

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

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

### Regulatory Implementing Order

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

##### I. Summary of the Evidence and Information Submitted

On March 1, 2007, the Secretary of Education, with the consent of the State Board of Education, proposed to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt new regulation 14 **DE Admin. Code** 925, Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

On December 3, 2004, President Bush signed into law the *Individuals with Disabilities Education Improvement Act of 2004* ("IDEA 2004"). Most of IDEA 2004 became effective in July 2005. On August 14, 2006, the U.S. Department of Education issued its final regulations implementing IDEA 2004. The new federal regulations, located at 34 CFR Part 300, became effective on October 13, 2006.

The current State regulations relating to the education of children with disabilities are codified in 14 **DE Admin. Code** 925. Concurrent with this Order, the Secretary, with the consent of the State Board of Education, will enter additional Orders replacing existing regulation 14 **DE Admin. Code** 925 with the following new regulations:

- 14 **DE Admin. Code** 922 Children with Disabilities, Subpart A, Purposes and Definitions
- 14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies
- 14 **DE Admin. Code** 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility
- 14 **DE Admin. Code** 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs
- 14 **DE Admin. Code** 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children
- 14 **DE Admin. Code** 927, Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information
- 14 **DE Admin. Code** 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved
- 14 **DE Admin. Code** 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

Notice of all the proposed regulations was published in the News Journal and the Delaware State News on February 26, 2007, in the form hereto attached. The Department received extensive comments on proposed regulation 14 **DE Admin. Code** 925, Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, as noted below in Findings of Facts.

##### II. Findings of Facts

The Secretary finds that it is appropriate to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt proposed regulation 14 **DE Admin. Code** 925, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, except for sections relating to Response to Intervention, as part of a comprehensive review of existing State regulations in light of changes to federal law.

The Secretary makes the following specific findings:

**Response to Intervention (RTI).** The Department received extensive comment about the proposed

response to intervention regulations. As a result, the Secretary finds it is appropriate to make substantive changes to the proposed RTI procedures. The Department will "reserve" space in Regulation 925, Subpart D, in order to revise and republish RTI regulations and will accept additional public comments about the revised RTI procedures. Accordingly, it is not necessary to summarize all of the comments received to the original proposal here. Generally, commenters were in mostly in favor of RTI, but suggested that the proposed roll-out schedule was too rapid, particularly for middle and high schools; were concerned about the cost of implementation, particularly as related to group sizes and intensity of services in Tiers 2 and 3; stressed the need for continued professional guidance and technical assistance; expressed concern that RTI procedures not delay services to children with disabilities; and sought clarification about the application of RTI to children with other types of disabilities, such as autism.

**The Department also received the following comments about other parts of Regulation 925, not related to response to intervention.**

**Informed consent.** A comment suggested that agencies be required to provide detailed information about special education rights and specific services at the same time the agency asks parents to consent to evaluate whether a child needs such services. The information that is required as part of "consent" is specifically defined in Section 3.0 of Regulation 922, Children with Disabilities, Subpart A, Purposes and Definitions (which will be adopted concurrent with this regulation) and is the same as the federal requirement. It is unnecessary to require additional information beyond what is required by the federal regulations. As noted below, the Department plans to develop additional State forms and will carefully consider whether a State-consent form should be developed and what information it should contain.

**Evaluation standards.** A comment suggested that the regulations should permit districts to take into account possible future negative outcomes associated with a particular type of disability as part of continuing a child's eligibility for services, even if the student does not currently require specialized services. The Department believes this suggestion would impermissibly expand the use of federal special education funds, such that the suggestion should not be incorporated into the regulation.

The Governor's Advisory Council for Exceptional Citizens also suggested adding a requirement that agreements between families and districts around the timing of reevaluations be in writing. While the Department agrees that memorializing agreements in writing will often be good practice, it is not required by federal regulations and would add another documentation requirement around an area that is rarely a source of dispute. Likewise, the Department will also follow federal regulations by permitting evaluations and reevaluation reviews to occur without a meeting. Meetings may, of course, be held, but would not be required.

The Council also suggested revising subsection 6.3 to permit teams to consider historical data older than two years. The Department agrees, and has made a non-substantive revision to the regulation.

**Speech and language impairment eligibility.** Comments questioned whether the eligibility criteria for students with speech and language impairment should be more carefully delineated to eliminate inter-district variations. The proposed eligibility standards are the same as currently used and have presented few concerns about application or differences between districts in eligibility, such that no change to the regulation is necessary.

**Visual Impairment eligibility.** Comments suggested that the eligibility criteria for students with visual impairments should include children with degenerative eye diseases who are likely to become visual impaired as a result, and suggested other changes to improve the clarity of subsection 6.17. The Department agrees with most of these recommendations and will revise and republish subsection 6.17 to accept additional public comment on the revisions.

**Multiple disabilities eligibility.** The Governor's Advisory Council for Exceptional Citizens noted that the regulation does not include detailed criteria for students who may be eligible for special education services under the multiple disabilities category. The federal definition of "multiple disabilities" is included as one of the categories of "children with disabilities" who are eligible for special education services in 14 **DE Admin. Code** 922, Children with Disabilities, Subpart A, Definitions and Purposes, adopted concurrent with this regulation. The Department does not believe that any further detail about the eligibility of such students is required. It would be extremely unusual for a student to be eligible under the "multiple disabilities" category without already also being eligible

under at least one other category and once a student is eligible under any category, the student is entitled to a free appropriate public education based on the student's own individual needs, not the category of eligibility.

**Other eligibility categories.** The Council also made a number of suggestions about specific criteria for other eligibility categories, including emotional disturbance and other health impairment. The Department has corrected subsection 6.9.2.2 to correct a typographical error that was inconsistent with federal requirements and corrected subsection 6.14.3.2 for clarity. Otherwise, the proposed eligibility standards are the same as currently used, were comprehensively reviewed late in 2004 and are consistent with federal requirements and with prevailing understandings of various disorders as presented in DSM-IV. They have presented few concerns with respect to eligibility of students for special education services or about differences between districts in eligibility and no further changes to these regulations are necessary.

**Agency representative at IEP team meetings.** Comments suggested that it was unnecessary to have a person with the authority to commit agency resources at every meeting as required by Subsection 21.1.4.4. This language reflects long-standing federal interpretation about the authority of the person designated to represent a district at a meeting and is appropriate to the regulation.

**Objectives.** A few comments suggested that IEPs for all students should continue to include objectives. Federal law no longer requires objectives so long as each student's IEP contains measurable annual goals and the Department believes that well-written, measurable and carefully monitored annual goals will both meet student needs and be easier for families to understand. Delaware IEPs will continue to require both goals and objectives for students who participate in the DSTP via a portfolio assessment.

**IEPs of transferring students.** Some comments suggested that districts should be able to implement IEPs developed by other Delaware districts without an IEP meeting. Parent participation in the IEP process is particularly important when students change school districts, and that a meeting should be held by the receiving district even if the IEP will be adopted as received from the student's sending district. No change will be made to Subsection 23.4.

**Model forms.** Comments were received suggesting the Department develop or revise standard forms for RTI implementation. The Department plans to update the existing required State forms in light of these new regulations and will also consider developing new forms as appropriate to implement the regulations.

Finally, in addition to other comments, the Governor's Advisory Council for Exceptional Citizens made stylistic suggestions and noted various typographical or grammatical errors some of which the Department was able to correct before publication of the proposed regulation and some of which are corrected as part of this adoption.

### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt most of proposed regulation 14 **DE Admin. Code** 925, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, with the non-substantive revisions noted above. Substantive changes to the proposed regulation will be republished for additional public comment.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925, attached hereto as Exhibit "B," is hereby adopted. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 925 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 925 in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

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

**IT IS SO ORDERED** the 17th day of May 2007.

### Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of May 2007

### State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Dennis J. Savage

Richard M. Farmer, Jr., Vice President

Barbara Rutt

Dr. Claibourne D. Smith

## ~~925 Children with Disabilities~~

### ~~1.0 Adoption and Incorporation of Federal Regulations~~

~~1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 CFR Parts 300 and 303, are adopted and incorporated as part of these Regulations.~~

~~1.2 These Regulations implement, complement and supplement the federal regulations and 14 **Del.C.** Ch. 31 (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.~~

~~1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the Administrative Manual for Special Education Services (adopted February 2000), available at the Department of Education.~~

~~**3-DE-Reg-1551 (5/1/00)**~~

### ~~2.0 Identification of Children with Disabilities~~

~~2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.~~

~~2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in 14 **DE Admin. Code** 815.~~

~~2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.~~

~~2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.~~

~~2.3.2 When the instructional support team determines the child should be evaluated to determine eligibility and possible need for special education services, the recommendation will be forwarded to the appropriate staff member within 10 school days. Concurrently, the parent shall be notified within 10 days of the~~

determination by the instructional support team that a child should be evaluated to determine eligibility and need for special education services. The notification shall include a request for parental consent for initial evaluation, which complies with section 300.505 of the federal regulations (see Procedural Safeguards, section 14.0). Referrals for an individual child that do not contain all required documentation, including the evidence as described in 2.3, may be returned to the instructional support team with a request for the required information, but a return to the instructional support team shall not delay parental notification and request for consent for initial evaluation.

2.3.3 A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.

~~3 DE Reg. 1551 (5/1/00)~~

~~4 DE Reg. 470 (9/1/00)~~

### **3.0 Procedures for Evaluation and Determination of Eligibility**

3.1 Initial evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation and the meeting to determine eligibility shall occur within 45 school days, or 90 calendar days whichever is shorter, of the receipt of consent for the initial evaluation, unless additional time is agreed upon.

#### **3.2 Evaluation Procedures**

##### **3.2.1 Qualified Evaluation Specialists**

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

#### **3.3 Procedures for Determining Eligibility and Placement**

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency.

