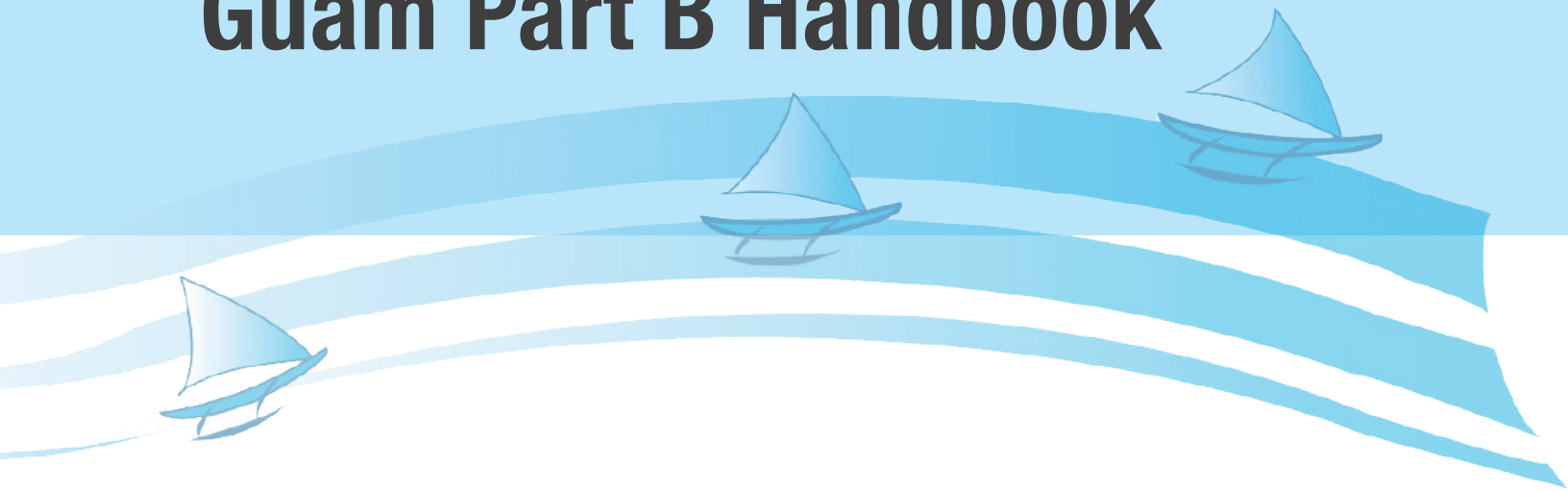


# Guam Part B Handbook



**January 2013**

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## **FREE APPROPRIATE PUBLIC EDUCATION (FAPE) POLICY**

### **34 CFR §300.101**

It is the policy of the Guam Department of Education (hereafter referred to as GDOE) to make available a free appropriate public education (FAPE) to all students with disabilities ages 3 to 21 inclusive, including students who have been suspended or expelled from school. If the child turns 21 prior to the end of the school year, the child shall be allowed to complete the school year.

The GDOE policy ensures that the obligation to make FAPE available to a preschool eligible child residing in Guam begins no later than the child's third birthday and an IEP is in effect for the child by that date according to the IEP requirements. If a child's third birthday occurs during the summer, the child's IEP Team determines the date when services under the IEP will begin.

#### Children advancing from grade to grade

The GDOE ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

The determination that a child described in previous paragraph of this section is eligible under IDEA, is made on an individual basis by the group responsible within the child's school for making eligibility determinations.

### **Limitations and Exceptions to FAPE for certain ages**

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#### **34 CFR §300.102**

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- Children aged 3, 4, 5, 18, 19, 20, or 21 in the GDOE to the extent that its application to those children would be inconsistent with Guam Law or practice, or the order of any court, respecting the provision of public education to children of those ages.
- Children aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility,
  - Were not actually identified as being a child with a disability; and
  - Did not have an IEP under Part B of the IDEA.

The exception above does not apply to children with disabilities, aged 18 through 21, who:

- Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or
- Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability.

The obligation to make FAPE available does not apply to children with disabilities who have graduated from high school with a regular high school diploma. The exception above does not apply to children who have graduated from high school but have not been awarded a regular high school diploma. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice. The term regular high school diploma does not include an alternative degree that is not fully aligned with the GDOE's academic standards, such as a certificate or a general educational development credential (GED).

