairment (also referred to as “deaf” or “hard of hearing”), Specific Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, ~~Speech/Language~~ Speech or Language Impairment, Traumatic Brain Injury, and Visual Impairment Including Blindness. Eligibility criteria, disability-specific evaluation procedures, re-evaluation procedures, documentation and additional IEP team members necessary for each educational classification are delineated in subsections 6.6 through 6.18.

6.5.2 A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under 14 **Del.C.** Ch. 17, when the child’s IEP team has determined that the child meets the eligibility criteria of at least ~~one (1)~~ 1 of the educational classifications in this section, and by reason thereof, needs special education and related services.

6.5.3 A child’s IEP team may determine that a child is eligible for special education and related services under more than ~~one (1)~~ 1 educational classification. The educational classification selected by the IEP team shall not be a relevant factor in determining whether the child received FAPE, provided that the child’s IEP is based on the child’s educational needs.

6.5.4 When an IEP team determines that a child is eligible for special education and related services under more than ~~one (1)~~ 1 educational classification, the child’s primary ~~disability~~ educational classification shall be recorded first on the IEP.

6.5.5 Exit Criteria: A child’s eligibility for special education and related services shall terminate when:

6.5.5.1 The child reaches their ~~21st~~ 22nd *birthdate. A child with a disability who reaches their 21st 22nd birthdate after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or*

6.5.5.2 The child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not include a GED; or

6.5.5.3 The IEP team determines the child is no longer a child with a disability in need of special education and related services. In making such determination, the team shall consider: eligibility criteria; data based and documented measures of educational progress; and other relevant information.

6.6 Autism

6.6.1 Eligibility Criteria: Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction. It is generally, but may not be, evident before the age of 3. A child is eligible for special education and related services under the Autism educational classification when the child’s IEP team finds that the child ~~displays, or displayed by history:~~

6.6.1.1 ~~Persistent Displays, or displayed by history, persistent~~ impaired *impairments in social communication and social interaction, across multiple contexts, which manifest as:*

6.6.1.1.1 *Deficits in social-emotional reciprocity;*

6.6.1.1.2 *Deficits in non-verbal communicative behaviors used for social interaction; or*

6.6.1.1.3 *Deficits in developing, maintaining, and understanding relationships; and*

6.6.1.2 ~~Restricted Displays, or displayed by history, restricted,~~ restricted, *repetitive patterns of behavior, characteristics, interests, or activities, that are not age or developmentally appropriate, which manifest as:*

6.6.1.2.1 *Stereotyped or repetitive motor movements, use of objects or speech;*

6.6.1.2.2 *Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior;*

6.6.1.2.3 *Highly restricted, fixated interests that are abnormal in intensity or focus; or*

6.6.1.2.4 *Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment; and*

~~6.6.1.2.5~~ 6.6.1.3 *The displayed impairments or patterns must result in a significant impairment in important areas of functioning and be persistent across multiple contexts, including a variety of people, tasks and settings; and*

~~6.6.1.2.6~~ 6.6.1.4 *One (1) or more of the displayed impairments or patterns must have an adverse effect on the child's educational performance as that term is defined in 14 DE Admin. Code 922-3-0 922, Section 3.0.*

- 6.6.2 Age of Eligibility: A child is eligible for special education and related services under the Autism educational classification from birth until the student's receipt of a regular high school diploma ~~or the end August 31st of the school year in which the student attains the age of 24~~ 22, whichever occurs first.
- 6.6.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Autism if the child meets the criteria in subsection 6.6.1 and the adverse effects on the child's educational performance cannot primarily be explained by an emotional disability, *intellectual disability*, *developmental delay*, or factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925-6-2 925**, subsection 6.2.
- 6.6.4 Disability-Specific Evaluation Procedures: *In addition to the evaluation procedures required by 14 DE Admin. Code ~~925.4.0 through 925.5.0~~, in order 925, Sections 4.0 and 5.0, to determine a child's eligibility for special education and related services under the Autism educational classification, the child's IEP team shall obtain data from the following sources:*
- 6.6.4.1 *Specialized, validated assessment tools that provide specific evidence of the features of the educational classification of Autism described above; and*
- 6.6.4.2 *Observations of the child across structured and unstructured contexts.*
- 6.6.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code 925.3.0 through 925.5.0 and 925.6-6 925, Sections 3.0 through 5.0 and subsection 6.6.**
- 6.6.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under an Autism educational classification shall be provided by individuals who have specific training in the assessment of students with the educational classification of Autism. This means individuals with training in the administration of the assessment procedures referenced in subsection 6.6.4 and interpretation of the data obtained from procedures used such as, a licensed psychologist, certified school psychologist, or licensed and certified speech-language pathologist.*
- 6.6.7 Additional IEP team Members: In addition to the IEP team members required by 14 **DE Admin. Code 925-8-0 925, Section 8.0**, *a certified school psychologist and a licensed and certified speech-language pathologist are required to be members of the IEP team for the purpose of determining eligibility.*

6.7 Developmental Delay

- 6.7.1 Eligibility Criteria: A child is eligible for special education and related services under the Developmental Delay classification if the child's IEP team finds that the child *exhibits a significant delay or, in the alternative, atypical development in ~~one (1)~~ 1 or more of the following developmental domains: cognition, communication (expressive or receptive), physical (gross motor or fine motor), social, emotional, or adaptive behavior; and that the presence of ~~one (1)~~ 1 or more documented characteristics of the significant delay or atypical development has an adverse effect on educational performance as defined in 14 DE Admin. Code 922-3-0 922, Section 3.0.*
- 6.7.1.1 *A significant delay shall be shown by:*
- 6.7.1.1.1 *Standardized composite test scores of 1.5 or more standard deviations below the mean in ~~two (2)~~ 2 or more of the following developmental domains: cognition, communication (expressive or receptive), physical (gross motor or fine motor), social or emotional, and adaptive behavior; or*
- 6.7.1.1.2 *Standardized composite test scores of 2.0 or more standard deviations below the mean in any ~~one (1)~~ 1 of the developmental domains: cognition, communication/expressive or receptive; physical (gross motor or fine motor); social or emotional, and adaptive behaviors.*
- 6.7.1.2 *If a child does not exhibit a significant delay, atypical development may be determined by the professional judgment of the IEP team and documented in the evaluation summary report. This judgment is based on multiple sources of information, showing a significant atypical quality or pattern of development or behavior occurring in multiple settings over an extended period of time.*
- 6.7.2 Age of Eligibility: A child is eligible for special education and related services under the Developmental Delay educational classification from the child's 3rd birthdate until the child's 9th birthdate.
- 6.7.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Developmental Delay if the child meets the criteria in subsection 6.7.1 and the adverse effects on the child's educational performance cannot primarily be explained by *a significant visual or hearing impairment, cultural factors*, or factors listed under the special rule for eligibility in 14 **DE Admin. Code 925-6-2. 925**, subsection 6.2.

- 6.7.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0**, in order 925, Sections 4.0 through 5.0, to determine a child's eligibility for special education and related services under the Developmental Delay educational classification, *the child's IEP team shall obtain the following data:*
- 6.7.4.1 *Developmental history;*
 - 6.7.4.2 *Medical history;*
 - 6.7.4.3 *Interview with the child's parent or guardian;*
 - 6.7.4.4 *Behavioral observations of the child in their daily environment, which may include the child's home with a parent or caregiver, or an education or care setting, which includes peers who are typically developing;*
 - 6.7.4.5 *Standardized norm-referenced instruments or other instruments, such as criterion referenced measures; and*
 - 6.7.4.6 *Other assessments, which could be used for intervention planning, such as dynamic assessments, behavior rating scales, or language samples.*
- 6.7.5 Re-evaluation procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code 925.3.0 through 925.5.0, and 925.6.7** 925, Sections 3.0 through 5.0 and subsection 6.7.
- 6.7.6 Documentation: *The IEP team shall document its eligibility determination in an evaluation summary report.* Documentation required to determine eligibility under a Developmental Delay educational classification shall be provided by a qualified professional such as, a licensed psychologist or certified school psychologist.
- 6.7.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code 925.8.0** 925, Section 8.0, *a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.*
- 6.8 Deaf-Blind also be referred to as "Dual Sensory Impairment"
- 6.8.1 Eligibility Criteria: A child is eligible for special education and related services under the Deaf-Blind educational classification when the child's IEP team finds that the child has concomitant hearing and visual impairments, the combination of which has an adverse effect on educational performance as defined in 14 **DE Admin. Code 922.3.0** 922, Section 3.0 such that the concomitant impairments cause such severe communication and other developmental and educational needs that the child cannot be accommodated in special education programs or related services solely for children with deafness or children with blindness.
- 6.8.1.1 Applicable hearing impairments include:
 - 6.8.1.1.1 A permanent conductive, sensorineural, or mixed hearing loss of 20 dB HL or greater at ~~two~~ 2 or more frequencies between 500-6000 Hz, either unilaterally or bilaterally; or
 - 6.8.1.1.2 A fluctuating hearing loss greater than 20 dB HL at ~~two~~ 2 or more frequencies between 500-6000 Hz, either unilaterally or bilaterally and persists for more than 6 months; or
 - 6.8.1.1.3 Auditory Neuropathy Spectrum Disorder (ANSO), which is defined as the presence of at least partial outer hair cell function and an absent or grossly abnormal ABR (Auditory Brainstem Response). A behavioral audiogram cannot be used to diagnose ANSO; or
 - 6.8.1.1.4 A hearing impairment that does not meet the criteria in subsections 6.8.1.1.1 through 6.8.1.1.3.
 - 6.8.1.2 Applicable visual impairments include:
 - 6.8.1.2.1 Partial sight, including but not limited to macular holes, oscillopsia, and central vision loss; or blindness; or neurological conditions (not perceptual impairments); or a progressive loss of vision; and corrected visual acuity of 20/50 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 40 degrees; or
 - 6.8.1.2.2 A cortical vision impairment; or
 - 6.8.1.2.3 A functional vision loss where field and acuity deficits alone do not meet the criteria in subsections 6.8.1.2.1 or 6.8.1.2.2.
- 6.8.2 Age of Eligibility: A child is eligible for special education and related services under the Deaf-Blind educational classification from birth until the child's receipt of a regular high school diploma ~~or the end~~ August 31st of the school year in which the student attains the age of ~~24~~ 22, whichever occurs first.
- 6.8.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Deaf-Blind if the child meets the criteria in subsection 6.8.1 and the adverse effect on educational performance cannot primarily be

explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code** ~~925.6.2~~ 925, subsection 6.2.

6.8.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code** ~~925.4.0 through 925.5.0, in order~~ 925, Sections 4.0 through 5.0, to determine a child's eligibility for special education and related services under the Deaf-Blind educational classification, *the child's IEP team shall obtain the following:*

6.8.4.1 *Documentation of the visual and hearing impairments by a qualified medical professional as defined in 14 **DE Admin. Code** ~~925.6.8.6~~ 925, subsection 6.8.6; and*

6.8.4.2 *An audiological evaluation that is no more than ~~six (6)~~ 6 months old, unless otherwise specified by the licensed audiologist.*

6.8.5 Re-evaluation Procedures

6.8.5.1 For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code** ~~925.3.0 through 925.5.0 and 925.6.8~~ 925, Sections 3.0 through 5.0 and subsection 6.8; and

6.8.5.2 *Make every effort to obtain updated documentation related to the student's visual impairment; and*

6.8.5.3 *Obtain an audiological evaluation that is no more than ~~one (1)~~ 1 year old, unless otherwise specified by the licensed audiologist.*

6.8.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under a the Deaf-Blind educational classification shall be provided as follows:*

6.8.6.1 *Documentation of the child's hearing impairment shall be provided by a qualified medical professional who can certify the existence of a hearing impairment with or without amplification such as, a licensed audiologist.*

6.8.6.2 *Documentation of the child's visual impairment shall be provided by a qualified medical professional, such as a licensed ophthalmologist, optometrist, or neurologist, who can certify the existence of a visual impairment. If impaired visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, a functional vision evaluation can be completed by a teacher of the visually impaired or deaf-blind teacher and used to document functional vision loss to qualify for services.*

6.8.7 *Additional IEP team Members: In addition to the IEP team members required by 14 **DE Admin. Code** ~~925.8.0~~ 925, Section 8.0, a licensed audiologist or a teacher of students who are deaf or hard of hearing, a certified school psychologist, a team member from the statewide programs for Deaf-Blind, and a licensed and certified speech-language pathologist are required to be members of the IEP team for the purpose of determining eligibility.*

6.9 Emotional Disability

6.9.1 Eligibility Criteria: A child is eligible for special education and related services under the Emotional Disability educational classification if the child's IEP team finds that the child exhibits an identified pattern of behavior that has existed over a long period of time and to a marked degree as defined in subsection 6.9.1.1 or has a psychiatric disorder, such as schizophrenia; and that pattern of behavior or psychiatric disorder adversely affects the child's educational performance as *defined in 14 **DE Admin. Code** ~~922.3.0~~ 922, Section 3.0.*

6.9.1.1 Patterns of behavior in subsection 6.9.1 shall be characterized by ~~one (1)~~ 1 or more of the following:

6.9.1.1.1 *Situationally inappropriate behavior for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other children of similar age under similar circumstances. That is, the child's characteristic behaviors are sufficiently distinct from those of the child's peer groups; or*

6.9.1.1.2 *A general pervasive mood of unhappiness or depression; or*

6.9.1.1.3 *A tendency to develop physical symptoms or fears associated with personal or school problems; or*

6.9.1.1.4 *An inability to build or maintain satisfactory interpersonal relationships with peers, teachers and others.*

6.9.1.2 *If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 **DE Admin. Code** 508 Multi-Tiered System of Support (MTSS) (23 **DE Reg.** 613 (02/01/20)).*

- 6.9.2 Age of Eligibility: A child is eligible for special education and related services under the Emotional Disability educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma *or the end August 31st of the school year in which the child attains the age of 21 22*, whichever occurs first.
- 6.9.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Emotional Disability if the child meets the criteria in subsection 6.9.1 and the adverse effect on educational performance cannot primarily be explained by *intellectual, sensory, cultural, health factors*, or factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925.6-2 925**, subsection 6.2.
- 6.9.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0**, in order 925, Sections 4.0 through 5.0, to determine a child's eligibility for special education and related services under the Emotional Disability educational classification, *the child's IEP team shall obtain data from the following:*
- 6.9.4.1 *A review of educational records;*
 - 6.9.4.2 *A social/developmental history with input from the parent or guardian that addresses developmental, familial, medical/health, and environmental factors impacting learning and behavior;*
 - 6.9.4.3 *Standardized rating scales;*
 - 6.9.4.4 *A child interview;*
 - 6.9.4.5 *Behavioral observations by teachers and at least ~~one~~ (1) other member of the IEP team; and*
 - 6.9.4.6 *If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).*
- 6.9.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code 925.3.0 through 925.5.0**, and ~~925.6.9~~ 925, Sections 3.0 through 5.0 and subsection 6.9.
- 6.9.6 Documentation: *The IEP team shall document its eligibility determination in an evaluation summary report.* Documentation required for eligibility under an Emotional Disability educational classification shall be provided by a qualified professional such as a licensed psychologist or certified school psychologist.
- 6.9.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code 925.8.0 925, Section 8.0**, *a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.*
- 6.10 Hearing Impairment Classification also referred to as "deaf" or "hard of hearing"
- 6.10.1 Eligibility Criteria: A child is eligible for special education and related services under the Hearing Impairment educational classification if the child has a hearing impairment under subsection 6.10.1.1 and that the hearing impairment adversely affects the child's educational performance as defined in 14 **DE Admin. Code 922.3.0 922, Section 3.0**. Adverse effects of hearing impairments may be exhibited by ~~one~~ (1) 1 or more of the examples listed in subsection 6.10.1.2.
- 6.10.1.1 *Applicable hearing impairment shall be:*
- 6.10.1.1.1 *A permanent conductive, sensorineural or mixed hearing loss of 20 dB HL or greater at ~~two~~ (2) 2 or more frequencies between 500-6000 Hz, either unilaterally or bilaterally; or*
 - 6.10.1.1.2 *A fluctuating hearing loss greater than 20 dB HL at ~~two~~ (2) 2 or more frequencies between 500-6000 Hz, either unilaterally or bilaterally, and persists for more than ~~six~~ (6) 6 months; or*
 - 6.10.1.1.3 *Auditory Neuropathy Spectrum Disorder (ANSO), which is defined as the presence of at least partial outer hair cell function and an absent or grossly abnormal ABR (Auditory Brainstem Response). A behavioral audiogram cannot be used to diagnose ANSO.*
- 6.10.1.2 Examples of adverse effects on educational performance for a hearing impairment:
- 6.10.1.2.1 Impairment in receptive or expressive language (spoken or signed) including a delay in syntax, pragmatics, semantics, or if there is a significant discrepancy between the receptive and expressive language scores or function;
 - 6.10.1.2.2 Impairment in auditory skills or functional auditory performance including speech perception scores (in quiet or noise), which demonstrate the need for specialized instruction in auditory skill development or assistive technology use;
 - 6.10.1.2.3 Impairment of speech articulation, voice or fluency;
 - 6.10.1.2.4 Lack of adequate academic achievement or sufficient progress to meet age or state-approved grade-level standards in reading, writing, or math;