~~3 DE Reg. 1551 (5/1/00)~~

~~4 DE Reg. 470 (9/1/00)~~

### **4.0 Eligibility for Services**

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with 14 Del.C. Ch. 17 and 14 Del.C. Ch. 31 and other age ranges as provided for by State and federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf blindness, or autism, shall be from birth through 20 years,

inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

#### 4.2 Definitions and General Eligibility and Exit Criteria

4.2.1 Eligibility Criteria, General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 ~~Del.C.~~ §1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria, General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data based and documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder, Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

4.3.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

4.3.1.1 All students with an educational classification of autism demonstrate a significant, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

4.3.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

4.3.1.1.2 Development of peer relationships;

4.3.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people, including parent(s) and caregivers; or

4.3.1.1.4 Social or emotional reciprocity.

4.3.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 4.3.1.2.1. or 4.3.1.2.2. below:

4.3.1.2.1 A qualitative impairment in communication, as manifested by:

4.3.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

4.3.1.2.1.2 Relative failure to initiate or sustain a conversation with others;

4.3.1.2.1.3 Stereotyped, idiosyncratic, or repetitive speech; or

4.3.1.2.1.4 A lack of varied, spontaneous make believe play or social imitative play.

4.3.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:

4.3.1.2.2.1 Encompassing preoccupation or circumscribed and restricted patterns of interest;

4.3.1.2.2.2 Apparently compulsive adherence to specific, nonfunctional routines and rituals;

4.3.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

4.3.1.2.2.4 Persistent preoccupation with parts and sensory qualities of objects.

4.3.1.3 All students with an educational classification of autism have impairments that:

4.3.1.3.1 Are inconsistent with the student's overall developmental and functional level; and

4.3.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

4.3.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

4.3.1.3.4 Are not primarily accounted for by an emotional disorder.

4.3.2 An educational classification of autism is established:

4.3.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

4.3.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 4.3.2.1.; and

4.3.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

4.3.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his/her current level of functioning. A

significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.

4.4.2 Multiple sources and methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

- 4.4.2.1 Developmental and medical history;
- 4.4.2.2 Interview with the child's parent or primary caregiver;
- 4.4.2.3 Behavioral observations;
- 4.4.2.4 Standardized norm referenced instruments; and
- 4.4.2.5 Other assessments which could be used for intervention planning, such

as dynamic or criterion referenced assessments, behavior rating scales, or language samples.

4.4.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

4.4.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

Nonregulatory note: Under the ~~Delaware Code~~, funding for the Developmental Delay category is only available through the Preschool Children with Disabilities block grant, except as authorized through the Special Education Funding Pilot.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression, is unable to enter into age appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without

amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written document for the formative intervention process used with the student. (See section 2.3, "Referral to Instruction Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 Eligibility Criteria for Mental Disability

4.9.1 Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

4.9.1.1 A level of intellectual functioning, as indicated below:

4.9.1.1.1 Educable Mental Disability: IQ 50 to 70 +/- 5 points;

4.9.1.1.2 Trainable Mental Disability: IQ 35 to 50 +/- 5 points;

4.9.1.1.3 Severe Mental Disability: IQ below 35; and

4.9.1.2 Significant limitations in two or more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.

4.9.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

4.9.3 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

4.10 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

4.10.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

4.10.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and body use necessary for performing educational activities.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

4.10.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments

necessary; and

4.10.3.3 Prior program or school records (if available), and, when determined necessary, a speech and language evaluation, adaptive behavior scale, vision or hearing screening, social history or psychological evaluation.

4.10.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

4.10.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children classified under the Orthopedic Impairment category will be counted as Physically Impaired in the Unit Count.

4.11 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

4.11.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

4.11.2 For ADD and ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:

4.11.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;

4.11.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

4.11.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

4.11.2.1.3 Often does not seem to listen when spoken to directly;

4.11.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

4.11.2.1.5 Often has difficulty organizing tasks and activities;

4.11.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);

4.11.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

4.11.2.1.8 Is often easily distracted by extraneous stimuli;

4.11.2.1.9 Is often forgetful in daily activities; or

4.11.2.2 Six (or more) of the following symptoms of hyperactivity/impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

4.11.2.2.1 Often fidgets with hands or feet and squirms in seat;

4.11.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected;

4.11.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

4.11.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;

4.11.2.2.5 Is often "on the go" or often acts as if "driven by a motor";

4.11.2.2.6 Often talks excessively;

4.11.2.2.7 Often blurts out answers before questions have been completed;

4.11.2.2.8 Often has difficulty waiting turn;

4.11.2.2.9 Often interrupts or intrudes into conversations or games; and

4.11.2.3 Some hyperactive/impulsive or inattentive symptoms that caused impairment were present before seven years of age;

4.11.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

4.11.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

4.11.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another

mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

4.11.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.11.3.1 Written documentation from the formative intervention process used with the student (see section 2.3, p.11 "Referral to Instructional Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.11.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re-evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in number 4.11.2 above.

4.11.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

4.11.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children classified under the Other Health Impaired category will be counted as Physically Impaired in the Unit Count.

4.12 Eligibility Criteria for Speech and Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.

4.12.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, 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 disability condition.

4.13 Eligibility Criteria for Traumatic Brain Injury:-

A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.13.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.13.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.14 Visual Impairment Eligibility Criteria

4.14.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.14.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.

4.14.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.14.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.14.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.15 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.15.1 A speech disability is defined as a communication disorder or delay involving articulation, voice quality, and speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.15.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.15.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized norm based instrument. It is strongly recommended that the evaluation include clinical observations or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.15.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test;

4.15.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist;

4.15.2.1.3 oral motor involvement which may affect the development of normal articulation;

4.15.2.1.4 Speech Fluency, or

4.15.2.1.5 Voice Quality

4.15.3 Results of the evaluation may indicate a significant delay in receptive and expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.15.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

~~3 DE Reg. 1551 (5/1/00)~~

~~4 DE Reg. 470 (9/1/00)~~

~~8 DE Reg. 886 (12/01/04)~~

## **5.0 Individualized Education Program (IEP)**

An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

### **5.2 IEP of Transferring Students with Disabilities**

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 ~~Del.C.~~ Ch. 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out of state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

### **5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.**

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 When possible participation in a Cooperative Education Program or a Diversified Occupations Program is to be discussed, the Career Technical Teacher Coordinator shall attend the IEP meeting as per 14 ~~DE Admin. Code~~ 525.

5.3.3 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no

less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The Primary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used for students beginning with preschool (age 3), until use of the Secondary IEP form. The Secondary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used beginning in the eighth grade, or earlier, if the IEP team agrees.

5.4.2 The requirement that the local education agencies and other agencies use the forms found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) 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 Free Appropriate Public Education (FAPE) to any individual child with a disability.

5.4.3 The IEP shall designate 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.

5.4.4 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests and preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature or severity of the child's disability.

5.6.2 Regression and recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

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

5.6.4 Career Technical: For children ages 16 to 20 whose IEPs contain Career Technical goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

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

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

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

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

purpose of satisfying the LRE requirements for students receiving extended school year services.

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

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

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

**3 DE Reg. 1551 (5/1/00)**

**8 DE Reg. 886 (12/01/04)**

## **6.0 Least Restrictive Environment**

Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regular Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 Regular class with special education and related services provided within regular classes,

6.1.2 Regular class with instruction within the regular class and with special education and related services provided outside regular classes, or

6.1.3 Regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 Resource rooms with special education and related services provided within the resource room, or

6.2.2 Resource rooms with part time instruction in a regular class.

6.3 Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 Self-contained special classrooms with part time instruction in a regular class.

6.3.2 Self-contained special classrooms with full time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 Public day schools for children with disabilities, or

6.4.2 Public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 Public residential schools for children with disabilities, or

6.6.2 Public residential schools for children with disabilities for a portion of the school day

(greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 ~~Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:~~

~~6.7.1 Private residential schools for children with disabilities, or~~

~~6.7.2 Private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.~~

6.8 ~~Homebound and Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of service which assures a free, appropriate public education.~~

~~6.8.1 Where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her 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.~~

~~6.8.2 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 requirements for the provision of a free, appropriate public education.~~

~~6.8.3 In instances of parental objection to such home instruction, due process provisions apply.~~

~~6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:~~

~~6.8.4.1 The child shall be identified as disabled and in need of special education and related services and enrolled in the school district or other public educational program; and~~

~~6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or~~

~~6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and that 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.~~

~~6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.~~

~~6.8.6 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 that the child needs a transitional program to facilitate his or her return to the school program.~~

6.9 ~~Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age appropriate placement is provided.~~

~~6.9.1 An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service and support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.~~

~~6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:~~

~~6.9.2.1 The amount of time of regular, special education and related services; or~~

~~6.9.2.2 The settings as identified in 6.1 to 6.8 above.~~

~~6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the scheduled of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.~~

**3 DE Reg. 1551 (5/1/00)**

## **7.0 Career Technical**

When appropriate to individual needs of the children, as determined by the IEP team, each school district

or other public agency responsible for the education of a child with a disability shall provide career technical programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities shall be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities shall be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the Career Technical program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Codification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

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

7.3.5 Counseling services designed to facilitate the transition from school to post school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998.

7.3.6 Regular Career Technical programs with supportive services as identified by the IEP team; and

7.3.7 Special education Career Technical programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate career technical education, including access to Career Pathways, as determined by the IEP team through the availability of a continuum of Career Technical education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular Career Technical Programs with no supportive services;

7.5.2 Regular Career Technical Programs with supportive services as identified by the IEP team;

7.5.3 Special education Career Technical Programs;

7.5.4 Self-contained Career Technical Programs; and

7.5.5 Community based job training programs.

### **3-DE-Reg-1551 (5/1/00)**

## **8.0 Facilities, Equipment and Materials**

All facilities which house programs for children with disabilities shall meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

### **3-DE-Reg-1551 (5/1/00)**

## **9.0 Length of School Day**

The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents, guardian and Relative Caregiver.