The obligation to make FAPE available does not apply to children with disabilities who are eligible under subpart H of IDEA, but who receive early intervention services under Part C of the Act.

## **OTHER FAPE REQUIREMENTS**

### **Methods and Payments**

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34 CFR §300.103

- The GDOE uses whatever local, Federal, and/or private sources of support that are available in the GDOE to meet the requirements of Part B of IDEA.
- Nothing in Part B of IDEA relieves any insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a child with a disability.
- The GDOE ensures that there will be no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

### **Residential Placement**

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34 CFR §300.104

It is the GDOE policy that if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is provided at no cost to the parents of the child.

### **Assistive Technology**

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34 CFR §300.105

The GDOE ensures that the assistive technology devices or assistive technology services, or both as defined under IDEA respectively, are made available to a child with a disability if required as part of the child's:

- Special Education;
- Related services; or
- Supplementary aids and services.

### **Extended school year services**

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34 CFR §300.106

The GDOE ensures that extended school year services are available as necessary to provide FAPE, consistent with the procedures below.

The term extended school year services means special education and related services that are provided to a child with a disability:

- Beyond the normal school year of the GDOE;
- In accordance with the child's IEP;
- At no cost to the parents of the child; and
- Meet the standards of the GDOE.

## **Nonacademic services**

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34 CFR §300.107

The GDOE takes steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

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

## **Physical Education**

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34 CFR §300.108

The GDOE ensures that physical education services, specially designed if necessary, is made available to every child with a disability receiving FAPE, unless the GDOE enrolls children without disabilities, and does not provide physical education to children without disabilities in the same grades.

The GDOE takes responsibility for the education of a child with a disability who is enrolled in a separate facility and ensures that the child receives appropriate physical education services in compliance with this section.

## **Free Appropriate Public Education (Fape) Procedures**

1. The Board of Education has a policy that makes available a free appropriate public education (FAPE) to all children with disabilities between the ages of 3 to 21, inclusive, including children who have been suspended or expelled. The Board also ensures that FAPE is available to any individual child, with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
2. The Board has established the goal of full educational opportunity to all children with disabilities ages 3 through 21.
3. School personnel are prohibited from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving services under the Individuals with Disabilities Education Act, Part B. However, teachers and other school personnel are permitted to consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.
4. The Guam Department of Education System implements the policy of providing a free appropriate public education (FAPE) through this Handbook for the Delivery of Special Education Services and other board policies related to special education, as administered by the Division of Special Education.

**Responsibility:** Superintendent of Education  
Assistant Superintendent, Special Education  
Principals

## **FULL EDUCATIONAL OPPORTUNITY GOAL POLICY**

34 CFR §300.109

The GDOE has in effect policies and procedures to demonstrate that the GDOE provides a full educational opportunity to all children with disabilities, ages 3 through 21.

### **Program Options**

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34 CFR §300.110

The GDOE ensures that each school takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the GDOE, including art, music, industrial arts, consumer and homemaking education, and vocational education.





## CHILD FIND POLICY

34 CFR §300.111

It is the policy of the GDOE to conduct Child find activities that is defined as the continuous process of identifying, locating, and evaluating all children (birth through 21) with disabilities residing in Guam, including children with disabilities who are homeless children or are wards of Guam, and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services or early intervention services for infants and toddlers with disabilities. A practical method has been developed and implemented to determine which children are currently receiving needed special education and related services.

The GDOE has adopted the term developmental delay for children with disabilities aged 3 through 5.

Child find also includes:

- Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and
- Highly mobile children, including migrant children.

NOTE: Nothing in Part B of the IDEA Act requires that children be classified by their disability so long as each child who has a disability and who, by reason of that disability, needs special education and related services, is regarded as a child with a disability under Part B of the IDEA.