- 6.10.1.2.5 Inconsistent performance in social and learning environments compared to typically developing peers;
- 6.10.1.2.6 Inconsistent performance of self-advocacy skills or use of specialized technology/resources to access instruction.
- 6.10.2 Age of Eligibility: A child is eligible for special education and related services under the Hearing Impairment educational classification from the child's birth until the child's receipt of a regular high school diploma *or the end August 31st of the school year in which the child attains the age of 24 22*, whichever occurs first.
- 6.10.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Hearing Impairment if the child meets the criteria in subsection 6.10.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925.6.2 925, subsection 6.2.**
- 6.10.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0, in order 925, Sections 4.0 through 5.0** to determine a child's eligibility for special education and related services under the Hearing Impairment educational classification, *the child's IEP team shall obtain the following:*
 - 6.10.4.1 *Documentation of the hearing impairment by a qualified medical professional as defined in 14 DE Admin. Code 925.6.10.6 925, subsection 6.10.6, and*
 - 6.10.4.2 *An audiological evaluation that is no more than six (6) 6 months old, unless otherwise specified by a licensed audiologist.*
- 6.10.5 Re-evaluation Procedures
 - 6.10.5.1 For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code 925.3.0 through 925.5.0, as well as 925.6.10 925, Sections 3.0 through 5.0 and subsection 6.10;** and
 - 6.10.5.2 *Obtain an audiological evaluation that is no more than one (1) 1 year old, unless otherwise specified by a licensed audiologist.*
- 6.10.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's hearing impairment shall be provided by a qualified medical professional who can certify the existence of a hearing impairment with or without amplification, such as a licensed audiologist.*
- 6.10.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code 925.8.0 925, Section 8.0**, a licensed audiologist or a teacher of students who are deaf or hard of hearing, a certified school psychologist, and a licensed and certified speech-language pathologist are required to be members of the IEP team for the purpose of determining eligibility.
- 6.11 Specific Learning Disability
 - 6.11.1 Eligibility Criteria: A child is eligible for special education and related services under the Specific Learning Disability educational classification if the child exhibits a disorder in ~~one (1)~~ 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations that ~~adversely affects~~ have an adverse effect on the child's educational performance as defined in 14 **DE Admin. Code 922.3.0 922, Section 3.0**, as evidenced by:
 - 6.11.1.1 Lack of achievement: If, when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standard, the child does not achieve adequately for the child's age or to meet State approved grade level standards in ~~one (1)~~ 1 or more of the following areas:
 - 6.11.1.1.1 Oral expression;
 - 6.11.1.1.2 Listening comprehension;
 - 6.11.1.1.3 Written expression;
 - 6.11.1.1.4 Basic reading skill;
 - 6.11.1.1.5 Reading fluency skills;
 - 6.11.1.1.6 Reading comprehension;
 - 6.11.1.1.7 Mathematics calculation;
 - 6.11.1.1.8 Mathematics problem solving; and
 - 6.11.1.2 Insufficient progress: The child does not make sufficient progress to meet age or State approved grade level standards in ~~one (1)~~ 1 or more of the areas identified in subsection 6.11.1.1 of this regulation, when using a process based on scientific, evidence-based interventions *within a multi-*

tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)); or

- 6.11.1.3 Pattern of strengths and weaknesses: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the child's IEP team to be relevant to the identification of a Specific Learning Disability, using appropriate assessments, consistent with 14 **DE Admin. Code 925.4.0 and 925.5.0 925, Sections 4.0 and 5.0.**
- 6.11.1.4 Elimination of Discrepancy Model: Public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the Specific Learning Disability classification.
- (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))
[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31912, July 11, 2017]
34 CFR 300.307
34 CFR 300.309
- 6.11.2 Age of Eligibility: A child is eligible for special education and related services under the Specific Learning Disability educational classification from the child's 5th birthdate until the child's receipt of a regular high school diploma *or the end August 31st of the school year in which the child attains the age of 21 22,* whichever occurs first.
- 6.11.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Specific Learning Disability if the child meets the criteria in subsection ~~6.8.4~~ 6.11.1, and the adverse effect on educational performance cannot primarily be explained by:
- 6.11.3.1 A visual, hearing or motor disability;
- 6.11.3.2 Intellectual Disability;
- 6.11.3.3 Emotional Disability;
- 6.11.3.4 Cultural factors;
- 6.11.3.5 Environmental or economic disadvantage;
- 6.11.3.6 Limited English proficiency; or
- 6.11.3.7 Any of the other factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925.6.2 925, subsection 6.2.**
- ~~6.11.3.7.1 To~~ In order to ensure that underachievement in a child suspected of having a Specific Learning Disability is not due to lack of appropriate instruction in reading or math, the child's IEP team shall consider, as part of the evaluation described in 34 CFR 300.304 through 300.306:
- ~~6.11.3.7.2~~ 6.11.3.7.1Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- ~~6.11.3.7.3~~ 6.11.3.7.2Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- 6.11.3.8 The public agency shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and shall adhere to the timeframes described in 34 CFR 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1).
- 6.11.3.8.1 If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection 6.11.3.7; and
- 6.11.3.8.2 Whenever a child is referred for an evaluation.
[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31912, July 11, 2017]
34 CFR 300.309
- 6.11.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0, in order 925, Sections 4.0 through 5.0** to determine a child's eligibility for special education and related services under the Specific Learning Disability educational classification, the child's IEP team shall obtain data from the following:
- 6.11.4.1 Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel *within a*

multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20));

- 6.11.4.2 Observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty, including:
 - 6.11.4.2.1 Observation in routine classroom instruction and monitoring of the child's performance done before the child was referred for an evaluation or at least ~~one (1)~~ 1 member of the IEP team may conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained; or
 - 6.11.4.2.2 In the case of a child less than school age or out of school, an IEP team member shall observe the child in an environment appropriate for a child of that age.
(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110) 34 CFR 300.310
- 6.11.4.3 Evidence of insufficient progress when using a process based on scientific, evidence-based interventions *within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))* or evidence of a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development (see subsection 6.11.1.3);
- 6.11.4.4 Assessments of intellectual functioning are not required to determine eligibility for special education and related services under the Specific Learning Disability educational classification, but may be used for students suspected of having an intellectual disability or where a problem-solving team as defined in *proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))* or the child's IEP team and the parent determine such tests are relevant in selecting appropriate instructional or behavioral interventions.
(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)
- 6.11.5 Re-evaluation procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 **DE Admin. Code** ~~925.3.0 through 925.5.0, as well as 925.6.11~~ 925, Sections 3.0 through 5.0 and subsection 6.11.
- 6.11.6 Documentation: *The IEP team shall document its eligibility determination in an evaluation summary report.* Documentation required to determine eligibility under a Specific Learning Disability classification shall be provided by a qualified professional such as a certified school psychologist, and in cases in which a child may be eligible in the areas of oral expression or listening comprehension, a licensed and certified speech-language pathologist. For a child suspected of having a Specific Learning Disability, the documentation of the determination of eligibility, as required in 34 CFR 300.306(a)(2), shall contain a statement of:
 - 6.11.6.1 Whether the child has a Specific Learning Disability;
 - 6.11.6.2 The basis for making the determination, including an assurance that the determination has been made in accordance with 34 CFR 300.306(c)(1);
 - 6.11.6.3 The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - 6.11.6.4 The educationally relevant medical findings, if any;
 - 6.11.6.5 Whether:
 - 6.11.6.5.1 The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with 34 CFR 300.309(a)(1); and
 - 6.11.6.5.2 The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR 300.309(a)(2)(i); or
 - 6.11.6.5.3 The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(ii);
 - 6.11.6.6 The determination of the child's IEP team concerning the effects of a visual, hearing, motor disability, or an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - 6.11.6.7 If the child has participated in a process that assesses the child's response to scientific, research-based intervention within a *multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))*;
 - 6.11.6.7.1 The instructional strategies used and the student-centered data collected; and
 - 6.11.6.7.2 The documentation that the child's parents were notified about:

- 6.11.6.7.2.1 The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - 6.11.6.7.2.2 Strategies for increasing the child's rate of learning; and
 - 6.11.6.7.2.3 The parents' right to request an evaluation.
- 6.11.6.8 Each IEP team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the IEP team member shall submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 **Del.C.** §3110)

[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31913, July 11, 2017]

34 CFR 300.311

- 6.11.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code** ~~925.8.0~~ 925, Section 8.0, a general education teacher and a *certified school psychologist* are required to be members of the IEP team for the purpose of determining eligibility. *In cases in which a child may be eligible in the areas of oral expression or listening comprehension, a licensed and certified speech-language pathologist shall also be a member of the IEP team.*

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

34 CFR 300.308

6.12 Intellectual Disability

- 6.12.1 Eligibility Criteria: A child is eligible for special education and related services under the Intellectual Disability educational classification if the child has significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that ~~adversely affects~~ has an adverse effect on the child's educational performance *as referred to in 14 **DE Admin. Code** ~~922.3.0~~ 922, Section 3.0*. A child may be eligible under the Intellectual Disability educational classification in ~~one (1)~~ 1 of the following subcategories: mild, moderate or severe.

