

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 929

### Regulatory Implementing Order

#### 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

##### 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 adopt new regulation 14 **DE Admin. Code** 929, Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved.

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 repealing the existing regulation and replacing it 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 comments on proposed regulation 14 **DE Admin. Code** 929, Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives, as noted below in Findings of Facts.

##### II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 929 as part of its review of existing State regulations relating to the education of children with disabilities in light of changes to federal law.

This regulation largely re-adopts existing regulations regarding special programs and unique educational alternatives. The Governor's Advisory Council for Exceptional Citizens suggested that the regulation would benefit from a comprehensive revision, and include provisions about the licensure of group homes serving children with autism by other state agencies. However, since the program requirements found in this regulation are comprehensive, specific to Delaware and not required by federal law, the Department believes that comprehensive changes to the regulation should first be completed by interested stakeholders rather than as part of this review of federal changes.

The Council also 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 Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 DE Admin. Code 929 with the revisions noted above. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 929, attached hereto is hereby adopted. Pursuant to 14 Del.C. §122(e), 14 DE Admin. Code 929 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 929 shall be in the form attached hereto, and said regulation shall be cited as 14 DE Admin. Code 929 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

### **929 Children with Disabilities Subpart I Special Programs and Unique Educational Alternatives**

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 Special Programs for Children who are Deaf-Blind**

1.1 *The Margaret S. Sterck School, Delaware School for the Deaf, located in the Christina School District, shall have administrative responsibility for providing services to the deaf-blind program.*

#### **2.0 Special Programs for Children with Autism.**

2.1 *The following definitions shall apply to this section:*

***“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.

***“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.

**“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 who is primarily eligible for special education related services under the autism classification.

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

2.2.1 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 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 DOE.

2.2.2 The SMRB shall consist of the following members:

2.2.2.1 Director for State Services for Children with Autism.

2.2.2.2 Director of the Exceptional Children and Early Childhood Education Group, or the Director's designee.

2.2.2.3 One administrator from each LEA 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.

2.2.2.4 One non administrative 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.

2.2.2.5 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.

2.2.3 The SMRB shall operate under the following procedures:

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

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

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

2.2.3.4 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.

2.2.3.5 The SMRB shall discharge its responsibilities in accordance with the Act and these regulations.

2.2.3.6 The SMRB shall function in an advisory capacity and the procedural safeguards guaranteed to students with autism, their parents (as defined under the Act), and LEAs or other public agencies, shall not be diminished by the activities of the SMRB.

2.2.4 The SMRB has the following responsibilities:

2.2.4.1 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.

2.2.4.1.1 Requests for review of practices may be submitted to the SMRB by SMRB members, the Secretary, the State Parent Advisory Committee, superintendents or chief administrators of LEAs.

2.2.4.1.2 If the party making the request for review disagrees with the recommendation of the SMRB regarding best educational practices, they may request the Secretary appoint an independent expert to review the practice. The procedural safeguards guaranteed to students with autism, their parents (as defined under the Act) and LEAs or other public agencies, shall not be diminished by any recommendations of an independent expert appointed by the Secretary.

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

2.2.4.3 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.

2.2.4.4 To assist LEAs with approved programs in developing and implementing plans to address the recommendations of the SMRB.

2.2.4.5 To submit an Annual Report by September 1 of each year to the Secretary, the State Board of Education, and the Governor's Advisory Council for Exceptional Citizens.

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

2.3.1 The function of the PAC shall be to advise the LEA on matters pertaining to the local center. A PAC formed under this section may combine its activities and meetings with other local parent organizations or committees serving children with disabilities.

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

2.3.3 When an LEA 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.

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

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

2.4.2 The establishment and revision of bylaws for the SPAC shall be by majority vote of all of its eligible members.

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

2.4.4 Reimbursement for travel expenses shall be available to members of the SPAC.

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

2.5.1 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 an LEA serving children with autism.

2.5.2 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, DOE, any Delaware LEA, 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.