## Child Find Procedures

1. Each school shall have procedures to identify children who may be in need of special education and related services (e.g. Faculty orientation, professional development sessions, etc.).
2. The principal shall establish and determine the members of the Child Study team.
3. Children may be identified through a screening process, or by school staff, the parent(s), or other individuals.
  - (a) The identification of a child who may be in need of special education and related services must be in written form to the principal or designee of the school the child attends, or if not enrolled, the school the child would attend based on attendance area. If the identifying individual is unable to speak or write in English, the school personnel shall assist in completing the Child Intake form.
  - (b) Upon receipt of a Child Intake Form, the principal or designee, shall:
    - (1) Initiate the evaluation eligibility process in accordance with IDEA; or
    - (2) Require that the Child Study team review and respond to the request; or
    - (3) Deny the request.

If the request is denied, prior written notice in accordance with IDEA shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures. (34 CFR 300.507)





## **INITIAL EVALUATIONS POLICY**

34 CFR §300.301

It is the policy of GDOE to conduct a full and individual initial evaluation before the provision of special education and related services for a child with a disability as defined under Part B of IDEA.

### **Request for initial evaluation**

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A parent of a child or the GDOE may initiate a request for an initial evaluation.

### **Procedures for initial evaluation**

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The GDOE conducts and completes the initial evaluation within 60 days of receipt of parental consent. (See exceptions to the timeline described below.)

The initial evaluation consists of procedures:

- To determine if the child is a child with a disability under IDEA; and
- To determine the educational needs of the child.

The timeframe in this section does not apply to the GDOE 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 timeframe in this section 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.

The exception applies only if the GDOE is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and GDOE agree to a specific time when the evaluation will be completed.

### **Screening for instructional purposes is not evaluation**

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34 CFR §300.302

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

### **Evaluation Procedures**

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34 CFR §300.304

It is the policy of the GDOE to provide prior written notice to the parents of a child with a disability, in accordance with the procedures below and a description of the evaluation procedures the GDOE proposes to conduct.

### **Conduct of Evaluation**

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Evaluations are conducted through implementation of the following procedures:

- A variety of assessment tools and strategies are used 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 under IDEA; and
  - The content of the IEP, including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities);

- No single measure or assessment is used 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,
- Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors.

## **Other evaluation procedures**

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The evaluation procedures also ensure that:

- Assessments and other evaluation materials used to assess a child under Part B of IDEA:
  - Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - Are provided and administered in the 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 do so provide or administer;
  - Are used for purposes for which the assessments or measures are valid and reliable;
  - Are administered by trained and knowledgeable personnel; and
  - Are administered in accordance with any instructions provided by the producer of the assessments.
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Assessments are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test 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).
- 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.
- Assessments of children with disabilities who transfer from another public agency to the GDOE in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.
- In evaluating each child with a disability, 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.
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

## Additional requirement for evaluations

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34 CFR §300.305

- Review of existing evaluation data

As part of an initial evaluation (if appropriate) under IDEA, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including:

- Evaluations and information provided by the parents of the child;
  - Current classroom-based, local, or State assessments, and classroom-based observations; and
  - Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
    - Whether the child is a child with a disability and the educational needs of the child;
    - The present levels of academic achievement and related developmental needs of the child;
    - Whether the child needs special education and related services

## Conduct of review

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The group described in this section may conduct its review without a meeting.

## Source of data

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The GDOE must administer such assessments and other evaluation measures as may be needed to produce the data identified in this section.

<b>Forms:</b>	Evaluation Plan Parent Notice: Request for PERMISSION TO EVALUATE Procedural Safeguards Notice Prior Written Notice Referral for Services Form Child Identification Checklist/Related Services Checklists
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<b>Responsible Person:</b>	Designated School Person
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**Timeline: Initial Evaluation:** 60 days from receipt of consent to completion of the evaluation

**NOTE:** The exceptions to the timeline of 60 days are for students who enroll in school after the timeline has begun and where the parent fails or refuses to "produce" the child for the evaluation.

Day is defined as calendar days unless specified otherwise.



## PRE-EVALUATION PROCEDURES

### **Initial Referral for Special Education and Related Services:**

When a decision is made by either the principal or Child Study Team (CST) to submit a referral for an initial evaluation, the following procedures shall be implemented.

#### **1. Review of Existing Data**

This process is required and is done at the initial evaluation, if appropriate. Prior written notice is required since it is part of the evaluation process. School personnel should consider at the initial evaluation whether there are sufficient existing data on the child to use this process of reviewing existing data.