- 6.12.1.1 *Mild Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is mildly below age expectations with respect to the following:*

6.12.1.1.1 *Performance on an individually administered test of intelligence that falls within a range of IQ 50 to 70 +/- 5 points; and*

6.12.1.1.2 *Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least 1 of the following areas:*

6.12.1.1.2.1 *Conceptual skills;*

6.12.1.1.2.2 *Social adaptive skills;*

6.12.1.1.2.3 *Practical adaptive skills, or*

6.12.1.1.3 *An overall composite score on a standardized measure of adaptive behavior, and*

6.12.1.1.4 *Insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 **DE Admin. Code** 508 Multi-Tiered System of Support (MTSS) (23 **DE Reg.** 613 (02/01/20)).*

- 6.12.1.2 *Moderate Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is moderately below age expectations with respect to the following:*

6.12.1.2.1 *Performance on an individually administered test of intelligence that falls within a range of IQ 35 to 50 +/- 5 points; and*

6.12.1.2.2 *Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least ~~one (1)~~ 1 of the following areas:*

6.12.1.2.2.1 *Conceptual skills,*

6.12.1.2.2.2 *Social adaptive skills,*

6.12.1.2.2.3 *Practical adaptive skills, or*

6.12.1.2.3 *An overall composite score on a standardized measure of adaptive behavior.*

- 6.12.1.3 *Severe Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is severely below age expectations with respect to the following:*

6.12.1.3.1 *Performance on an individually administered test of intelligence that falls within a range of IQ below 35; and*

6.12.1.3.2 *Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least 1 of the following areas:*

6.12.1.3.2.1 *Conceptual skills,*

6.12.1.3.2.2 *Social adaptive skills,*

6.12.1.3.2.3 *Practical adaptive skills, or*

6.12.1.3.3 *An overall composite score on a standardized measure of adaptive behavior.*

6.12.2 Age of Eligibility: A child is eligible for special education and related services under the Intellectual Disability educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma *or ~~the end August 31st~~ of the school year in which the child attains the age of 21 22,* whichever occurs first.

6.12.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Intellectual Disability if the child meets the criteria in subsection 6.12.1, and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925-6-2 925, subsection 6.2.**

6.12.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0, in order 925, Sections 4.0 through 5.0** to determine a child's eligibility for special education and related services under the Intellectual Disability educational classification, *the child's IEP team shall obtain data from the following:*

6.12.4.1 *Observations of the child including adaptive behaviors relevant to the child's age, and*

6.12.4.2 *For a mild intellectual disability, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 **DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).***

6.12.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow procedures in 14 **DE Admin. Code 925.3.0 through 925.5.0, as well as 925.6.12 925, Sections 3.0 through 5.0 and subsection 6.12.**

6.12.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under an Intellectual Disability educational classification shall be provided by a licensed psychologist or certified school psychologist.*

6.12.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code 925.8.0 925, Section 8.0,** *a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.*

6.13 Orthopedic Impairment

6.13.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Orthopedic Impairment if the child has an orthopedic impairment caused by a congenital anomaly (e.g., skeletal deformities), or disease (e.g., juvenile rheumatoid arthritis, osteogenesis imperfecta), or other causes (e.g., muscular or neuromuscular disabilities, cerebral palsy, amputations, and fractures or burns that cause contractures) that ~~adversely affects~~ has an adverse effect on the child's educational performance *as defined in 14 **DE Admin. Code 922.3.0 922, Section 3.0.***

6.13.2 Age of Eligibility: A child is eligible for special education and related services under the Orthopedic Impairment education classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma *or ~~the end August 31st~~ of the school year in which the child attains the age of 21 22,* whichever occurs first.

6.13.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Orthopedic Impairment if the child meets the criteria in subsection 6.13.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925-6-2 925, subsection 6.2.**

6.13.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925.4.0 through 925.5.0, in order 925, Sections 4.0 through 5.0,** to determine a child's eligibility for special education and related services under the Orthopedic Impairment educational classification, *the child's IEP team shall obtain the following:*

6.13.4.1 *Documentation of the orthopedic ~~impairment by~~ impairment by a qualified professional as described in 14 **DE Admin. Code 925-6-13-6 925, subsection 6.13.6,** and*

- 6.13.4.2 *Results from physical or occupational therapy evaluations using appropriate measures, which identify educational and related service needs, as well as environmental adjustments necessary.*
- 6.13.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow procedures in 14 **DE Admin. Code** ~~925.3.0 through 925.5.0 and 925.6.13~~ 925, Sections 3.0 through 5.0 and subsection 6.13; and should make every effort to obtain updated documentation related to the student's orthopedic impairment.
- 6.13.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's orthopedic impairment shall be provided by a qualified medical professional who can certify the existence of an orthopedic impairment.*
- 6.13.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code** ~~925.8.0~~ 925, Section 8.0, a certified school psychologist and at least ~~one (1)~~ 1 of the following shall be members of the IEP team for the purpose of determining eligibility: a physical therapist, occupational therapist, or nurse.
- 6.14 Other Health Impairment
- 6.14.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Other Health Impairment if the child has a chronic or acute health condition such as, asthma, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or Tourette syndrome, that ~~adversely affects~~ has an adverse effect on the child's educational performance as defined in 14 **DE Admin. Code** ~~922.3.0~~ 922, Section 3.0.
- 6.14.1.1 If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions *within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))*.
- 6.14.1.2 *For attention deficit hyperactivity disorder (ADHD), the child shall also exhibit:*
- 6.14.1.2.1 *Six (6) or more of the following symptoms of inattention for children up to the age of 16, or five (5) or more for adolescents 17 years or older and adults; symptoms of inattention have been present for at least six (6) 6 months, and inappropriate for developmental level:*
- 6.14.1.2.1.1 *Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;*
- 6.14.1.2.1.2 *Often has difficulty sustaining attention in tasks or play activities;*
- 6.14.1.2.1.3 *Often does not seem to listen when spoken to directly;*
- 6.14.1.2.1.4 *Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (e.g. loses focus, side-tracked);*
- 6.14.1.2.1.5 *Often has difficulty organizing tasks and activities;*
- 6.14.1.2.1.6 *Often avoids, dislikes, or is reluctant to engage in tasks that require mental effort over a long period of time (such as ~~schoolwork~~ schoolwork or homework);*
- 6.14.1.2.1.7 *Often loses things necessary for tasks or activities (e.g., school materials, pencils, books, or tools, etc.);*
- 6.14.1.2.1.8 *Often easily distracted;*
- 6.14.1.2.1.9 *Often forgetful in daily activities; or*
- 6.14.1.2.2 *Six (6) or more of the following symptoms of ~~hyperactivity-impulsivity~~ hyperactivity-impulsivity for children up to age 16, or five (5) 5 or more for adolescents 17 and older and adults; symptoms of hyperactivity-impulsivity have been present for at least six (6) 6 months to an extent that is disruptive and inappropriate for the student's developmental level:*
- 6.14.1.2.2.1 *Often fidgets with hands or feet, or squirms in seat;*
- 6.14.1.2.2.2 *Often leaves seat in situations when remaining seated is expected;*
- 6.14.1.2.2.3 *Often runs about or climbs in situations in where it is not inappropriate (adolescents or adults, may be limited to feeling of restlessness);*
- 6.14.1.2.2.4 *Often unable to play or take part in leisure activities quietly;*
- 6.14.1.2.2.5 *Often "on the go" or often acts as if "driven by a motor";*
- 6.14.1.2.2.6 *Often talks excessively;*
- 6.14.1.2.2.7 *Often blurts out an answer before a question has been completed;*
- 6.14.1.2.2.8 *Often has trouble waiting his the student's turn;*
- 6.14.1.2.2.9 *Often interrupts or intrudes on others (butts into conversations or games); and*