### **3-DE-Reg-1551 (5/1/00)**

## **10.0 Compulsory Attendance**

Compulsory attendance will be in accordance with 14-DeI.G. 2703 and 2706, and shall apply to students

with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 ~~Del.C.~~ 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

**3-DE-Reg. 1551 (5/1/00)**

**11.0 Transportation**

Transportation of all children to and from school is provided under 14 ~~Del.C.~~ Ch. 29, and when special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when such travel and specialized equipment requirements are specified on the child's IEP and it is necessary for the implementation of the child's IEP; and

11.2 Travel arrangements are to be made in consultation with the local transportation representative when unusual requirements are indicated.

11.3 Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

**3-DE-Reg. 1551 (5/1/00)**

**12.0 Discipline Procedures**

12.1 Documentation, including the reasons for the action, shall be made for any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 In school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum although in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 removals from transportation, if it results in the child's absence from school for more than 10 days.

**12.2 Expedited Due Process Hearings**

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents, guardian or Relative Caregiver of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school

year.

**3-DE-Reg-1551 (5/1/00)**

**13.0 Educational Surrogate Parent.**

An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 A parent cannot be identified;

13.1.2 After reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address;

13.1.3 Parental rights have been terminated, and legal responsibility has not been granted by a court of law to an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 The child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 The right of access to a surrogate parent who shall act as an advisor to the student;

13.3.2 The right to refuse the appointment of a surrogate parent;

13.3.3 The right to participate in the selection of a surrogate parent; and

13.3.4 The right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 **Nomination and Candidacy of Surrogate Parent:** The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 **Screening of Potential Surrogate Parents:** Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 Be at least 18 years of age;

13.6.2 Be a legal resident of the United States;

13.6.3 Be competent to represent the child;

13.6.4 Not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 Have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case by case basis). In general, a person would have a conflict of interest if he/she were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for the child.

13.6.6 Receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 Be able to converse in the primary communication mode used by the child,

whenever possible.

13.7 ~~Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.~~

13.7.1 ~~The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.~~

13.7.2 ~~The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.~~

13.7.3 ~~Follow up training shall be provided by the Department of Education.~~

13.8 ~~Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.~~

13.8.1 ~~The Department of Education shall determine the child's eligibility for a surrogate parent.~~

13.8.2 ~~The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.~~

13.8.3 ~~The Department of Education shall notify, in writing, the district or referring agency or person of the appointment.~~

13.8.4 ~~A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.~~

13.9 ~~Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision making processes concerning that child by:~~

13.9.1 ~~Becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs;~~

13.9.2 ~~Granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;~~

13.9.3 ~~Participating in the development of an IEP for the child;~~

13.9.4 ~~Reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;~~

13.9.5 ~~Initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such assistance is in the best interest of the child; and~~

13.9.6 ~~Taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.~~

13.10 ~~The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.~~

13.11 ~~Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.~~

13.11.1 ~~The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.~~

13.12 ~~Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:~~

13.12.1 ~~Mileage for attendance at meetings concerning the child being represented; and~~

- 13.12.2 Long distance telephone calls to the school in which the child is being served; and
- 13.12.3 Photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

**3-DE Reg. 1551 (5/1/00)**

**14.0 Procedural Safeguards**

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents, guardian or Relative Caregiver by the district or any other public agency, shall be maintained.

14.4 Mediation of other disputes between the school and the parents, guardian or Relative Caregiver as to the child's education program shall be offered at the discretion of the Department of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, nonadversarial context.

14.4.2 Parents may be accompanied and advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parent's discretion.

**3-DE Reg. 1551 (5/1/00)**

**15.0 Due Process Procedures**

15.1 Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decisions. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents, guardian or Relative Caregiver shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 Non Exclusivity of Remedies: The remedies identified in this section should not be viewed as

exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 Non Compliance: When the finding indicates non compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 Compliance: When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, 1402 Federal Street, Suite 2, Dover, DE 19901, and shall include in the complaint the following:

15.14.1 The name of the agency against which the complaint is filed;

15.14.2 A statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and the provisions of this Manual;

15.14.3 The facts on which the statement is based;

15.14.4 The time frame in which the incident(s) occurred;

15.14.5 A description of the attempts made to resolve the issue(s) prior to filing this action;

and

15.14.6 Name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

**3-DE-Reg-1551 (5/1/00)**

## **16.0 Confidentiality of Student Records**

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the Special Education: Parents' Guide to Rights and Services and a copy of parents' due process rights as delineated in this Manual.

**3-DE-Reg-1551 (5/1/00)**

## **17.0 High School Graduation**

17.1 Continuing their Education: 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 district expense, until their 21st birthday.

17.2 Graduation Process: 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 his/her disability, educational placement or the type of document conferred.

**3-DE-Reg-1551 (5/1/00)**

## **18.0 Interagency and Special Programs**

18.1 Interagency and Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, interdistrict or interagency programs shall be considered within least restrictive environment requirements.

18.2 Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence.

18.2.1 The agreement may be initiated by the district, agency or the Department of

Education (DOE):

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

18.2.3 Each Interagency Agreement shall include the:

18.2.3.1 Title of the agreement;

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

18.2.3.3 Purpose of the agreement;

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

18.2.3.5 End dates and Reauthorization schedule;

18.2.3.6 Procedures to resolve disputes regarding program and fiscal issues; and

18.2.3.7 Signature and title of each party's authorized administrator.

### 18.3 Responsibility for Placement in Interagency Programs

18.3.1 For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures including:

18.3.1.1 Setting the date, time, and place of all meetings;

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

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

18.3.1.4 Communicating recommendations of staffing to all appropriate staff.

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

18.3.2.1 Representatives of the interdistrict or interagency program shall participate in the IEP meeting.

18.3.2.2 A representative of the district of residence shall be a member of the child's IEP team.

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

**3-DE Reg. 1709 (6/1/00)**

### 19.0 Special Programs for Children with a Visual Impairment

Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented through an interagency agreement.

**3-DE Reg. 1709 (6/1/00)**

### 20.0 Special Programs for the Children who are Deafblind

The Margaret S. Sterek School, Delaware School for the Deaf (DSD), located in the Christina School District, shall have administrative responsibility for providing services to the deafblind program.

20.1 The Director and Coordinator of the Deafblind Program shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.

**3-DE Reg. 1709 (6/1/00)**

### 21.0 Special Programs for Children with Autism

21.1 Definitions of terms applicable only to special programs for children with autism.

**"Behavior Management Procedure"** means any procedure used to modify the rate or form of a target behavior.

**"Behavior Management Target"** means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self stimulation, noncompliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation,

public disrobing, etc.).

**"Emergency Intervention Procedure"** means any procedure used to modify episodic dangerous behavior (e.g., self injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

21.1.4 "Ethical Use" means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

**"Informed Consent"** means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

**"Least Restrictive Procedure"** means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

**"School"** means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

**"Accepted Clinical Practice"** means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer reviewed journals or similar professional literature.

21.2 The Statewide Monitoring Review Board (SMRB) shall be generally administered by the Director for State Services for Children with Autism and the Director of the Exceptional Children and Early Childhood Education Group, Department of Education.

21.2.1 The purpose of the SMRB is to define research based best educational practices for students with autism served in approved programs in Delaware. This includes reviewing and making recommendations to the Secretary of Education regarding the special education and related services for children with autism in approved programs, including programs for students with autism whose placement in private facilities has been authorized by the Department of Education.

21.2.2 The SMRB shall consist of the following members:

21.2.2.1 Director for State Services for Children with Autism.

21.2.2.2 Director of the Exceptional Children and Early Childhood Education

Group, or designee.

21.2.2.3 One administrator from each LEA and charter school with an approved program for students with autism, or their designee. The administrator or designee must have experience in, and responsibility for, the program for students with autism.

21.2.2.4 One nonadministrative experienced professional from each approved program for students with autism. These individuals are nominated by the administrator responsible for the approved program and are subject to the approval of the Director for State Services for Children with Autism.

21.2.2.5 Two nonvoting public representatives nominated annually by the Statewide Parent Advisory Committee. These individuals must not have a child currently served in an approved program.

21.2.3 The SMRB shall operate under the following procedures:

21.2.3.1 The Director of State Services for Children with Autism shall serve as the Chairperson of the Board.

21.2.3.2 A majority of the voting members of the board shall constitute a quorum.

21.2.3.3 Decisions of the Board shall be determined by a majority vote of the quorum.—

21.2.3.4 The chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled at least five times per year, contingent upon agenda items.—

21.2.3.5 The SMRB shall discharge its responsibilities in accordance with the IDEA and the Administrative Manual for Special Education Services (AMSES).

21.2.3.6 The SMRB shall function in an advisory capacity and the procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA), and local school districts, charter schools, or agencies, shall not be diminished by the activities of the SMRB.