The review of existing data on the child, is done by the Child Study Team, including the parent, and other qualified professionals. The data reviewed must include evaluations and information provided by parents; current classroom-based assessments, district-wide assessments, classroom-based observations, and teacher and related service providers' observations. This review may be conducted without a meeting.

On the basis of this review:

Determine what additional data, if any, are needed to determine the following:

- Whether the child is a child with a disability and the educational needs of the child;
- The present levels of academic achievements and related developmental needs; and
- Whether the child needs special education and related services.

#### **2. Completion of Evaluation Plan**

Based on the review and input from the child's parents and the CST, the CST or other decision-making team:

- Completes the Evaluation Plan Form. The Evaluation Plan Form must include documentation of what existing evaluation data was reviewed and what action has been determined as a result of reviewing existing information/data. It must include assessment of all suspected areas.
- Obtain signatures of the CST (including the parent/guardian of the child) on the form to document participation in the review of existing data.

#### **3. Parent Notice: Request for PERMISSION to EVALUATE**

- The designated school person prepares the Parent Notice: Request for PERMISSION to EVALUATE and Prior Written Notice forms and attaches it to the Child Identification Checklist (CIC) and Procedural Safeguards Notice.
- If the parents were not present at the CST meeting, the designated school person contacts the parent by phone or in person and informs parent of the results of the meeting. The designated school person sends form home for signature with CIC and Procedural Safeguards Notice as attachments.

### **NOTE:**

- If at any time the parent revokes consent for an evaluation, no further evaluations may be conducted. However, the parent may not revoke consent for evaluations that were conducted before the revocation.
- If parent refuses consent, the designated school person contacts the parent to determine the reason for refusing consent and attempts to explain the need for an evaluation. If the parent still



refuses, the principal may, **but is not required**, to pursue the resolution of the issue through mediation and/or due process procedures.

#### Procedures for 30-Day Diagnostic Placement As Part of Initial Evaluation:

<b>Forms:</b>	Evaluation Plan Child Identification Checklist/Related Services Checklist Prior Written Notice
<b>Parent Notice:</b>	Request for PERMISSION to EVALUATE Procedural Safeguards Notice Referral for Services Form
<b>Responsible Person:</b>	Designated School Person

In order for a student to be placed in a 30-day diagnostic placement, the Child Study Team, including the principal and parent must determine that such a placement is necessary to determine:

- Whether the child has a particular category of disability;
- Present levels of academic achievement and related developmental needs of the child; and,
- Whether the child needs special education and related services.

The school personnel must obtain consent from the parent for the 30-day diagnostic placement and it must be specified in the Evaluation Plan. The parent must be informed in writing that the placement is solely for diagnostic purposes.

<b>Forms:</b>	Student Observation
<b>Responsible Person:</b>	Designated School Person

### Initial Evaluation Procedures

#### Verification of Consent

The designated school person must verify that the parent has given written informed consent on Parent Notice: Request for PERMISSION to EVALUATE form prior to any evaluation and, if this is an initial evaluation, that he or she understands the parent rights.

#### Conduct of Evaluation

##### 1. Limited English Proficient Child:

- Assessments and evaluation materials must be provided and administered in the language and form most likely to yield accurate information on what a child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer.
- Prior to evaluating a child who may be limited English proficient, the school must first determine the child's proficiency in English and the child's native or primary language.
- The evaluators must determine whether the evaluation needs to be conducted in a language other than English. If yes, determine whether the use of a qualified interpreter **is necessary**.
- If an interpreter is needed, the designated school person must complete and submit an Interpreter Request Form to the Parent Services Office at the Division of Special Education. The DSP follows standard operating procedures for requesting for an interpreter.
- Assessments of children with limited English proficiency must be selected and administered

to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

2. Medical Services for Diagnostic Or Evaluation Purposes:

- If a vision, hearing, or any other medical evaluation is required to determine eligibility and educational needs, the designated school person must assist the parent in obtaining the evaluation.
- The evaluation must be at no cost to the parent and transportation must be provided if necessary to obtain the evaluation.
- Designated school person must facilitate obtaining the medical evaluation so that there is no delay with the full evaluation of the child. For parents choosing to use their insurance to obtain any medical evaluation, the GDOE shall reimburse the parent for any co-payment or additional costs that is not covered by the insurance. The DSP shall inform parents of the procedures for such reimbursement.