- 6.14.1.2.3 *Several of the inattentive or hyperactive impulsive symptoms exhibited were present before 12 years of age;*
 - 6.14.1.2.4 *Several symptoms are present in ~~two (2)~~ 2 or more settings (such as home, school or work, with friends or relatives, in other activities); and*
 - 6.14.1.2.5 *Clear evidence that the symptoms interfere with, or reduce the quality of social, school or work functioning.*
- 6.14.2 Age of Eligibility: A child is eligible for special education and related services under the Other Health Impairment educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma ~~or the end August 31st of the school year in which the child attains the age of 21 22,~~ whichever occurs first.
- 6.14.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Other Health Impairment if the child meets the criteria in subsection 6.14.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925.6.2 925, subsection 6.2,** and *additionally in the case of ADHD, such adverse effect on educational performance cannot primarily be explained by another mental disorder (such as mood disorder, anxiety disorder, dissociative disorder, or personality disorder), and the symptoms do not happen only during the course of schizophrenia or another psychotic disorder.*
- 6.14.4 **Disability-Specific Evaluation Procedures:** *In addition to the evaluation procedures required by 14 DE Admin. Code 925.4.0 through 925.5.0 925, Sections 4.0 through 5.0, the child's IEP team shall obtain the following:*
- 6.14.4.1 *Documentation of the health impairment by a qualified professional as described in 14 DE Admin. Code 925.6.14.6 925, subsection 6.14.6; and*
 - 6.14.4.2 *If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).*
- 6.14.5 **Re-evaluation Procedures:** *For purposes of continued eligibility determination, the IEP team shall follow procedures in 14 DE Admin. Code 925.3.0 through 925.5.0 and 925.6.14 925, Sections 3.0 through 5.0 and subsection 6.14; and the IEP team should make every effort to obtain updated documentation related to the student's health impairment.*
- 6.14.6 **Documentation:** *The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's underlying health impairment shall be provided by a qualified medical professional such as a medical doctor, licensed nurse practitioner, or licensed physician's assistant. In cases in which a child displays behaviors consistent with ADHD, a certified school psychologist or licensed psychologist may also provide the documentation required for eligibility consideration.*
- 6.14.7 **Additional IEP team members:** *In addition to the IEP team members required by 14 DE Admin. Code 925.8.0 925, Section 8.0, a certified school psychologist and a school nurse shall be members of the IEP team for the purpose of determining eligibility.*
- 6.15 **Speech or Language Impairment**
- 6.15.1 **Eligibility Criteria:** A child is eligible for special education and related services under the educational classification of Speech or Language Impairment if the child has a *moderate to severe* impairment in communication, and ~~that the impairment adversely affects~~ has an adverse effect on the child's educational performance as defined in 14 **DE Admin. Code 922.3.0 922, Section 3.0.**
- 6.15.1.1 *If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).*
 - 6.15.1.2 **Applicable communication impairments:**
 - 6.15.1.2.1 *Speech fluency as exhibited by disfluencies such as stuttering, which includes: prolongations, repetitions, or pauses, or avoidance behaviors, or reduced perception of naturalness or secondary concomitant behaviors, such as distracting sounds, facial grimaces or other body movements; or cluttering, which includes: rapid or irregular speech rate, often with deletion or collapsing of syllables, deletion of word endings, increased frequency of revisions or interjections, pauses in communication that occur at unexpected junctures with respect to grammatical production;*
 - 6.15.1.2.2 *Articulation/Connected speech intelligibility as exhibited by impairment in the production of speech sounds (including substitutions, omissions, distortions or additions of speech sounds)*

that are considered to be developmentally appropriate for the child's age or cultural linguistic background;

6.15.1.2.3 Receptive or expressive language as exhibited by: impairment in the form of language (phonology, morphology, syntax), content of language (vocabulary, semantics), comprehension or functional use of language (pragmatics) of a spoken, written, or other symbol system; or

6.15.1.2.4 Voice quality as exhibited by: voice impairment in ~~one (1)~~ 1 or more processes of pitch, quality, intensity or resonance.

6.15.2 Age of Eligibility: A child is eligible for special education and related services under the Speech or Language Impairment educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma ~~or the end August 31st of the school year in which the student attains the age of 24~~ 22, whichever occurs first, except where speech and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary educational classification.

6.15.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Speech or Language Impairment if the child meets the criteria in subsection 6.15.1, *and the adverse effect on educational performance cannot primarily be explained by:*

6.15.3.1 *Sociocultural dialect;*

6.15.3.2 *Differences associated with acquisition of English as a new language;*

6.15.3.3 *Anxiety disorders (e.g. selective mutism);*

6.15.3.4 *Limited exposure to communication-building experiences;*

6.15.3.5 *Differences related to medical issues not directly related to the vocal mechanism; or*

6.15.3.6 Other factors listed under the special rule for eligibility determination in **14 DE Admin. Code ~~925.6-2~~ 925, subsection 6.2.**

6.15.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code ~~925.4.0 through 925.5.0~~ 925, Sections 4.0 through 5.0,** the child's IEP team shall obtain data from:

6.15.4.1 *Language samples and communication skills assessments and additional criterion-referenced measures that assess form, content and use, as needed.*

6.15.4.2 An oral peripheral examination; and

6.15.4.3 *If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).***

6.15.5 Re-evaluation Procedures:

6.15.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code ~~925.3.0 through 925.5.0 and 925.6.15~~ 925, Sections 3.0 through 5.0 and subsection 6.15;** and

6.15.5.2 *For impairments in voice or swallowing, the IEP team should make every effort to obtain updated documentation by a qualified medical professional related to the student's impairment.*

6.15.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's communication disorder shall be provided by a licensed and certified speech-language pathologist. For impairments in voice or swallowing, an evaluation by a qualified medical professional is also required.*

6.15.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code ~~925.8.0~~ 925, Section 8.0,** *a licensed and certified speech-language pathologist shall be a member of the IEP team for the purpose of determining eligibility. When the child's primary educational classification is Speech or Language Impairment a special education teacher or provider is not required to be a member of the IEP team.*

6.16 Traumatic Brain Injury

6.16.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Traumatic Brain Injury if the child has an acquired injury to the brain caused by an external physical force, or by certain medical conditions such as stroke, encephalitis, aneurysm, anoxia or brain tumors resulting in total or partial functional disability or psychosocial impairment, or both, and ~~that the traumatic brain injury adversely affects~~ has an adverse effect on the child's educational performance as defined in **14 DE Admin. Code ~~922.3-0~~ 922, Section 3.0.**

- 6.16.2 Age of Eligibility: A child is eligible for special education and related services under the Traumatic Brain Injury educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma or August 31st of the school year in which the child attains the age of 22, whichever occurs first.
- 6.16.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Traumatic Brain Injury if the child meets the criteria in subsection 6.16.1, and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in 14 **DE Admin. Code 925-6-2 925, subsection 6.2**.
- 6.16.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925-4.0 through 925-5.0 925, Sections 4.0 through 5.0**, the child's IEP team shall obtain documentation of the traumatic brain injury by a qualified medical professional as described in 14 **DE Admin. Code 925-6-16.6 925, subsection 6.16.6**.
- 6.16.5 Re-evaluation Procedures
- 6.16.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in 14 **DE Admin. Code 925-3.0 through 925-5.0 and 925-6.16.1 925, Sections 3.0 through 5.0 and subsection 6.16.1**; and
- 6.16.5.2 *The IEP team should make every effort to obtain updated documentation related to the student's traumatic brain injury.*
- 6.16.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's traumatic brain injury shall be provided by a qualified medical professional who can certify the existence of a traumatic brain injury.*
- 6.16.7 Additional IEP team Members: In addition to the IEP team members required by 14 **DE Admin. Code 925-8.0 925, Section 8.0**, *a certified school psychologist and a school nurse shall be members of the IEP team for the purpose of determining eligibility.*
- 6.17 Visual Impairment Including Blindness
- 6.17.1 Eligibility Criteria: A child is eligible for special education and related services under the Visual Impairment including Blindness educational classification if the child has an impairment in vision that, even with correction, ~~adversely affects~~ has an adverse effect on the child's educational performance as *defined in 14 DE Admin. Code 922-3-0 922, Section 3.0*.
- 6.17.1.1 Applicable visual impairments are:
- 6.17.1.1.1 Partial sight, including macular holes, oscillopsia, and central vision loss; or blindness; or neurological conditions (not perceptual impairments); or a progressive loss of vision; and corrected visual acuity of 20/50 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 40 degrees; or
- 6.17.1.1.2 Cortical vision impairment, or
- 6.17.1.1.3 A functional vision loss ~~where~~ for which field and acuity deficits alone may not meet the criteria in subsections 6.17.1.1.1 or 6.17.1.1.2.
- 6.17.2 Age of Eligibility: A child is eligible for special education and related services under the Visual Impairment including Blindness educational classification from birth until the child's receipt of a regular high school diploma ~~or the end~~ August 31st of the school year in which the student attains the age of 24 22, whichever occurs first.
- 6.17.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Visual Impairment including Blindness if the child meets the criteria in subsection 6.17.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination consistent with 14 **DE Admin. Code 925-6-2 925, subsection 6.2**.
- 6.17.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by 14 **DE Admin. Code 925-4.0 through 925-5.0, in order 925, Sections 4.0 through 5.0**, to determine a child's eligibility for special education and related services under the Visual Impairment including Blindness educational classification, the child's IEP team shall obtain documentation of the visual impairment by a qualified medical professional as defined in 14 **DE Admin. Code 925-6-17.6 925, subsection 6.17.6**.
- 6.17.5 Re-evaluation Procedures
- 6.17.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in 14 **DE Admin. Code 925-3.0 through 925-5.0 and 925-6.17 925, Sections 3.0 through 5.0 and subsection 6.17**; and

6.17.5.2 The IEP team should make every effort to obtain updated documentation related to the student's visual impairment.