21.2.4 The SMRB has the following responsibilities:

~~21.2.4.1 To determine which educational methods and curricula are consistent with research based best practices for students with autism. This includes reviewing and making recommendations regarding proposed new practices.~~

~~21.2.4.1.1 Requests for review of practices may be submitted to the SMRB by SMRB members, the Secretary of Education, the State Parent Advisory Committee, Superintendents of LEAs, or Chief Administrators of Charter Schools.~~

~~21.2.4.1.2 If the party making the request for review disagrees with the recommendation of the SMRB regarding best educational practices, they may request the Secretary of Education appoint an independent expert to review the practice. The procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA) and local school districts, charter schools or agencies, shall not be diminished by any recommendations of an independent expert appointed by the Secretary.~~

~~21.2.4.2 To review, at least annually, educational programming and aggregated performance data for students with autism in approved programs in Delaware.~~

~~21.2.4.3 To make recommendations based on this review regarding appropriate strategies, supports, services, and professional development necessary to ensure the implementation of research based best educational practices with respect to the evaluation and educational programming for students with autism.~~

~~21.2.4.4 To assist LEAs and charter schools with approved programs in developing and implementing plans to address the recommendations of the SMRB.~~

~~21.2.4.5 To submit an Annual Report by September 1 of each year to the Secretary, Department of Education, the State Board of Education, and The Governor's Advisory Council for Exceptional Citizens as the IDEA authorized advisory panel.~~

~~21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.~~

~~21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.~~

~~21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.~~

~~21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.~~

~~21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.~~

~~21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.~~

~~21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.~~

~~21.4.3 A current statewide membership list shall be provided to all parents.~~

~~21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).~~

~~21.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).~~

~~21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.~~

~~21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in State committee, council, board or program that deals directly with children with autism.~~

~~21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the~~

DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after the fact examination. (See Section 21.7.)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case by case review that have been granted interim or on going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after the fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit

them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 ~~These minutes shall be submitted within two weeks of each meeting.~~

21.6.4.4.2 ~~An oral summary of the HRC recommendations shall be made within twenty four hours following the HRC meeting to the Director of DAP and the PRC chairperson.~~

21.7 ~~Joint responsibilities of the Peer Review and Human Rights Committees are as follows:~~

21.7.1 ~~Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:~~

21.7.1.1 ~~Without further PRC and HRC review during the year approved;~~

21.7.1.2 ~~Without a case by case PRC and HRC review but with after the fact review time lines to be established by the PRC; or~~

21.7.1.3 ~~Only with prior case by case PRC and HRC before the fact review;~~

21.7.2 ~~Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;~~

21.7.3 ~~Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:~~

21.7.3.1 ~~For use without after the fact reporting to the PRC and HRC; or~~

21.7.3.2 ~~For use with after the fact reporting to the PRC and HRC;~~

21.7.4 ~~Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.~~

21.7.4.1 ~~Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.~~

21.7.4.2 ~~A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.~~

21.7.5 ~~The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC and HRC annual review at least one month prior to the review date.~~

21.7.5.1 ~~At the discretion of either chairperson, Committees may meet jointly or separately to conduct before the fact and after the fact reviews.~~

21.7.6 ~~Approve, before the fact, the housing of children under age twelve with a child over age sixteen in a community based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.~~

21.7.7 ~~Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case by case review.~~

21.7.7.1 ~~Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.~~

21.7.7.2 ~~Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.~~

21.7.8 ~~Have access to the educational records of any child with autism for purposes of 21.5.1 and 21.6.1 of this section.~~

21.7.8.1 ~~A quorum of a joint meeting shall consist of a majority of combined membership.~~

21.7.9 ~~Submit written Procedural Descriptions for Behavior Management and Emergency Interventions~~

21.7.9.1 ~~Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.~~

21.7.9.1.1 ~~The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.~~

21.7.9.1.2 ~~The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.~~

21.7.9.1.3 ~~The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.~~

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after the fact, or prior case by case review). A school serving children with autism shall then submit proposals in accordance with PRC and HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC and HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency intervention procedures that require after the fact review only shall be used by a school without case by case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case by case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC and HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

~~21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELAGARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).~~

~~21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.~~

~~21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.~~

~~21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.~~

~~21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.~~

~~21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.~~

~~21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.~~

~~3 DE Reg. 1709 (6/1/00)~~

~~8 DE Reg. 884 (12/01/04)~~

## **22.0 Students in Need of Unique Educational Alternatives**

~~22.1 Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources and programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs.~~

~~22.1.1 The Secretary of Education shall approve children for Unique Educational Alternative support and the type of Unique Educational Alternative Support to be provided when such support is necessary to provide special education and related services to a child with a disability.~~

~~22.1.2 If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.~~

~~22.1.3 Such approval of unique educational alternatives shall be for no more than a one year period, ending no later than August 31 of the year in which the child is to be enrolled.~~

~~22.2 To the extent authorized by the General Assembly in the Budget Act, the Department of Education shall convene the Interagency Collaborative Team (ICT) to review the expenditures for placements of students in need of Unique Educational Alternatives.~~

~~22.2.1 The Interagency Collaborative Team (ICT) membership shall consist of:~~

~~22.2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;~~

~~22.2.1.2 Division Director, Family Services of DSCYF;~~

~~22.2.1.3 Division Director, Division of Youth Rehabilitation Services of DSCYF;~~

~~22.2.1.4 Division Director, Division of Mental Retardation of DHSS;~~

~~22.2.1.5 Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS;~~

~~22.2.1.6 Director of the Office of the Budget, or designee;~~

~~22.2.1.7 Controller General or designee;~~

~~22.2.1.8 Director, Exceptional Children's Group, Department of Education (DOE), who will serve as Chair;~~

~~22.2.1.9 Associate Secretary, Curriculum and Instructional Improvement, Department of Education (DOE).~~

22.2.2 A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to be their representative on the Interagency Collaborative Team (ICT) only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

22.2.3 The Interagency Collaborative Team (ICT) shall invite to its meetings: a representative of a responsible school district for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

22.2.4 The Interagency Collaborative Team (ICT) shall:

22.2.4.1 Review existing assessments of new referrals;

22.2.4.2 Prescribe, if required, additional assessments for new referrals;

22.2.4.3 Review proposed treatment plans of new referrals;

22.2.4.4 Recommend alternatives for treatment plans of new referrals;

22.2.4.5 Coordinate interagency delivery of services;

22.2.4.6 Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

22.2.4.7 If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

22.2.4.8 If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

22.2.5 The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

22.2.5.1 New referrals will be assessed in the interagency manner described above.

22.2.5.2 The Interagency Collaborative Team (ICT) may accept and review cases initiated by other agencies, but in all cases, the school district of residence must be involved in the review.

22.2.5.3 Cases reviewed by the Interagency Collaborative Team (ICT) will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

22.2.5.4 Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

22.2.6 The Interagency Collaborative Team (ICT) shall report on its activities to the Governor, Budget Director, President Pro Tempore, Speaker of the House and the Controller General by February 15 of each year. The report shall address the status of items addressed in the previous February ICT Annual Report.

### 22.3 Interagency Collaborative Team (ICT) Review Criteria

22.3.1 The Interagency Collaborative Team (ITC) shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria:

22.3.1.1 A school district or other public agency support program is either not available or is not adequate.

22.3.1.2 The school district certifies that the school district cannot meet the needs of the child with existing resources and program.

### 22.4 Procedures for Districts Seeking to Place Students in Unique Educational Alternative Settings

22.4.1 The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting.

22.4.2 The chairperson of the Interagency Collaborative Team shall be contacted by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

22.4.3 The IEP team that includes district level representation shall meet and determine if the child's need for special education and related services can be met within the existing resources and programs available to the district.

22.4.3.1 Representatives of all agencies involved with the child shall be invited to

attend this meeting.

22.4.4 The district shall submit an application to the Chair of the IGT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs.

22.4.5 The application will include:

22.4.5.1 Current and other relevant assessment information;

22.4.5.2 A historical summary of all placements and major interventions and support services that have been provided to the student;

22.4.5.3 A current IEP;

22.4.5.4 A concise statement of the needs that cannot be addressed through existing resources or programs;

22.4.5.5 A list of all agencies and resources that are currently supporting the child and the family; and

22.4.5.6 An Interagency Release of Information Form.

## 22.5 Procedures for the IGT

22.5.1 The IGT shall review the application at its next monthly meeting.

22.5.2 Parents and representatives of all involved agencies shall be invited to participate in the meeting.

22.5.3 Recommendations of the Interagency Collaborative Team shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The IGT may:

22.5.3.1 Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and review of additional programs and resources that the local team had not considered;

22.5.3.2 Request for additional information shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting and as soon as the additional information is available, the case shall be brought back to the IGT for further review.

22.5.3.3 Recommend approval and agree that the child has needs that cannot be addressed through existing programs and resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

22.5.3.4 Recommend rejection and ask the local team to use existing programs and resources to meet the educational needs of the children.

22.5.4 Final recommendations of the ITC shall be shared in writing with the school district, parents and other agency staff involved in the case within five business days.

22.5.4.1 If the recommendation is for approval, the local team shall develop the specifics, including costs, of the Unique Educational Alternative.

22.5.4.2 The final plan, with costs, shall be submitted to the Chair of the IGT.

22.5.4.3 The Chair shall submit the recommendations for approval to the Secretary of Education.

22.5.4.4 A recommendation for rejection shall be submitted by the Chair of the IGT to the Secretary of Education for final action.

22.5.4.5 The parent, district superintendent, the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary of Education, following the action.

## 22.6 Financial Aid for Unique Educational Alternatives

22.6.1 Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line.

22.6.1.1 The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school district are recommended by the Interagency Collaborative Team (IGT).

22.6.2 Financial aid for children with disabilities approved for private placement by the Department of Education shall include maintenance, transportation and tuition.

22.6.2.1 The Department of Education shall pay 85% of the private placement

costs and the local school district shall pay 15% of the private placement costs.

~~22.6.2.2 The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the Delaware Code.~~

~~22.7 Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval.~~

~~22.7.1 Such an independent placement in a private or public out of state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.~~

~~22.8 School District and Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for consideration of a unique educational alternative, including a private placement.~~

~~22.8.1 District Certification and Documentation~~

~~22.8.1.1 The local school district certification that the child is eligible for private placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education.~~

~~22.8.1.2 Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s).~~

~~22.8.1.3 Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the child's disability.~~

~~22.8.1.4 Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.~~

~~22.9 Responsibility for Individualized Education Program~~

~~22.9.1 The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility.~~

~~22.9.2 The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.~~

~~22.9.3 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 district or any other public agency.~~

~~22.9.4 If the private school or facility initiates and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.~~

~~22.9.5 District of Residence: The referring district and fiscal agency for a child in private placement is the child's district of residence.~~

~~22.9.6 Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.~~

~~22.10 State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private programs, the Department of Education shall have the authority to:~~

~~22.10.1 Monitor compliance through procedures such as written reports, onsite visits and parent questionnaires.~~

~~22.10.2 Develop regulations that define the standards by which private schools and facilities may be approved to serve children with disabilities, and a schedule for reevaluation.~~

~~22.10.3 Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a child with disability.~~

22.10.4 Provide an opportunity for those private schools or facilities to participate in the development and revision of State standards which apply to them.