3. Designated school person and evaluation team (school psychologist, speech, etc.) schedules and implements the Evaluation Plan once the consent has been obtained from the parent. The designated school person submits the original documents to the Special Education Data Office and maintains a copy of the consent and other referral documents at the school site.

4. Evaluation team implements EVALUATION PLAN.

5. Designated school person gathers information from the parent about child's strengths, weaknesses, interests, problems, etc.

6. Teachers provide information related to academic achievement and functional performance such as work samples of child's academic performance in reading, writing, math, and/or conducts informal academic inventories as well as performance in non-academic areas.

7. Observation if learning disability is suspected:

- If learning disability (LD) is suspected, there must be either (1) 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, at least one member of the child's eligibility team, designated as part of the Evaluation Plan, must observe the child's academic performance in the regular classroom setting after the child has been referred for an evaluation and parental consent is obtained.
- In the case of a child of less than school age or out of school, the individual must observe the child in an environment appropriate for a child of that age. The observer completes the Student Observation forms.

8. Once the evaluations have been completed, the evaluators notify the designated school person that the evaluations have been completed.

9. Designated school person notifies members of the eligibility committee of the meeting schedule. If the IEP meeting is to be held immediately after, committee members must be notified that the IEP meeting will follow the eligibility meeting if the child is found eligible for services. If all members of the IEP Team are not present for the eligibility meeting and if the IEP meeting is to be held immediately after a determination of eligibility, they need to be informed of when they should join the meeting.

Members of the Eligibility Committee must include a team of qualified professionals and the parent of the child. For a child suspected of having a learning disability, the committee must include at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher; the child's regular teacher, or if the child does not have a regular teacher, a regular teacher qualified to teach a child of his or her age; and for a child less than school age, an individual qualified to teach a child of his or her age.

Designated school person facilitates the preparation of evaluation results and reports for the eligibility meeting.

For Initial Evaluations, a pre-conference meeting to discuss the evaluation results is recommended with the school psychologist (or any other individual who can interpret the evaluation results) and the parent.

## REEVALUATION POLICY

### 34 CFR §300.303

It is the policy of the GDOE to ensure that a reevaluation of each child with a disability is conducted in accordance with IDEA requirements:

- If the GDOE 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.

#### Limitation

A reevaluation conducted in this section:

- May occur not more than once a year, unless the parent and the GDOE agree otherwise; and
- Must occur at least once every 3 years, unless the parent and the GDOE agree that a reevaluation is unnecessary. If a reevaluation is necessary, the reevaluation shall be conducted using the procedures as described in this manual.

### Review of Existing evaluation data

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#### 34 CFR §300.305

As part of any reevaluation under IDEA, the IEP Team and other qualified professionals, as appropriate, must:

- Review existing evaluation data on the child, including:
  - Evaluations and information provided by the parents of the child;
  - Current classroom-based, local, or State assessments, and classroom-based observations; and
  - Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
- 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 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.
  - The IEP team, in consultation with the related service representative, shall also determine whether a related service should be added to the child's IEP.

**NOTE:** The additional assessment for a related service for a child already receiving special education services is for possible additional services rather than for diagnosis of a new disability category.

### Conduct of review

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The IEP team may conduct its review without a meeting.

### Source of data

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The GDOE must administer such assessments and other evaluation measures as may be needed to produce the data identified in this section.

### **Requirements if additional data are not needed**

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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 GDOE must notify the child's parents of:

- That determination and the reasons for the determination; and
- The right of the parents 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.

The GDOE is not required to conduct the assessment described in this section unless requested to do so by the child's parents.

### **Evaluations before change in eligibility**

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- The GDOE must evaluate a child with a disability in accordance with IDEA requirements before determining that the child is no longer a child with a disability.
- The evaluation described in this section is not required before the termination of a child's eligibility under IDEA due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under Guam Law.
- For a child whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under Guam law, the GDOE must 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.