6.17.6 *Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's visual impairment shall be provided by a qualified medical professional such as a licensed ophthalmologist, optometrist, or neurologist.*

6.17.7 Additional IEP team members: In addition to the IEP team members required by 14 **DE Admin. Code 925-8.0 925, Section 8.0**, *an orientation and mobility specialist, teacher of students with visual Impairments, and a certified school psychologist are required to be members of the IEP team for the purpose of determining eligibility.*

11 DE Reg. 184 (08/01/07)

11 DE Reg. 1629 (06/01/08)

15 DE Reg. 352 (09/01/11)

18 DE Reg. 564 (01/01/15)

20 DE Reg. 172 (09/01/16)

21 DE Reg. 626 (02/01/18)

24 DE Reg. 673 (01/01/21)

7.0 ~~Definition of Individualized Education Program~~

7.1 General: Each child who is determined eligible for special education and related services shall have a single IEP. ~~As used in these regulations, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sections 7.0 through 11.0, and that shall include:~~

7.1.1 A statement of the child's present levels of academic achievement and functional performance (*i.e. areas in which there is evidence that the disability causes an adverse effect on educational performance*), including:

7.1.1.1 How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children); or

7.1.1.2 For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

7.1.2 A statement of measurable annual goals, including academic and functional goals designed to:

7.1.2.1 Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;

7.1.2.2 For children with disabilities who participate in the Alternate Assessment based on Alternate Achievement Standards (AA-AAS), a description of benchmarks or short-term objectives.

7.1.3 A description of how the child's progress toward meeting the annual goals described in subsection 7.1.2 will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

7.1.4 A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

7.1.4.1 To advance appropriately toward attaining the annual goals;

7.1.4.2 To be involved in and make progress in the general education curriculum in accordance with subsection 7.1.1, and to participate in extracurricular and other nonacademic activities; and

7.1.4.3 To be educated and participate with other children with disabilities and non-disabled children in the activities described in this section;

7.1.5 An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in subsection 7.1.4;

7.1.6 A statement of any individual appropriate accommodations that are necessary to measure the ~~academic achievement and functional~~ child's performance ~~of the child~~ on State and district wide assessments consistent with section 612(a)(16) of the Individuals with Disabilities Education Act; and if the IEP team determines that the child shall take an alternate assessment, instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child;

- 7.1.7 The projected date for the beginning of the services and modifications described in subsection 7.1.4, and the anticipated frequency, location, and duration of those services and modifications; and
- 7.1.8 *A statement designating whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.*
- 7.2 Transition services: *Beginning with the earlier of the first IEP to be in effect when the child turns ~~fourteen (14)~~ 14 or enters the ~~eighth (8th)~~ 8th grade, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include:*
- 7.2.1 Appropriate measurable postsecondary goals based upon ~~age-appropriate~~ age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- 7.2.2 The transition services *and activities* (including courses of study) needed to assist the child in reaching those goals.
- 7.2.2.1 *The IEP team shall discuss employment options with children and parents consistent with Delaware's Employment First Policy articulated by 19 Del.C. §743.*
- 7.2.2.2 *Progress made on activities and services that reasonably enable the child to reach the child's postsecondary goals in transition IEPs shall be reported with the same frequency as ~~academic~~ all IEP goals.*
- 7.2.3 *The child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical educational programs.*
- 7.3 Transfer of rights at age of majority: Beginning not later than ~~one (1)~~ 1 year before the child reaches the age of 18, the IEP shall include a statement that the child has been informed that the child's rights under 14 Del.C. §3132 will transfer to the child, *or an educational representative or educational surrogate parent* on reaching the age of 18 under 14 **DE Admin. Code 926-20-0 926, Section 20.0.** (Authority: 20 U.S.C. 1415(m); 14 Del.C. §3132)
- 7.3.1 *In order for the child to appoint an educational representative or educational surrogate parent, the educational representative form should be completed by the child's 18th birthdate pursuant to 14 DE Admin. Code 926, Section 20.0.*
- 7.4 *IEP Forms: Each public agency shall use the IEP forms as developed and required by the DOE. The requirement that public agencies use the DOE's IEP forms does not prohibit or prevent an IEP team from including on an IEP any information, service or other notation the team determines necessary to provide FAPE to a child with a disability. This section shall not be construed to require an IEP team to include information under ~~one (1)~~ 1 component of a child's IEP that is already contained under another component of the child's IEP.*
- 7.5 Extended school year services: A student's need for extended school year services shall be determined in accordance with 14 **DE Admin. Code 923-6-0 923, Section 6.0.** (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); 14 Del.C. §3110)
- 7.6 Twelve-month program eligibility: The DOE shall include a parental notice and acknowledgment section in IEP forms described in subsection 7.4 which both identifies students eligible for a 12-month program pursuant to Title 14 **Del.C. §1703** and documents the parental option to accept a 12-month program. [Authority: Title 14 **Del.C. §§1703(e), 1703(f)**]

12 DE Reg. 1084 (02/01/09)

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

20 DE Reg. 549 (01/01/17)

24 DE Reg. 673 (01/01/21)

8.0 IEP Team

- 8.1 General: The public agency shall ensure that the IEP team for each child with a disability includes:
- 8.1.1 The parents of the child;
- 8.1.2 Not less than ~~one (1)~~ 1 regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- 8.1.3 Not less than ~~one (1)~~ 1 special education teacher of the child, or where appropriate, not less than ~~one (1)~~ 1 special education provider of the child;
- 8.1.4 A representative of the public agency who:

- 8.1.4.1 Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - 8.1.4.2 Is knowledgeable about the general education curriculum;
 - 8.1.4.3 Is knowledgeable about the availability of resources of the public agency; *and*
 - 8.1.4.4 *Has authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.*
- 8.1.5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subsections 8.1.2 through 8.1.6;
- 8.1.6 At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- 8.1.7 Whenever appropriate, the child with a disability; *and*
- 8.1.8 *Whenever the child is, or may be, participating in a career and technical education program, a career technical education teacher of the child, or career technical teacher coordinator.*
- 8.2 Transition services participants: In accordance with subsection 8.1.7, the public agency shall, *in writing*, invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.
- 8.2.1 If the child does not attend the IEP team meeting, the public agency shall take other steps to ensure that the child's preferences and interests are considered.
- 8.2.2 To the extent appropriate, with the consent of the parents or a child who has reached the age of 18, in implementing the requirements of subsection 8.2, the public agency shall invite, *in writing*, a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- 8.3 Determination of knowledge and special expertise: The determination of the knowledge or special expertise of any individual described in subsection 8.1.6 shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.
- 8.4 Designating a public agency representative: A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in subsection 8.1.4.4 are satisfied.
- 8.4.1 At the beginning of each school year, the public agency shall identify its agency representatives, and any person designated to serve as an agency representative at each or any of its schools, in writing.
- 8.4.2 The agency's written list of representatives and designees shall be supplied to each school of the public agency. It shall be available to the DOE upon request. The agency's representative and designee list shall be updated and redistributed to schools throughout the school year to the extent staffing and personnel changes alter the original list.
- 8.5 IEP team attendance: A member of the IEP team described in subsections 8.1.2 through 8.1.5 is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- 8.5.1 A member of the IEP team described in subsection 8.5 may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
- 8.5.1.1 The parent, in writing, and the public agency consent to the excusal; *and*
 - 8.5.1.2 The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.
- 8.5.2 *There is no excusal for required IEP team members, as described in 14 DE Admin. Code 925, Section 6.0 under Determination of Eligibility, for the purpose of eligibility determination.*
- 8.6 Initial IEP team meeting for child under Part C: In the case of a child who was previously served under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.
(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D); 14 Del.C. §3110)
- 8.7 *No public agency, or any person acting under the authority of a public agency, shall discriminate or take any adverse employment or contract action against any person based upon statements that the person makes while advocating for a student in connection with an IEP, including statements made in preparation for or at a meeting, review, or conference concerning a child with a disability's free and appropriate public education.*
- 8.7.1 *Entities or persons who violate this subsection shall be subject to the same sanctions as persons or entities that engage in unlawful employment practices under 19 Del.C. Ch. 7.*

entities that engage in unlawful employment practices under 19 Del.C. Ch. 7.