2.5.3 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 DOE and the Director of the DAP.

2.5.4 Peer Review Committee (PRC) Responsibilities:

2.5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after the fact examination.

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

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

2.5.4.1.3 The PRC shall meet at least 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.

2.5.4.1.4 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.

2.5.4.1.5 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children with disabilities 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.

2.5.4.1.6 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.

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

2.5.4.1.7 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.

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

2.5.4.1.7.2 An oral summary of the PRC recommendations shall be made within 24 hours following the PRC meeting to the Director of DAP and the HRC chairperson.

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

2.6.1 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.

2.6.2 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 DOE, 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.

2.6.3 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 DOE and the Director of the DAP.

2.6.4 Human Rights Committee Responsibilities

2.6.4.1 Whenever a school proposes 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 7 days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

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

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

2.6.4.2 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.

2.6.4.3 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.

2.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director of DOE's Exceptional Children and Early Childhood Group, and the PRC chairperson.

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

2.6.4.4.2 An oral summary of the HRC recommendations shall be made within 24 hours following the HRC meeting to the Director of DAP and the PRC chairperson.

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

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

2.7.1.1 Without further PRC and HRC review during the year approved:

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

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

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

2.7.3 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:

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

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

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

2.7.4.1 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.

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

2.7.5 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.

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

2.7.6 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 as the administering agency for the DAP.

2.7.7 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.

2.7.7.1 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.

2.7.7.2 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.

2.7.8 Have access to the educational records of any child with autism for purposes of 2.5.1 and 2.6.1 of this section.

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

2.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions.

2.7.9.1 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.

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

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

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

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

2.7.9.2 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.

2.7.9.3 Behavior management and emergency intervention procedures that require

annual review only may then be implemented by a school without further PRC/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.

2.7.9.4 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.

2.7.9.4.1 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.

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

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

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

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

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

2.7.9.6.1 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).

2.7.9.6.2 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.

2.7.9.7 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.

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

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

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

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

2.7.9.9 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.

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

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

2.7.9.10 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 2.7.7.

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

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

2.8.2 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.

2.8.2.1 Said policies shall be reviewed by Delaware's DOE 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.

2.8.3 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 DOE 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.

2.8.4 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.

2.9 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.

2.10 Appropriate liaison with the Department of Health and Social Services (DHSS) and other agencies shall be established by the Director of DAP and the DOE.

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

3.1 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.

3.1.1 The Secretary 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.

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

3.1.3 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.

3.2 The DOE shall convene the Interagency Collaborative Team (ICT) to review the expenditures for placements of children with disabilities in need of Unique Educational Alternatives.

3.2.1 ICT membership shall consist of:

3.2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;

3.2.1.2 Division Director, Division of Family Services of DSCYF;

3.2.1.3 Division Director, Division of Youth Rehabilitation Services of DSCYF;

3.2.1.4 Division Director, Division of Developmental Disabilities Services of DHSS;

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

3.2.1.6 Director of the Office of Management and Budget, or a designee;

3.2.1.7 Controller General or a designee;

3.2.1.8 Director, Exceptional Children and Early Childhood Education Group, DOE, who

will serve as Chair;

3.2.1.9 Associate Secretary, Curriculum and Instructional Improvement Branch, DOE.

3.2.2 A Director shall be assigned to the ICT and may designate staff to be their representative on the 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.

3.2.3 The ICT shall invite to its meetings: a representative of a responsible LEA for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

3.2.4 The ICT shall:

3.2.4.1 Review existing assessments of new referrals;

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

3.2.4.3 Review proposed treatment plans of new referrals;

3.2.4.4 Recommend alternatives for treatment plans of new referrals;

3.2.4.5 Coordinate interagency delivery of services;

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

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

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

3.2.5 The 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 annual Appropriations Act will be covered from the existing appropriation.

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

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

3.2.5.3 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.

3.2.6 The ICT shall report on its activities to the Governor, Director of the Office of Management and Budget, 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.