## REEVALUATION PROCEDURES

### 1. Review of Existing Data

Determine what additional data, if any, are needed to determine:

- Whether the child continues to have such a disability and such educational needs;
- The present levels of academic achievement and related developmental needs;
- 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 Individualized education program of the child and to participate as appropriate in the general education curriculum.
- The IEP team, in consultation with the related service representative, shall also determine whether a related service should be added to the child's IEP.

**NOTE:** The additional assessment for a related service for a child already receiving special education services is for possible additional services rather than for diagnosis of a new disability category.

The IEP team must discuss whether the team has enough information to determine eligibility and the educational needs of the child as part of the reevaluation. Although a meeting is not required, the designated school person must communicate with IEP team members to review the existing data on the child and to obtain input to determine if additional information is needed. If existing data is sufficient, then an eligibility determination can be made and the IEP can be revised, if appropriate, based on the results of the reevaluation. If existing data is not sufficient, then additional evaluations need to be conducted.

Whether or not the parents participated in the review of data for reevaluation, the DSP must obtain input from the parent and inform the parents of the results through the Prior Written Notice form and that the parent has the right to request for an assessment.

If the IEP Team determines additional data are necessary, the DSP must obtain permission to evaluate and provide parents with a procedural safeguards notice if the parents request it.

The designated school person (DSP) prepares *Parent Notice: Request for PERMISSION to EVALUATE* and *Prior Written Notice to Parents* forms.

If the IEP committee determines that no additional data is needed to determine continued eligibility and to determine the child's educational needs, the school must notify the parents of the following:

- The determination that no additional data is needed;
- The reasons for the determination; and
- The right of the parents 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..

The DOE is not required to conduct an assessment unless requested to do so by the child's parents. The DSP must proceed with Eligibility Procedures.

**Note:** If the IEP team determines that an additional related service is needed, the team shall consult with the related service representative. This additional assessment for a related service for a child already receiving special education services is for possible additional services rather than for determining eligibility under a different disability category.

## 2. Consent for Reevaluation

Informed parental consent need not be obtained for a reevaluation if the DOE can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. The reasonable measures taken to obtain consent must be documented in writing. To meet the reasonable efforts requirement, the school must document its attempts to obtain parental consent using the IEP participation procedures.

If, after reasonable measures, the GDOE is unable to obtain consent for the reevaluation, the GDOE shall proceed with conducting the reevaluation. If the GDOE is unable to locate the parent after reasonable efforts, the GDOE shall appoint a surrogate parent to protect the rights of the child.

The principal may use "consent override" procedure to proceed with the reevaluation.

### Override of Refusal to Consent

Prior to pursuing dispute resolution procedures, the school shall document efforts to convince the parent to consent to the reevaluation. The school may, but is not required to, pursue mediation or due process in order to obtain consent for the reevaluation. If the school decides not to pursue the consent, the documented efforts are filed at the school and central data office.

## 3. Referral for Parent/Teacher Request for Reevaluation Prior to Due Date

If there is a referral for a reevaluation before the required 3-year reevaluation, the DOE must determine whether the educational or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation. Although the IDEA requires that reevaluations are not conducted more frequently than once a year, the parent and the GDOE can agree otherwise.

If the parent and the DOE agree that no additional data are needed to determine continued eligibility, the school must notify the parents of:

- The determination and the reasons for the determination; and
- The right of the parents 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.

If a parent requests a reevaluation prior to the due date, the GDOE must either provide a proposal to reevaluate or a refusal to reevaluate through a *Prior Written Notice*. The *Prior Written Notice* must include:

- (A) a description of the action proposed or refused by the GDOE;
- (B) an explanation of why the GDOE proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the GDOE used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA, Part B and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of IDEA, Part B;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of other factors that are relevant to the agency's proposal or refusal.

## ELIGIBILITY DETERMINATION POLICY

34 CFR §300.306

### General

It is the policy of the GDOE that upon completion of the administration of assessments and other evaluation measures:

- A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as per IDEA and GDOE criteria, and the educational needs of the child; and
- The GDOE provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

### Special rule for eligibility determination

A child is not determined to be a child with a disability under Part B of IDEA:

- If the determinant factor for that determination is:
  - Lack of appropriate instruction in reading, including the essential components of reading instruction;
  - Lack of appropriate instruction in math; or
  - Limited English proficiency; and
- If the child does not otherwise meet the eligibility criteria under IDEA and GDOE.