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

24 DE Reg. 673 (01/01/21)

9.0 Parent Participation

- 9.1 Public agency responsibility, general: Each public agency shall take steps to ensure that ~~one (1)~~ 1 or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:
- 9.1.1 Notifying parents of the meeting, *in writing, no less than ~~ten (10)~~ 10 school days prior to the IEP team meeting (unless mutually agreed otherwise)* to ensure that they will have an opportunity to attend, *and no less than ~~five (5)~~ 5 school days prior to a meeting to conduct a manifestation determination under 14 DE Admin. Code ~~926.30~~ 926, Section 30.0;* and
- 9.1.2 Scheduling the meeting at a mutually agreed ~~on~~ time and place.
- 9.2 Information provided to parents: The notice required under subsection 9.1 shall:
- 9.2.1 Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- 9.2.2 Inform the parents of the provisions in subsections 8.1.6 and 8.3 (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and subsection 8.6 (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act).
- 9.2.2.1 *The IEP team shall provide notice to the parent, and if appropriate, the child, that they may request the presence of any teacher, paraprofessional, and any additional staff members at an IEP meeting.*
- 9.2.3 *A summary of the procedural safeguards shall be included with the notice of meeting and a full copy of the procedural safeguards shall be provided to the parents at the IEP meeting.*
- 9.2.4 *The IEP team shall provide notice to the parent, and if appropriate, the child, that they may request any data (e.g. classroom assessments, formative assessments, behavior data, related service reports, multi-tiered system of support data) in the agency's possession relevant to the child's needs or disability prior to the IEP meeting.*
- 9.3 *The IEP team will ensure parent input through the following:*
- 9.3.1 *The IEP team shall provide a questionnaire requesting the input of a child's parent, and where appropriate, the input of the child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, or other elements of the child's IEP.*
- 9.3.1.1 *The questionnaire shall be sent with or prior to the written meeting notice inviting the parent to attend the IEP meeting.*
- 9.3.2 *If the IEP team prepares a draft of the IEP prior to the date of the IEP meeting, the IEP team shall provide the parent, and if appropriate, the child, with a copy of the draft IEP accompanied by a letter clearly indicating that the document is a draft for discussion purposes only and is therefore subject to revisions.*
- 9.3.3 *The Department in collaboration with the Governor's Advisory Council for Exceptional Citizens shall create and provide a draft letter and associated guidance to assist public agencies with the content and application of the letter referred to in subsection 9.3.2.*
- 9.4 *For a child with a disability beginning with the earlier of the first IEP to be in effect when the child turns ~~fourteen (14)~~ 14 or enters the ~~eighth (8th)~~ 8th grade, or younger if determined appropriate by the IEP team, the notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with subsection 7.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative. *The invitation to the child shall be in writing.**
- 9.5 Other methods to ensure parent participation: If neither parent can attend an IEP team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with Section 14.0 (related to alternative means of meeting participation).
- 9.6 Conducting an IEP team meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed on time and place, such as:
- 9.6.1 Detailed records of telephone calls made or attempted and the results of those calls;

- 9.6.2 Copies of correspondence sent to the parents and any responses received; and
- 9.6.3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- 9.6.4 Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- 9.7 Parent copy of child's IEP: The public agency shall give the parent a copy of the child's IEP at no cost to the parent.
(Authority: 20 U.S.C. 1414(d)(1)(B)(i); 14 **Del.C.** §3110)
- 9.8 *The Department of Education, in conjunction with the Department of Justice, shall annually survey a random and representative sample of parents and their children who have IEPs with respect to the parents' and children's satisfaction with the IEP process. Information gathered through this survey shall be used by the Department of Education and Department of Justice to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with state and federal laws and regulations.*
 - 9.8.1 *Information gathered through this survey shall also be used by the Department of Education in carrying out monitoring duties as outlined in 14 **DE Admin. Code** 927 to ensure compliance with state and federal laws and regulations.*
 - 9.8.2 *A summary of the survey results will be made available on the Department of Education's website.*
- 14 DE Reg. 1060 (04/01/11)**
- 15 DE Reg. 352 (09/01/11)**
- 20 DE Reg. 172 (09/01/16)**
- 24 DE Reg. 673 (01/01/21)**

10.0 When IEPs Shall be in Effect

- 10.1 General: At the beginning of each school year, each public agency shall have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Section 2.0.
- 10.2 Initial IEPs; ~~provision of services;~~ Provision of Services
 - 10.2.1 Each public agency shall ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
 - 10.2.2 ~~as~~ As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
- 10.3 Accessibility of child's IEP to teachers and others. Each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of:
 - 10.3.1 Their specific responsibilities related to implementing the child's IEP; and
 - 10.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.
- 10.4 IEPs for children who transfer from and to public agencies within Delaware: If a child with a disability (who had an IEP that was in effect in a previous public agency in Delaware) transfers to a new public agency in Delaware, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency).
 - 10.4.1 A child with a disability who transfers from ~~one~~ (1) Delaware public agency to another shall be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of a parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within 60 days of the child's initial attendance in the receiving public agency, the receiving public agency shall:
 - 10.4.1.1 *Adopt the child's Evaluation Summary Report from the previous public agency or conduct a new evaluation that meets the applicable eligibility requirements in 14 **DE Admin. Code** 925, Section 6.0.*
 - ~~10.4.1.1~~ 10.4.1.2 *Adopt Review and adopt* the child's IEP from the previous public agency at an IEP meeting convened for that purpose, or ~~develop,~~ develop and adopt, and implement a new IEP that meets the applicable requirements in Sections 7.0 through 11.0.
- 10.5 IEPs for children who transfer from out of state public agencies: If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in Delaware, and enrolls

in a new school in Delaware within the same school year, the new public agency (in consultation with the parents) shall provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency).

10.5.1 A child with a disability who transfers from an out of state public agency shall be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of a parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within 60 days of the child's initial attendance in the receiving public agency, the receiving public agency shall:

10.5.1.1 Conduct ~~an~~ a new evaluation pursuant to Sections 4.0 through 6.0 (if determined to be necessary by the new public agency); and

10.5.1.2 ~~develop~~ Develop, adopt, and implement a new IEP, if appropriate, that meets the applicable requirements in Sections 7.0 through 11.0.

10.6 Transmittal of records and public agency duties: To facilitate the transition for a child described in subsections 10.4 and 10.5:

10.6.1 *The receiving public agency shall ensure that all requirements concerning evaluation, IEP development, placement, and procedural safeguards are applied in determining the provision of special education and related services.* The receiving public agency in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

10.6.2 The previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)-(C); 14 **Del.C.** §3110)

24 DE Reg. 673 (01/01/21)

11.0 Development, Review, and Revision of IEP

11.1 Development of IEP, general: In developing each child's IEP, the IEP team shall consider:

11.1.1 The strengths of the child;

11.1.2 The concerns of the parents for enhancing the education of their child;

11.1.3 The results of the initial or most recent evaluation of the child; and

11.1.4 The academic, developmental, and functional needs of the child.

11.2 Consideration of special factors: The IEP team shall:

11.2.1 In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

11.2.2 In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

11.2.3 In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

11.2.4 Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

11.2.5 Consider whether the child needs assistive technology devices and services; and

11.2.6 ~~In the case of a child who is blind, visually impaired, or has a physical or print disability, consider whether the child needs accessible instructional materials.~~ The IEP team shall consider intervention supports and strategies, including instructional materials in accessible formats, for students who have difficulty accessing or using grade-level textbooks and other core materials in standard print formats. This includes children who are blind, visually impaired, or have a physical or print disability (as defined in 14 DE Admin. Code 922, Section 3.0).

11.2.7 *In the case of any child with limited reading proficiency, consider the reading services, supports and evidence-based interventions as those relate to the child's IEP;*

11.2.7.1 *For a child who is not beginning to read by age ~~seven (7) 7~~, or who is beyond age ~~seven (7) 7~~ and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read. Eligibility for reading-based extended school year services shall be determined in accordance with 14 **DE Admin. Code** ~~923-6-0~~ 923, Section 6.0.*