**3 DE Reg. 1709 (6/1/00)**

**23.0 General Supervision of Education for Children with Disabilities**

The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

23.1 Documentation of Department of Education (DOE) activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

23.1.1 General Supervision, Cooperative Agreements, Complaint and Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

23.2 The Department of Education (DOE) shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

23.3 The Department of Education (DOE) shall distribute regulations, sample documents and letters of notification to all agencies (public and nonpublic) providing services to children with disabilities.

23.4 Nothing in the Individuals with Disabilities Education Act, as amended, or in these regulations shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

23.5 Compliance Monitoring: The Department of Education (DOE) shall fulfill a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

23.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

23.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of subgrantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

23.5.3 Adoption and use of a method by which the Department of Education (DOE) formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

23.5.4 Adoption and use of a method by which the Department of Education (DOE) enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the Department of Education (DOE) determines that a local school district or other public agency has failed to comply with any requirement in the Administrative Manual for Special Education Services, the Department of Education (DOE) shall:

23.5.4.1 Make no further payments to the district or agency until the Department of Education (DOE) is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA Part B payments;

23.5.4.3 Or both.

23.5.5 Any school district or other public agency receiving a notice from the Department of Education under 23.5.4 is subject to public notice provisions as required under 34 CFR 300.196.

23.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

23.6 Scope of Department of Education Compliant Monitoring Authority

23.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

23.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

23.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

23.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children with disabilities administered within the State.

23.7 The Department of Education Methods of Monitoring shall include:

23.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

23.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance and noncompliance with State and federal requirements;

23.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR);

23.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6 Use of offsite review, on-site review, letters of inquiry, and follow up or verification of specific activities;

23.7.7 Written documentation of each monitoring activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

23.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

23.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

23.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

23.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of noncompliance.

23.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

23.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

23.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

23.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

~~23.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.~~

~~23.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or noncompliance within thirty (30) days after the conclusion of the hearing; or~~

~~23.7.13.3 If the Department of Education reaches a final decision of noncompliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:~~

~~23.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;~~

~~23.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;~~

~~23.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.~~

~~23.8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.~~

~~23.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.~~

~~23.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.~~

~~23.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:~~

~~23.8.3.1 The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;~~

~~23.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;~~

~~23.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.~~

~~23.8.4 On going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.~~

~~23.8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.~~

~~23.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.~~

~~23.8.6 The Department of Education shall coordinate with each district, agency and institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.~~

~~23.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the~~

GAGEC and organization responsible for carrying out the programs.

~~23.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.~~

~~23.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.~~

~~23.8.7.3 The Department of Education shall be responsible for the following dissemination activities:~~

~~23.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;~~

~~23.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;~~

~~23.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.~~

### 23.9 Finance and Administration

~~23.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).~~

~~23.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the **Delaware Code**.~~

~~23.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA Part B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.~~

~~23.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.~~

~~23.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.~~

~~23.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its intent to disapprove all or part of the Application. This notice shall also inform the LEA that it is entitled to a hearing before the Department's final decision to disapprove all or part of the Application, and shall advise the LEA of the procedure for requesting a hearing.~~

~~23.9.3.3.1 The LEA shall have thirty (30) days to request a hearing, beginning on the date of the Department's notice to the LEA of its right to a hearing. The request for a hearing must be filed in writing with the Delaware Secretary of Education and shall explain why the LEA believes its Application should be approved.~~

~~23.9.3.3.2 The LEA shall have access, at a reasonable time and location, to all of the Department's records pertaining to the Application and to the applications of other LEAs.~~

~~23.9.3.3.3 The Department shall schedule and conduct a hearing on the record within thirty (30) days of the Secretary's receipt of a hearing request from the LEA.~~

~~23.9.3.3.4 No later than ten (10) days after the hearing, the Department shall issue its written ruling, which shall include findings of fact and the reasons for its decision.~~

~~23.9.3.3.5 If the Department determines that its intention to disapprove all or part of the Application was contrary to applicable state or federal law, the Department shall rescind its intent to disapprove the Application and shall issue an approval consistent with the requirements of such law.—~~

~~23.9.3.3.6 If the Department issues a final disapproval of all or part of the Application, the LEA may appeal that decision to the Secretary of the United States Department of Education. The LEA must file a notice of appeal with the Secretary of the United States Department of Education within twenty (20) days of the final disapproval of the Delaware Department of Education. A copy of the LEA's federal notice of appeal~~

must be filed with the Delaware Department of Education when it is filed with the United States Secretary of Education.

23.9.3.4 An applicant from a district or agency shall include the following information:

23.9.3.4.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

23.9.3.4.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

23.9.3.4.3 The basis the applicant used to select the children.

23.9.3.4.4 The manner and extent to which the applicant complied with Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE).

23.9.3.4.5 The places and times the children will receive benefits under the program.

23.9.3.4.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

23.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

23.9.4.1 The specific procedures used in order to authenticate the count of children will be found in the Monitor's Handbook for the September Audit and Site Monitoring.

23.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation for each child determined to have been misclassified.

23.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on site visits as well.

#### 23.10 Other SEA Responsibilities

23.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

23.10.1.1 Incorporate within its Comprehensive Compliance Monitoring System process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

23.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

23.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

**3-DE-Reg-1709 (6/1/00)**

**5-DE-Reg-874 (10/1/01)**

#### 24.0 Funding Issues for Children with Disabilities

24.1 Reimbursement under the Unit System: Eligibility of the local education agencies to receive reimbursement under the unit system is contingent upon:

24.1.1 The proper identification of children with disabilities in accordance with Title 14 of the ~~Delaware Code~~ and Sections 2.0, 3.0, and 4.0 of these regulations; and

24.1.2 A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.

24.2 Aide Positions for Services to Children with Disabilities (as authorized under 14 ~~Del.C.~~ §1324).

24.2.1 All paraeducators in such positions shall work under the supervision of teachers.

24.2.2 The following positions may be authorized:

24.2.2.1 Trainable Mental Disability Unit: One classroom teacher, or in lieu of a

teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.

24.2.2.2 Severe Mental Disability Unit: One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.

24.2.2.3 Autism Unit: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.

24.2.2.4 Physical Impairment Unit: One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

24.2.2.5 Hearing Impairment Unit: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4 to 12), and one clerk aide for the parent child program may be employed in any given special school.

24.2.2.6 Deaf Blindness Unit: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty two (222) days.

24.2.2.7 Intensive Learning Center Unit: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

24.2.3 The use and ratio of aides to teachers shall be dependent upon the rationale developed by the agency.

#### 24.3 School Nurses (as authorized by 14 Del.C. §1310)

24.3.1 A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice.

#### 24.4 Other Positions for Services to Children with Disabilities

24.4.1 Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

24.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.

24.4.3 An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10) units.

24.4.4 A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

24.4.5 Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

### **3-DE-Reg. 1709 (6/1/00)**

## **25.0 Advisory Council for Exceptional Citizens**

The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94 142 (20 U.S.C. Section 1400 et seq.). (14 Del.C. 195, Section 3108; 51 Del. Laws, C. 287, Section 3; 61 Del. Laws, 190, Section 7; 71 Del. Laws, c. 180, Section 147.)

25.1 An annual report prepared by the Governor's Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

25.1.4 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

25.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

25.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

## **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 USC §14079a(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

### **1.0 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, 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 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 and 14 **DE Admin. Code** 925.[+2].0 through 925.12.0 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 transfer[s] 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 or refuses to consent to services under 1.2, the public agency 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 If the parent of the child refuses to consent to the initial provision of special education and

related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

1.2.3.1 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 public agency requests consent; and

1.2.3.2 Is not required to convene an IEP Team meeting or develop an IEP **[under]** for the child for the special education and related services for which the public agency requests such consent.

1.3 Parental consent for reevaluations: Subject to 1.3.1, each public agency shall obtain informed parental consent, in accordance with 1.1 prior to conducting any reevaluation of a child with a disability.

1.3.1 If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 1.1.4.

1.3.2 The public agency does not violate its obligation under 14 **DE Admin. Code** 923.11.0 and **[12].0** through 12.0 if it declines to pursue the evaluation or reevaluation.

1.3.3 The informed parental consent described in 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 reevaluation; 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 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 reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures in 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.

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 22.4. (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); 14 **Del.C.** §3110)

## **2.0 Initial Evaluations and Reevaluations**

2.1 Initial Evaluations General: Each public agency shall conduct a full and individual initial evaluation in accordance with 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 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) school days or ninety (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 must 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 **[under]** as defined in 14 **DE Admin. Code** 922.3.0; and to determine the educational needs of the child.

2.4 Exception: The time frame described in 2.3 of this section does not apply to a public agency if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or a child enrolls in a school of another public agency after the relevant time frame in 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.

2.4.1 The exception in 2.4 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.

2.5 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)

### **3.0** **Reevaluations**

3.1 General: A public agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with 14 **DE Admin. Code** 925.4.0 through 925.12.0 if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation.

3.2 Limitation: A reevaluation conducted under 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) years, unless the parent and the public agency agree that a reevaluation is unnecessary.  
(Authority: 20 U.S.C. 1414(a)(2); 14 **Del.C.** §3110)

### **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, that describes any evaluation procedures the agency proposes to conduct.

4.2 Conduct of evaluation: In conducting the evaluation, the public agency shall 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, 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]**

4.2.1 Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

4.2.2 Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

4.3 Other evaluation procedures: Each public agency shall ensure that assessments and other evaluation materials used to assess a child under these regulations:

4.3.1 Are selected and administered so as not to be discriminatory on a racial or cultural basis;

4.3.2 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;

4.3.3 Are used for the purposes for which the assessments or measures are valid and reliable;

4.3.4 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 he or she is providing student evaluation services; and

4.3.5 Are administered in accordance with any instructions provided by the producer of the assessments.

4.4 **[Each public agency shall ensure that] [Aa]ssessments 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.**

4.5 **[Each public agency shall ensure that] [Aa]ssessments 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).**

4.6 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;

4.7 Assessments of children with disabilities who transfer from one 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 2.4, to ensure prompt completion of full evaluations.