### Procedures for determining eligibility and educational need

- In interpreting evaluation data for the purpose of determining if a child is a child with a disability under IDEA, and the educational needs of the child, the GDOE:
  - Draws 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
  - Ensures that information obtained from all of these sources is documented and carefully considered.
- If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance IDEA.

## **Additional Procedures for Identifying Children with Specific Learning Disability**

34 CFR §300.307

### **Specific Learning Disabilities:**

The GDOE adopts the following procedures in the development of criteria for determining whether a child has a specific learning disability as defined by IDEA:

- Does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;
- Permits the use of a process based on the child's response to scientific, research-based intervention; and
- Permits the use of other alternative research-based procedures for determining whether a child has a specific learning disability.



**Additional Group Members:**

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**34 CFR §300.308**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in IDEA, is made by the child's parents and a team of qualified professionals, which include:

- The child's regular teacher; or
- If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- For a child of less than school age, an individual qualified by the GDOE to teach a child of his or her age; and
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

**Determining the existence of a specific learning disability:**

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**34 CFR §300.309**

The group described above may determine that a child has a specific learning disability, as defined in IDEA, if:

- The child does not achieve adequately for the child's age or to meet GDOE-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 GDOE-approved grade-level standards:
  - Oral expression.
  - Listening comprehension.
  - Written expression.
  - Basic reading skill.
  - Reading fluency skills.
  - Reading comprehension.
  - Mathematics calculation.
  - Mathematics problem solving.
- The child does not make sufficient progress to meet age or GDOE-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or
- The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, GDOE-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; and
- The group determines that its findings under this section are not primarily the result of:
  - A visual, hearing, or motor disability;
  - Intellectual disability;
  - Emotional disturbance;
  - Cultural factors;
  - Environmental or economic disadvantage; or
  - Limited English proficiency.

- 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 must consider, as part of the evaluation described above:
  - 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
  - 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.
- The GDOE must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes in Evaluation section, unless extended by mutual written agreement of the child's parents and a group of qualified professionals;
  - If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section; and
  - Whenever a child is referred for an evaluation.

## **Observation**

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### **34 CFR §300.310**

- The GDOE ensures 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.
- The group described in this section in determining whether a child has a specific learning disability, must 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.
  - In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

## **Specific documentation for the eligibility determination**

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### **34 CFR §300.311**

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

- Whether the child has a specific learning disability;
- The basis for making the determination, including an assurance that the determination has been made in accordance with IDEA;
- The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- The educationally relevant medical findings, if any;

- Whether:
  - The child does not achieve adequately for the child's age or to meet GDOE-approved grade-level standards; and
  - The child does not make sufficient progress to meet age or GDOE-approved grade-level standards ;or
  - The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, GDOE-approved grade level standards or intellectual development;
- The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - The instructional strategies used and the student-centered data collected; and
  - The documentation that the child's parents were notified about:
    - The GDOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - Strategies for increasing the child's rate of learning; and
    - The parents' right to request an evaluation.

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Members of the IEP Team must include:

- Agency (GDOE) Representative or designee that meets the following criteria:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general curriculum; and
  - Must have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

**NOTE:** A school administrator must not serve as the agency representative if the meeting concerns his/her child. Any individual designated as the agency representative must meet the above criteria without exception.

- Parents of the child

If the parent of the child is also the school administrator and representing the DOE as the GDOE representative in all special education processes, the administrator must request an administrator from another school to serve as the GDOE representative.

If the parent of the child is also the DSP for the case, the administrator must request for a DSP from the Division of Special Education or designate an alternate DSP.

- At least one general education teacher of the child (if the child is, or may be, participating in the regular education environment);
- At least one special educator of the child, or if appropriate, at least one special education provider of the child;
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team (except for the parent) described above;

- 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;
- If appropriate, the child with a disability.

Other members as appropriate: Whether additional members of an IEP Team should participate is a case-by-case determination by the GDOE. The above members are the only required team members for all students with a disability. Examples of possible additional members: counselor, nurse, etc.

See IEP Section of this Handbook for optional excusal procedures for IEP meetings.