- 11.3 Requirement with respect to regular education teacher: A regular education teacher of a child with a disability, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child; and supplementary aids and services, program modifications, and support for school personnel consistent with subsection 7.1.4.
- 11.4 Agreement: In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP in accordance with this section, the public agency shall ensure that the child's IEP team is informed of those changes.
- 11.5 Consolidation of IEP team meetings: To the extent possible, the public agency shall encourage the consolidation of re-evaluation meetings for the child and other IEP team meetings for the child.
- 11.6 Amendments: Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection 11.4, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
- 11.7 Review and revision of IEPs, general: Each public agency shall ensure that, subject to subsections 11.8 and 11.9, the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address:
- 11.7.1 Any lack of expected progress toward the annual goals described in subsection 7.1.2, and in the general education curriculum, if appropriate;
 - 11.7.2 The results of any re-evaluation conducted under Section 3.0;
 - 11.7.3 Information about the child provided to, or by, the parents, as described in subsection 5.1.4;
 - 11.7.4 The child's anticipated needs; or
 - 11.7.5 Other matters.
- 11.8 Consideration of special factors: In conducting a review of the child's IEP, the IEP team shall consider the special factors described in subsection 11.2.
- 11.9 Requirement with respect to regular education teacher: A regular education teacher of the child, as a member of the IEP team, shall, consistent with subsection 11.3, participate in the review and revision of the IEP of the child.
- 11.10 Failure to meet transition objectives, participating agency failure: If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subsection 7.2, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
- 11.11 Construction. Nothing in these regulations relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.
- 11.12 Children with disabilities in adult prisons, requirements that do not apply: The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
- 11.12.1 The requirements contained in section 612(a)(16) of the Individuals with Disabilities Education Act and 14 **DE Admin. Code** ~~925-7.1-6~~ 925, subsection 7.1.6 (relating to participation of children with disabilities in general assessments).
 - 11.12.2 The requirements in subsection 7.2 (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Individuals with Disabilities Education Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- 11.13 Modifications of IEP or placement: Subject to subsection 11.13.1, the IEP team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- 11.13.1 The requirements of Section 7.0 (relating to IEPs), and 14 **DE Admin. Code** ~~923-14.0~~ 923, Section 14.0 (relating to LRE) do not apply with respect to the modifications described in subsection 11.13.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e); 14 Del.C. §3110)

14 DE Reg. 1060 (04/01/11)

18 DE Reg. 564 (01/01/15)

18 DE Reg. 861 (05/01/15)

24 DE Reg. 673 (01/01/21)

12.0 Private School Placements by Public Agencies

12.1 Developing IEPs: Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with Sections 7.0 and 11.0.

12.1.1 The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

12.2 Reviewing and revising IEPs: After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

12.2.1 If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the child's IEP; and agree to any proposed changes in the IEP before those changes are implemented.

12.3 Responsibility: Even if a private school or facility implements a child's IEP, responsibility for compliance with these regulations remains with the public agency and the DOE.

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

24 DE Reg. 673 (01/01/21)

13.0 Educational Placements in the Least Restrictive Environment in the Least Restrictive Environment

13.1 Educational Placement Options. Following the development of a child's IEP, the IEP team shall determine the child's educational placement in the least restrictive environment based on the child's individual needs and the services identified in the IEP.

13.1.1 Except as provided in 14 DE Admin Code 925, subsection 11.12 (regarding children with disabilities in adult prisons), each public agency shall meet the least restrictive environment requirements of 14 DE Admin. Code 923, Sections 14.0 through 20.0.

13.1.2 Each public agency shall ensure a child with a disability is placed in a chronologically age-appropriate placement.

13.2 Educational placement options for children 3 to 5 years of age who are not yet in kindergarten shall include the following:

13.2.1 Children attending a regular early childhood program greater than 10 hours per week: Children with disabilities receiving special education and related services in a regular early childhood program with a ratio of at least 50% of children who do not have an IEP.

13.2.1.1 At least 10 hours per week and receive the majority of hours of special education and related services in the regular early childhood program; or

13.2.1.2 At least 10 hours per week and receive the majority of hours of special education and related services in some other location.

13.2.2 Children attending a regular early childhood program less than 10 hours per week: Children with disabilities receiving special education and related services in a regular early child-hood program with a ratio of at least 50% of children who do not have an IEP.

13.2.2.1 Less than 10 hours per week and receive the majority of hours of special education and related services in the regular early childhood program; or

13.2.2.2 Less than 10 hours per week and receive the majority of hours of special education and related services in some other location.

13.2.3 Children attending a special education program not in any regular early childhood program: Children with disabilities receiving special education and related services in a separate special education class or a separate school or a residential facility, and where more than 50% of the children have an IEP.

13.2.4 Children attending neither a regular early childhood program nor a special education program included in subsections 13.2.1 through 13.2.3 of this regulation; and

13.2.4.1 Receiving the majority of hours of special education and related services at home; or

13.2.4.2 Receiving the majority of hours of special education and related services at the service provider's location or some other location not in any other category.

- 13.3 Educational placement options for school age children shall include, but not be limited to, the following:
- ~~13.1.1 13.3.1~~ Inside Regular Education Class ≥ 80 percent of the day: Children with disabilities receiving special education and related services outside the regular classroom less than 21 percent of the day. ~~This may include children with disabilities placed in: regular class with special education related service provided within regular classes; regular class with special education related services provided outside regular classes; or regular class with special education services provided in resource rooms.~~
- ~~13.1.2 13.3.2~~ Inside Regular Class ≤ 79 percent of the day and \geq than 40 percent of the day: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent of the day and no more than 60 percent of the day. ~~This may include children placed in: resource rooms with special education related service provided within the resource room; or resource rooms with part time instruction in a regular class.~~
- ~~13.1.3 13.2.3~~ Inside Regular Class < 40 percent of the Day: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the day. ~~This may include children placed in: self-contained special classrooms with part time instruction in a regular class; or self-contained special classrooms with full time education instruction on a regular school campus.~~
- ~~13.1.4 13.3.4~~ Separate school: Children with disabilities receiving education programs in public or private separate day school facilities. This includes children with disabilities receiving special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate schools. This may include children placed in: public and private day schools for children with disabilities; public and private day schools for children with disabilities for a portion of the day (greater than 50 percent) and in regular school buildings for the remainder of the day; or public and private residential facilities if the student does not live at the facility.
- ~~13.1.5 13.3.5~~ Residential Facility: Receives education programs in public or private residential facilities during the school week. Includes children with disabilities receiving special education and related services, at public expense, for greater than 50 percent of school day in public or private residential facilities. May include children placed in: public and private residential schools for children with disabilities; or public and private residential schools for children with disabilities for a portion of the day (greater than 50 percent) and in separate day schools or regular schools buildings for the remainder of the day if the students.
- ~~13.1.6 13.3.6~~ Homebound and Hospital: Receives education programs in homebound hospital placement. Includes children with disabilities placed in and receiving special education and related services in: hospital programs, or homebound programs in homebound or hospital placements as defined in 14 **DE Admin. Code 922, Section 3.0.**
- ~~13.3.6.1 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.~~
- ~~13.3.6.2 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 10 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team the child needs a transitional program to facilitate their return to the school program.~~
- ~~13.1.7 13.3.7~~ Correctional Facilities: Children receiving special education in: short-term detention facilities (community based or residential); or correctional facilities.
- ~~13.1.8 13.3.8~~ Parentally Placed Private Schools: Children enrolled by their parents or guardians in regular parochial or other private schools and whose basic education is paid through private resources and who receive special education and related services at public expense from the local education agency or intermediate unit under a service plan.
- ~~13.2 Each public agency shall ensure a child with a disability is placed in a chronologically age appropriate placement.~~
- ~~13.3 If a child with a disability is a danger to himself or to herself, or is so disruptive that their behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.~~
- ~~13.3.1 Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with the requirements for the provision of a free, appropriate public education.~~
- ~~13.3.2 In instances of parental objection to such home instruction, parents may exercise any of the applicable procedural safeguards in these regulations.~~
- ~~13.3.3 To be eligible for supportive instruction and related services, the following criteria shall be met:~~

- ~~13.3.3.1 The child shall be identified as disabled and in need of special education and related services and enrolled in the LEA or other public educational program; and~~
- ~~13.3.3.2 If the absence is due to a medical condition, be documented by a physician's statement where the absence will be for two weeks or longer; or~~
- ~~13.3.3.3 If the absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and the such placement is both necessary and temporary; or if for transitional in school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.~~
- ~~13.3.4 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.~~
- ~~13.3.5 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team the child needs a transitional program to facilitate their return to the school program.~~
- (Authority: 14 Del.C. §3110)

See 34 CFR §300.114 and §300324(d)(2).

24 DE Reg. 673 (01/01/21)

14.0 Alternative Means of Meeting Participation

When conducting IEP team meetings and placement meetings pursuant to these regulations, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f); 14 Del.C. §3110)

24 DE Reg. 673 (01/01/21)

15.0 High School Graduation

~~Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at public agency expense, until their 21st birthday. Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to their disability, educational placement or the type of document conferred.~~

Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at public agency expense, until their 22nd birthday. Regardless of the document received at graduation by the student, whether a diploma or a Diploma of Alternate Achievement Standards, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to their disability, educational placement or the type of document conferred.

(Authority: 14 Del.C. §3110)

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

11 DE Reg. 184 (08/01/07)

11 DE Reg. 1629 (06/01/08)

12 DE Reg. 1084 (02/01/09)

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

18 DE Reg. 564 (01/01/15)

18 DE Reg. 861 (05/01/15)

20 DE Reg. 172 (09/01/16)

20 DE Reg. 549 (01/01/17)

21 DE Reg. 626 (02/01/18)

24 DE Reg. 673 (01/01/21)

27 DE Reg. 477 (01/01/24) (Prop.)