4.8 In evaluating each child with a disability under 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 disability category in which the child has been classified.

4.9 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)

## **5.0 Additional Requirements for Evaluations and Reevaluations**

5.1 Review of existing evaluation data: As part of an initial evaluation (if appropriate) and as part of any reevaluation 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, and the educational needs of the child; or

5.1.4.2 In case of a reevaluation of a child, whether the child continues to have such 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 reevaluation 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 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 5.1 of this section.

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 5.4 unless requested to do so by the child's parents.

5.5 Evaluations before change in eligibility: Except as provided in 5.5.1, a public agency shall evaluate a child with a disability in accordance with 4.0 through 12.0 before determining that the child is no longer a child with a disability.

5.5.1 The evaluation described in 5.5 is not required before the termination of a child's eligibility under these regulations due to graduation from secondary school with a regular diploma, or due to **[exceeding the age of 21 the child reaching his or her 21<sup>st</sup> birthday.]**

5.5.2 For a child whose eligibility terminates under circumstances described in 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.

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

## **6.0 Determination of Eligibility**

6.1 General: Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child **[shall] determine[s]** whether the child is a child with a disability, as defined in 14 **DE Admin. Code** 922.3.0, in accordance with 6.1.1 and the educational needs of the

child; and the public agency [shall] provide[s] a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. *The evaluation report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.*

6.2 Special rule for eligibility determination; A child shall not be determined to be a child with a disability under these regulations if the determinant factor for that determination is:

6.2.1 Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the [EDOESEA]);

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.

6.3 Procedures for determining eligibility and educational need; Eligibility decisions may include historical information [and evaluation data which are no more than two years old 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, and the educational needs of the child, each public agency shall:

6.3.1 Draw upon information from a variety of sources, including aptitude and achievement tests, 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.

6.3.2 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 20.0 through 24.0.

6.4 ~~**[Special grandfathering rules for learning disability eligibility. If, prior to the effective date of 12.0 (relating to response to intervention procedures), a child has been identified as a child with a learning disability, and is receiving special education services from a Delaware public agency as a result of that identification, the child shall continue to be eligible for services in Delaware as a learning disabled student until the child's re-evaluation as required in 3.0. Re-evaluation of such students shall apply the eligibility requirements of 6.11 and 7.0 through 12.0 as appropriate to the child's grade level as of the date of the re-evaluation. Reserved]**~~

(Authority: 20 U.S.C. 1414(b)(4) and (5); 14 Del.C. §3110)

6.5 Other Eligibility requirements and exit criteria.

6.5.1 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 team has determined that the child meets the eligibility criteria of at least one of the disability classifications in this section, and by reason thereof, needs special education and related services.

6.5.2 A child's IEP team may, but is not required to, determine that a child is eligible for special education and related services under more than one disability classification. The disability 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.

6.5.3 When an IEP team determines that a child is eligible for special education and related services under more than one disability classification, and includes the child as a special education student in the unit funding system, the LEA or other public agency shall report the child in the disability classification which best describes the effect of the disability on the child in the educational setting. The child's primary disability classification shall be recorded first on the IEP.

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

6.5.4.1 the child reaches his or her 21<sup>st</sup> birthday; or

6.5.4.2 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

6.5.4.3 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 Eligibility Criteria for Autism. The educational classification of autism encompasses the clinical

condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder, Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

6.6.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

6.6.1.1 All students with an educational classification of autism demonstrate a significant, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

6.6.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

6.6.1.1.2 Development of peer relationships;

6.6.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people, including parent(s) and caregivers; or

6.6.1.1.4 Social or emotional reciprocity.

6.6.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 6.6.1.2.1 or 6.6.1.2.2.

6.6.1.2.1 A qualitative impairment in communication, as manifested by:  
6.6.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

6.6.1.2.1.2 Relative failure to initiate or sustain a conversation with others;

6.6.1.2.1.3 Stereotyped, idiosyncratic, or repetitive speech; or

6.6.1.2.1.4 A lack of varied, spontaneous make believe play or social imitative play.

6.6.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:

6.6.1.2.2.1 Encompassing preoccupation or circumscribed and restricted patterns of interest;

6.6.1.2.2.2 Apparently compulsive adherence to specific, nonfunctional routines and rituals;

6.6.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

6.6.1.2.2.4 Persistent preoccupation with parts and sensory qualities of objects.

6.6.1.3 All students with an educational classification of autism have impairments that:

6.6.1.3.1 Are inconsistent with the student's overall developmental and functional level; and

6.6.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

6.6.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

6.6.1.3.4 Are not primarily accounted for by an emotional disorder.

6.6.2 An educational classification of autism is established:

6.6.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

6.6.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 6.6.3.2.1.; and

6.6.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

6.6.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

6.7 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and

adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

6.7.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

6.7.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or

6.7.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

6.7.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his or her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.

6.7.2 Multiple sources and methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

6.7.2.1 Developmental and medical history;

6.7.2.2 Interview with the child's parent or primary caregiver;

6.7.2.3 Behavioral observations;

6.7.2.4 Standardized norm referenced instruments; and

6.7.2.5 Other assessments which could be used for intervention planning, such as dynamic or criterion referenced assessments, behavior rating scales, or language samples.

6.7.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

6.7.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

6.8 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf blind condition:

6.8.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

6.8.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.8.3 Classification as a child who is deaf blind shall be made by the IEP team after consideration of the above eligibility criteria.

6.8.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.9 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

6.9.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

6.9.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

6.9.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer

groups; or

6.9.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression, [or] is unable to enter into age appropriate relationships with peers, teachers and others; and

6.9.3 The age of eligibility for children identified under this definition shall be from the 4<sup>th</sup> birthday through 20 years, inclusive.

6.10 Eligibility Criteria for Hearing Impairment: A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

6.10.1 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.10.2 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

6.11 Eligibility Criteria for Learning Disability:

~~6.11.1 [Grades K to 5. As of January 1, 2008, eligibility for special education services under the learning disability category for children in grades K to 5 shall be determined in accordance with 7.0 through 12.0. Between the effective date of these regulations and December 31, 2007, eligibility for special education services under the learning disability category for children in grades K to 5 shall be determined in accordance with 6.11.4. Reserved~~

~~6.11.2 Grades 6 to 12. Beginning with the 2008-2009 school year, eligibility for special education services under the learning disability category for children in grades 6 to 12 shall be determined in accordance with 7.0 through 12.0. Reserved~~

~~6.11.3 Grades 6 to 12 for the 2007-2008 school year. During the 2007 to 2008 school year, eligibility for special education services under the learning disability category for children in grades 6 to 12 may be determined either in accordance with 7.0 through 12.0, or in accordance with the following requirements: Reserved~~

~~6.11.4 In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required: Reserved~~

~~6.11.4.1 Written documentation of a formative intervention process used with the student. The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and Reserved~~

~~6.11.4.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and Reserved~~

~~6.11.4.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education. Reserved.]~~

6.11.5 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

6.12 Eligibility Criteria for Mental Disability: Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

6.12.1 A level of intellectual functioning, as indicated below:

6.12.1.1 Educable Mental Disability: IQ 50 to 70 +/- 5 points;

6.12.1.2 Trainable Mental Disability: IQ 35 to 50 +/- 5 points;

6.12.1.3 Severe Mental Disability: IQ below 35; and Significant limitations in two or

more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.

6.12.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

6.12.3 ~~[Additional requirements for eligibility under Educable Mental Disability Category. In addition to the other requirements of this subsection, and beginning as of January 1, 2008 for children in grades K to 5, and with the 2008-2009 school year for students in grades 6 to 12, eligibility for special education services under the Educable Mental Disability category shall require written documentation that the child's response to scientific, research based intervention was assessed in accordance with 7.0, 8.0 and 10.0 through 12.0. Reserved]~~

6.12.4 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

6.13 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

6.13.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

6.13.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

6.13.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

6.13.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and body use necessary for performing educational activities.

6.13.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.13.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

6.13.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and

6.13.3.3 Prior program or school records (if available), and, when determined necessary, a speech and language evaluation, adaptive behavior scale, vision or hearing screening, social history or psychological evaluation.

6.13.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs: physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

6.13.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

6.14 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

6.14.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

6.14.2 For ADD and ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:

6.14.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;

6.14.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

6.14.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

6.14.2.1.3 Often does not seem to listen when spoken to directly;

6.14.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

6.14.2.1.5 Often has difficulty organizing tasks and activities;

6.14.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that

require sustained mental effort (such as school work or homework):

6.14.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools):

6.14.2.1.8 Is often easily distracted by extraneous stimuli;

6.14.2.1.9 Is often forgetful in daily activities; or

6.14.2.2 Six (or more) of the following symptoms of hyperactivity impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

6.14.2.2.1 Often fidgets with hands or feet and squirms in seat;

6.14.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected:

6.14.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

6.14.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;

6.14.2.2.5 Is often "on the go" or often acts as if "driven by a motor";

6.14.2.2.6 Often talks excessively;

6.14.2.2.7 Often blurts out answers before questions have been completed;

6.14.2.2.8 Often has difficulty waiting turn;

6.14.2.2.9 Often interrupts or intrudes into conversations or games; and

6.14.2.3 Some hyperactive impulsive or inattentive symptoms that caused impairment were present before seven years of age;

6.14.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

6.14.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

6.14.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

6.14.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.14.3.1 Written documentation from the formative intervention process used with the student under 14 **DE Admin. Code** 923.11.9 (relating to referral to Intervention Support Team). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

6.14.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical or [or psychological] records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in 4.11.2.

6.14.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

6.14.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

6.15 Eligibility Criteria for Speech and/or Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.

6.15.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, 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 disability condition.

6.16 Eligibility Criteria for Traumatic Brain Injury. A qualified physician shall document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

6.16.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

6.16.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

6.17 Eligibility Criteria for Visual Impairment:

6.17.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.