### 3.3 Interagency Collaborative Team Review Criteria

3.3.1 The ICT shall recommend to the Secretary action on referrals for approval of Unique Educational Alternatives based on the following criteria:

3.3.1.1 An LEA or other public agency support program is either not available or is not adequate.

3.3.1.2 The LEA certifies that it cannot meet the needs of the child with existing resources and program.

### 3.4 Procedures for LEAs Seeking to Place Students in Unique Educational Alternative Settings

3.4.1 The responsible LEA for a child seeking Unique Educational Alternative support shall be the child's school district of residence. The district of residence is responsible for inviting the parent, and, if appropriate, the child with a disability, to the ICT meeting.

3.4.2 The chairperson of the ICT shall be contacted by the district of residence special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

3.4.3 The IEP team that includes district of residence 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.

3.4.3.1 Representatives of all agencies involved with the child shall be invited to attend this meeting.

3.4.4 The district of residence shall submit an application to the Chair of the ICT at least 5 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 and programs.

3.4.5 The application will include:

3.4.5.1 Current and other relevant assessment information;

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

3.4.5.3 A current IEP;

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

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

3.4.5.6 An Interagency Release of Information Form.

### 3.5 Procedures for the ICT

3.5.1 Review the application at its next monthly meeting.

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

3.5.3 Recommendations of the ICT shall be shared in writing with the LEA, parents and other agency staff involved with the case within 5 business days. The ICT may:

3.5.3.1 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;

3.5.3.2 Request for additional information shall be sent to the LEA, parents, and other agency staff involved in the case within 5 business days of the meeting and as soon as the additional information is available, the case shall be brought back to the ICT for further review.

3.5.3.3 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

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

3.5.4 Final recommendations of the ICT shall be shared in writing with the LEA, parents and other agency staff involved in the case within 5 business days.

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

3.5.4.2 The final plan, with costs, shall be submitted to the Chair of the ICT.

3.5.4.3 The Chair shall submit the recommendations for approval to the Secretary.

3.5.4.4 A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary for final action.

3.5.4.5 The parent, LEA superintendent or chief administrator, the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary, following the action.

### 3.6 Financial Aid for Unique Educational Alternatives

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

3.6.1.1 The DOE shall pay 70% of the Unique Educational costs and the LEA will pay 30% of the costs unless waivers for the LEA are recommended by the ICT.

3.6.2 Financial aid for children with disabilities approved for private placement by the DOE shall include maintenance, transportation and tuition.

3.6.2.1 The DOE shall pay 70% of the private placement costs and the LEA shall pay 30% of the private placement costs.

3.6.2.2 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.

3.7 Independent placements by LEA or public agency: An LEA 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 LEA or other public agency funds without DOE approval.

3.7.1 Any private or public out of state facility in which an LEA or other public agency uses local funds to independently place a child with a disability must, nonetheless, be approved under any applicable standards of the state in which the facility is located.

3.8 LEA and public agency responsibility for private placements: When an LEA or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the LEA or other public agency may refer the student for consideration of a unique educational alternative, including a private placement.

#### 3.8.1 LEA Certification and Documentation

3.8.1.1 The LEA 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 DOE for review by the ICT prior to action by the Secretary.

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

3.8.1.3 Such documentation shall include report(s) of the appropriate specialist(s).

depending upon the nature of the child's disability.

3.8.1.4 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.

3.9 Responsibility for Individualized Education Program

3.9.1 The LEA 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.

3.9.2 The LEA 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 LEA or other public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

3.9.3 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 LEA or any other public agency.

3.9.4 If the private school or facility initiates and conducts these meetings, the LEA or any other public agency shall ensure that the parents and an LEA or 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.

3.9.5 District of residence: The referring LEA for a child in private placement is the child's district of residence.

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

3.10 State responsibility for private school accountability: In implementing State and federal regulations governing accountability for and to private programs, the DOE shall have the authority to:

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

3.10.2 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.

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

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

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