6.17.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

6.17.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.17.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.18 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only):

6.18.1 A speech disability is defined as a communication disorder or delay involving articulation, voice quality, **[and or]** speech fluency to such a degree that it interferes with a child's overall communicative performance.

6.18.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

6.18.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized norm based instrument. It is strongly recommended that the evaluation include clinical observations or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

6.18.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test.

6.18.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist.

6.18.2.1.3 Oral motor involvement which may affect the development of normal articulation.

6.18.2.1.4 Speech fluency, or

6.18.2.1.5 Voice quality

6.18.3 Results of the evaluation may indicate a significant delay in receptive and expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

6.18.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

(Authority: 14 Del.C. §3110)

## **7.0 Learning Disabilities**

**7.1 General: [Subject to the effective dates in 6.11 and the special grandfathering rule in 6.4 eligibility for special education services under the learning disability category shall be contingent on the prior delivery of appropriate instruction, and shall further be based on the child's response to scientific, research based interventions delivered according to the procedures in 12.0. Eligibility for special education services under the learning disability category shall be determined in accordance with 8.0 to 11.0.]**

**7.2 [Assessments of intellectual functioning are not required to determine eligibility for special education services under the learning disability category. Assessments of intellectual functioning should**

~~generally be reserved for students suspected of having an educable mental disability or where an Intervention Support Team determines such tests are relevant in selecting appropriate instructional or behavioral interventions. Reserved]~~

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

## **8.0 Additional Group Members.**

8.1 The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 14 DE Admin. Code 922.3.0 shall be made by the child's parents and a team of qualified professionals, which shall include:

8.1.1 The child's regular teacher; or

8.1.2 If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

8.1.3 For a child of less than school age, an individual qualified by the DOE to teach a child of his or her age; and

8.1.4 At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

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

## **9.0 Determining the Existence of a Specific Learning Disability.**

9.1 The group described in 6.1 may determine that a child has a specific learning disability if:

9.1.1 Lack of achievement: The child does not achieve adequately for the child's age or to meet State approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards:

9.1.1.1 Oral expression.

9.1.1.2 Listening comprehension.

9.1.1.3 Written expression.

9.1.1.4 Basic reading skill.

9.1.1.5 Reading fluency skills.

9.1.1.6 Reading comprehension.

9.1.1.7 Mathematics calculation.

9.1.1.8 Mathematics problem solving; and

9.1.2 Insufficient progress [~~or distinct pattern of strengths and weaknesses~~] : The child does not make sufficient progress to meet age or State approved grade level standards in one or more of the areas identified in 9.1 when using a process based on the child's response to scientific, research based intervention; or

9.1.3 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, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 4.0 and 5.0; and

9.1.4 Rule out other conditions: The group determines that its findings under 9.1.1, 9.1.2 and 9.1.3 are not primarily the result of:

9.1.4.1 A visual, hearing, or motor disability;

9.1.4.2 Mental retardation;

9.1.4.3 Emotional disturbance;

9.1.4.4 Cultural factors;

9.1.4.5 Environmental or economic disadvantage; or

9.1.4.6 Limited English proficiency.

9.2 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 group shall consider, as part of the evaluation described in 4.0 through 6.0:

9.2.1 Data 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

9.2.2 Data 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.

9.3 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 2.3 and 3.0 (unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 6.1):

9.3.1 If, prior to a referral, a child has not made adequate progress after an appropriate period of time (as further provided in 12.0) when provided instruction, as described in 9.2; and

9.3.2 Whenever a child is referred for an evaluation.  
(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 **Del.C.** §3110)

## **10.0 Observation**

10.1 The public agency shall ensure that the child is observed 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.

10.2 The group described in 6.1, in determining whether a child has a specific learning disability, shall decide to use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or have at least one member of the group 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.

10.3 In the case of a child of less than school age or out of school, a group 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)

## **11.0 Specific Documentation for the Eligibility Determination**

11.1 For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 6.1, shall contain a statement of:

11.1.1 Whether the child has a specific learning disability;

11.1.2 The basis for making the determination, including an assurance that the determination has been made in accordance with 6.3;

11.1.3 The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

11.1.4 The educationally relevant medical findings, if any;

11.1.5 Whether,

11.1.5.1 The child does not achieve adequately for the child's age or to meet State approved grade level standards consistent with 9.1.1; and

11.1.5.2 The child does not make sufficient progress to meet age or State approved grade level standards consistent with 9.1.2; or

11.2 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 9.1.3;

11.3 The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

11.4 If the child has participated in a process that assesses the child's response to scientific, research based intervention:

11.4.1 The instructional strategies used and the student centered data collected; and

11.4.2 The documentation that the child's parents were notified about:

11.4.2.1 The DOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

11.4.2.2 Strategies for increasing the child's rate of learning; and

11.4.2.3 The parents' right to request an evaluation.

11.5 Each group member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group 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)

## 12.0 Response to Intervention Procedures.

~~12.1 Each public agency shall establish and implement procedures to determine whether a child responds to scientific, research based interventions (RTI).~~

~~12.2 Public agencies shall use rubrics approved by DOE to evaluate and select programs of instruction, and Tier 2 and Tier 3 interventions, for reading and mathematics.~~

~~12.3 Instructional screening and progress monitoring instruments used as part of RTI procedures shall be curriculum based.~~

~~12.4 RTI procedures shall include the tiers, and types and duration of services and interventions, described in 12.5 through 12.7.~~

~~12.5 Tier 1: Core Classroom Instruction: Tier 1 services shall be designed to be delivered in a general education setting, by a general education teacher. Instruction shall be delivered with fidelity as part of a research based core curriculum.~~

~~12.5.1 Universal Tier 1 instructional screenings for reading and mathematics shall be conducted at least 3 times each regular school year at routine and fairly spaced intervals. The first screening shall be conducted within 2 weeks of the beginning of the regular school year, or within 2 weeks of the child's entry into school.~~

~~12.5.2 Children who score at or below the 25<sup>th</sup> percentile on any instructional screening shall be provided Tier 2 interventions.~~

~~12.5.3 A school based team (such as a literacy team, a leadership team or a grade level team) shall review the program and progress of any child who does not score at benchmark on any instructional screening, but who does score above the 25<sup>th</sup> percentile, to assure that the child is receiving differentiated, needs based instruction. The team's review shall include the fidelity of program implementation, pacing and appropriateness of instructional groupings.~~

~~12.5.3.1 In addition, the child's progress toward end of year benchmarks shall occur at least once every 2 weeks until progress monitoring consistently demonstrates that the child is on a trajectory to meet end of year benchmarks.~~

~~12.5.3.2 If, after 6 weeks of progress monitoring, the child is not on a trajectory to meet end of the year benchmarks, the child shall be provided Tier 2 interventions unless the school based team specifically determines that further progress monitoring is required before additional interventions are provided.~~

~~12.6 Tier 2: Interventions: Tier 2 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base.~~

~~12.6.1 Tier 2 interventions shall be in addition to regularly scheduled, uninterrupted instruction in the general education classroom, and shall be delivered in small group settings of no more than 5 students, at least 3 times each school week for at least 30 minutes per session.~~

~~12.6.2 Tier 2 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.~~

~~12.6.3 If, after 6 school weeks of Tier 2 interventions, a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end of year benchmarks, an Intervention Support Team (IST) formulated in accordance with 14 DE Admin. Code 923.11.0 shall meet to review the child's program and progress, specifically including fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child requires Tier 3 intervention.~~

~~12.6.4 If, after an additional 6 school weeks of Tier 2 interventions (or a total of 12 school weeks of intervention) a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end of year benchmarks, the child shall begin receiving Tier 3 intervention as outlined by the IST.~~

~~12.7 Tier 3: Interventions: Tier 3 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher and additional staff, but is likely to be delivered in other or additional settings, or by other trained staff as appropriate to the specific intervention. It shall~~

be implemented with fidelity to its scientific research base.

~~12.7.1 Tier 3 intervention shall be in addition to regularly scheduled, uninterrupted instruction in the general education classroom, and shall be delivered in small group settings of no more than 3 students, at least 5 times each school week for at least 45 minutes per day.~~

~~12.7.2 Tier 3 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.~~

~~12.7.3 If, after 6 school weeks of Tier 3 interventions (or a total of 18 school weeks of intervention), a child has made no progress toward benchmarks, the IST shall refer the child for an initial evaluation for special education services.~~

~~12.7.4 If, after 6 school weeks of Tier 3 interventions (or a total of 18 school weeks of intervention), a child has made progress toward benchmarks, but is not on a trajectory to meet end of year benchmarks, the IST shall meet to review the child's program and progress, specifically including fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child should be referred for an initial evaluation for special education services.~~

~~12.7.5 If, after an additional 6 school weeks of Tier 3 intervention (or a total of 24 school weeks of intervention), a child has made progress toward benchmarks, but is not on a trajectory to meet end of year benchmarks, the IST shall refer the child for an initial evaluation for special education services.~~

~~12.8 RTI procedures shall also be designed to permit students to move between tiers of intervention based on the child's progress against benchmarks as measured through weekly progress monitoring.~~

~~12.8.1 Weekly progress monitoring shall continue after a student is referred for an initial special education evaluation and for any student who is evaluated and determined eligible for special education and related services after receiving the interventions required in this section.~~

~~12.8.2 In addition, the child's IEP team shall specifically consider the information gathered about the child's response to interventions, and the results of ongoing progress monitoring, in developing and revising the child's IEP. Subject to the requirements of 3.2, a public agency shall initiate a re-evaluation when ongoing progress monitoring indicates that the child's performance in reading or mathematics has improved such that the child may no longer require special education and related services.~~

~~12.9 If 80% or more of children in a classroom score below benchmark on any instructional screening, a school-based team, including a building-level administrator, shall meet to consider the need for additional classroom supports and strategies.~~

~~12.10 Consistent with 12.2, a parent of a child may request an initial evaluation at any time, including during the RTI process.~~

~~12.10.1 If the public agency agrees to conduct an initial evaluation, the evaluation shall be completed, and an eligibility determination made, within the time frame established in 2.3.~~

~~12.10.2 Notwithstanding a parent's right to request an initial evaluation, a child may be determined ineligible for services under the learning disability or educable mentally disabled categories where there is insufficient data to demonstrate that the child was provided appropriate instruction in the regular education setting, or where there is insufficient data based documentation of repeated assessments of achievement.~~

~~12.10.3 If a child is determined ineligible for special education services on these grounds, the child may be referred back to an IST to gather the required documentation and date by completing the RTI process. Eligibility for special education services may then be reconsidered at the request of the parent or a member of the IST Reserved]~~

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

## 13.0 to 19.0 Reserved

## 20.0 Definition of Individualized Education Program

20.1 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

20.0 through 24.0, and that shall include:

20.1.1 A statement of the child's present levels of academic achievement and functional performance, including:

20.1.1.1 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

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

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

20.1.2.1 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;

20.1.2.2 For children with disabilities who participate in the ~~[Delaware Alternative Portfolio Assessment~~ **Alternate Assessment based on Alternate Achievement Standards (AA-AAS)**], a description of benchmarks or short term objectives.

20.1.3 A description of how the child's progress toward meeting the annual goals described in 20.1.2 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;

20.1.4 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:

20.1.4.1 To advance appropriately toward attaining the annual goals;

20.1.4.2 To be involved in and make progress in the general education curriculum in accordance with 20.1.1, and to participate in extracurricular and other nonacademic activities; and

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

20.1.5 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 20.1.4;

20.1.6 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the 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;

20.1.7 The projected date for the beginning of the services and modifications described in 20.1.4, and the anticipated frequency, location, and duration of those services and modifications; and

20.1.8 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 other authorized responsible person.

20.2 Transition services: By the middle of the 8<sup>th</sup> grade, the IEP shall include the child's strengths, interests, and preferences, postsecondary goals, high school courses of study needed to assist the child in reaching those goals, and plans to make application to high school and career technical education programs. Full transition services planning will apply by the end of the 9<sup>th</sup> grade, or prior to the child's 15<sup>th</sup> birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team, and the IEP shall be updated annually and include:

20.2.1 Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

20.2.2 The transition services (including courses of study) needed to assist the child in reaching those goals.

20.3 Transfer of rights at age of majority: Beginning not later than 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 Part B of the Act will transfer to the child on reaching the age of 18 under 14 **DE Admin. Code** 926.20.0.

20.4 IEP Forms: Each public agency shall use the primary and secondary IEP forms developed by DOE. The primary IEP form shall be used for students beginning with preschool (age 3) and until the Secondary IEP form is used. The Secondary IEP form shall be used beginning in the 8<sup>th</sup> grade, or earlier, if the IEP team agrees. 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. ~~[Nor shall this section shall be]~~ **This section shall not be** construed to require an IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

20.5 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.] (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); 14 Del.C. §3110)

## **21.0 IEP Team**

21.1 General: The public agency shall ensure that the IEP Team for each child with a disability includes:

21.1.1 The parents of the child;

21.1.2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

21.1.3 Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

21.1.4 A representative of the public agency who:

21.1.4.1 Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

21.1.4.2 Is knowledgeable about the general education curriculum;

21.1.4.3 Is knowledgeable about the availability of resources of the public agency;

and

21.1.4.4 Has authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

21.1.5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 21.1.3 and 21.1.6;

21.1.6 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;

21.1.7 Whenever appropriate, the child with a disability; and

21.1.8 Whenever possible participation in a Cooperative Education Program or Diversified Occupations Program is to be discussed, the Career Technical Teacher Coordinator.

21.2 Transition services participants: In accordance with 21.1.7, the public agency shall 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.

21.2.1 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.

21.2.2 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 21.2, the public agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

21.3 Determination of knowledge and special expertise: The determination of the knowledge or special expertise of any individual described in 21.1.6 shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

21.4 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 21.1.4.4 are satisfied.

21.4.1 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.

21.4.2 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.

21.5 IEP Team attendance: A member of the IEP Team described in 21.1.2 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.

21.5.1 A member of the IEP Team described in 21.5 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:

21.5.1.1 The parent, in writing, and the public agency consent to the excusal; and

21.5.1.2 The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

21.6 Initial IEP Team meeting for child under Part C: In the case of a child who was previously served under Part C of the 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)

## **22.0 Parent Participation**

22.1 Public agency responsibility, General: Each public agency shall take steps to ensure that one 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:

22.1.1 Notifying parents of the meeting *no less than 10 business days prior to the meeting (unless mutually agreed otherwise)* to ensure that they will have an opportunity to attend, and *no less than three (3) business days for removal [due] to disciplinary action*; and

22.1.2 Scheduling the meeting at a mutually agreed on time and place.

22.2 Information provided to parents: The notice required under 22.1 shall:

22.2.1 Indicate the purpose, time, and location of the meeting and who will be in attendance; and

22.2.2 Inform the parents of the provisions in 21.1.6 and 21.3 (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 21.6 (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).

22.2.3 For a child with a disability beginning not later than the 8<sup>th</sup> grade or when the child turns 14, whichever occurs first, 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 20.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative.

22.3 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 28.0 (related to alternative means of meeting participation).

22.4 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:

22.4.1 Detailed records of telephone calls made or attempted and the results of those calls;

22.4.2 Copies of correspondence sent to the parents and any responses received; and

22.4.3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

22.4.4 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.

22.5 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)

## **23.0 When IEPs Shall be in Effect**

23.1 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 2.0.

23.2 Initial IEPs; provision of services: 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 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.

23.3 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:

23.3.1 His or her specific responsibilities related to implementing the child's IEP; and

23.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

23.4 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).

23.4.1 A child with a disability who transfers from one 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 must either:

23.4.1.1 Adopt the child's IEP from the previous public agency at an IEP meeting convened for that purpose, or develop, adopt, and implement a new IEP that meets the applicable requirements in 20.0 through 24.0.

23.5 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).

23.5.1 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 must:

23.5.1.1 Conduct an evaluation pursuant to 4.0 through 6.0 (if determined to be necessary by the new public agency); and develop, adopt, and implement a new IEP, if appropriate, that meets the applicable requirements in 20.0 through 24.0.

23.6 Transmittal of records and public agency duties: To facilitate the transition for a child described in 23.4 and 23.5:

23.6.1 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

23.6.2 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)

## **24.0 Development, Review, and Revision of IEP**

24.1 Development of IEP, General: In developing each child's IEP, the IEP Team shall consider:

24.1.1 The strengths of the child;

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

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

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

24.2 Consideration of special factors: The IEP Team shall:

24.2.1 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;

24.2.2 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;

24.2.3 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;

24.2.4 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; and

24.2.5 Consider whether the child needs assistive technology devices and services.

24.3 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 20.1.4.

24.4 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 20.1.4, the public agency shall ensure that the child's IEP Team is informed of those changes.

24.5 Consolidation of IEP Team meetings: To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

24.6 Amendments: Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in 24.4, 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.

24.7 Review and revision of IEPs, General: Each public agency shall ensure that, subject to 24.8 and 24.9, 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:

24.7.1 Any lack of expected progress toward the annual goals described in 20.1.2, and in the general education curriculum, if appropriate;

24.7.2 The results of any reevaluation conducted under 3.0;

24.7.3 Information about the child provided to, or by, the parents, as described under 5.1.4;

24.7.4 The child's anticipated needs; or

24.7.5 Other matters.

24.8 Consideration of special factors: In conducting a review of the child's IEP, the IEP Team shall consider the special factors described in 24.2.

24.9 Requirement with respect to regular education teacher: A regular education teacher of the child, as a member of the IEP Team, shall, consistent with 24.3, participate in the review and revision of the IEP of the child.

24.10 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 20.2, 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.

24.11 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.

24.12 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:

24.12.1 The requirements contained in section 612(a)(16) of the Act and 20.1.6 (relating to participation of children with disabilities in general assessments).

24.12.2 The requirements in 20.2 (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the 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.

24.13 Modifications of IEP or placement: Subject to 24.13.1, 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.

24.13.1 The requirements of 20.0 (relating to IEPs), and 14 DE Admin. Code 923.14.0 (relating to LRE) do not apply with respect to the modifications described in 24.13 of this section.

(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)

## **25.0 Private School Placements by Public Agencies**

25.1 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 20.0 and 24.0.

25.1.1 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.

25.2 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.

25.2.1 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.

25.3 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)

## **26.0 Reserved**

## **27.0 Educational Placements in the Least Restrictive Environment**

27.1 Educational Placement Options. Following the development of a child's IEP, the 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. Educational placement options shall include, but not be limited to, the following:

27.1.1 Inside Regular Education Class  $\geq$ 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.

27.1.2 Inside Regular Class  $\leq$  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.

27.1.3 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.

27.1.4 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.

27.1.5 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.

27.1.6 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.

27.1.7 Correctional Facilities: Children receiving special education in: short-tem detention facilities (community based or residential); or correctional facilities.

27.1.8 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.

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

27.3 If a child with a disability is a danger to himself or to herself, or is so disruptive that his or her 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.

27.3.1 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.

27.3.2 In instances of parental objection to such home instruction, parents may exercise any of the applicable procedural safeguards in these regulations.

27.3.3 To be eligible for supportive instruction and related services, the following criteria shall be met:

27.3.3.1 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

27.3.3.2 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

27.3.3.3 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.

27.3.4 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

27.3.5 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 his or her return to the school program.

(Authority: 14 Del.C. §3110)

## **28.0 Alternative Means of Meeting Participation**

28.1 When conducting IEP Team meetings and placement meetings pursuant to these regulations scheduling, exchange of witness lists, and status conferences), 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)

**29.0 High School Graduation**

29.1 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 his or her disability, educational placement or the type of document conferred.

(Authority: 14 Del.C. §3110)

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