## ELIGIBILITY DETERMINATION PROCEDURES

<b>Forms:</b>	Parent Meeting Notification Committee Member Notification Summary of Evaluation Parent Prior Written Notice: Eligibility Determination Student Observation (If LD is suspected) LD Report (If LD is suspected) Specific Learning Disability Form
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**Responsible Person:** Designated school person

### Eligibility Team Members:

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- Agency (GDOE) Representative or designee that meets the following criteria:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general curriculum; and
  - Is knowledgeable about the availability of resources of the public agency (i.e. GDOE). The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

The agency representative designated must be approved by the superintendent.

**NOTE:** A school administrator must not serve as the agency representative if the meeting concerns his/her child. Any individual designated as the agency representative must meet the above criteria without exception.

- Parent(s) of the child

If the parent of the child is also the school administrator and representing the DOE as the agency representative in all special education processes, the administrator must request an administrator from another school to serve as the agency representative.

If the parent of the child is also the DSP for the case, the administrator must request for a DSP from the Division of Special Education or designate an alternate DSP. If the parent of the child is also the DSP, the administrator must designate another DSP to carry out the DSP roles. At least one general education teacher of the child (if the child is, or may be, participating in the regular education environment);

- At least one special educator of the child, or if appropriate, at least one special education provider of the child;
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team (except for the parent) described above;
- 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;
- If appropriate, the child with a disability.
- If the child is suspected of a specific learning disability, the team must also include at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- If the child is of preschool age, the eligibility team shall include a teacher qualified to teach that age level.

- Other members as appropriate: Whether additional members of an IEP Team should participate is a case-by-case determination by the GDOE. The above members are the only required team members for all students with a disability. Examples of possible additional members: counselor, nurse, etc.

## **Eligibility Meeting for Initial Evaluations and Reevaluations**

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The purpose of the eligibility meeting for an initial evaluation is to determine if the child is a child with a disability and the educational needs of the child. In order to be a child with a disability:

- Determine whether the child has a particular category of disability; and
- Determine whether the child needs special education and related services

In the case of an eligibility determination at reevaluation:

- Whether the child continues to be a child with a disability in need of special education and related services and the educational needs of the child.

1. The Principal or designated school person chairs the meeting.
2. The chairperson introduces the members of the eligibility team.
3. Members of evaluation team, on the eligibility team, report on results of evaluation and how it relates to the child's involvement and progress in the general curriculum. Parent provides information related to child's strengths and educational concerns. Report must include information on educational history.
4. Designated school person completes Summary of Evaluation form and LD Report (if evaluated for a suspicion of a learning disability).
5. Committee reviews criteria for the suspected disability.
6. Committee determines whether the child meets the criteria for the specific disability or disabilities.
7. Committee determines whether the child is in need of special education and related services as a result of the disability.

**NOTE:** The committee MAY NOT determine a child to be a child with a disability if the determinant factor is lack of appropriate instruction in reading or lack of appropriate instruction in math or limited English proficiency. Children are not eligible if they need specialized instruction because of limited English proficiency or lack of appropriate instruction in reading or lack of appropriate instruction in math, but do not need such instruction because of a disability.

### **8. Eligibility Determination**

#### **Eligible for Special Education and Related Services:**

If the child is found to be ELIGIBLE (i.e. a child with a disability as defined by IDEA), the committee must proceed with an IEP meeting immediately or within 30 days. However, if the IEP meeting is to be conducted immediately after the eligibility meeting, the parents must have received notice of such a meeting. Document findings on eligibility on Parent Prior Written Notice form. Provide parent with the Notice. Go to Step #9.

#### **Ineligible for Special Education and Related Services:**

If the child is found to be INELIGIBLE, the responsibility for meeting the child's needs belongs to the general education program and not the special education program. However, resource room and/or consulting resource teachers may be consulted regarding strategies for meeting the needs of students with learning problems. Document findings on Parent Prior Written Notice form. Provide parent with the Notice. Terminate referral as a result of eligibility determination.

**Eligibility cannot be Determined:**

If the committee cannot reach agreement on eligibility and requires additional information, a decision is made as to what information is needed, who will be responsible for gathering the information, and a timeline for gathering the information. Eligibility is tabled until additional information is obtained. A new eligibility meeting date is scheduled at this time. The committee must *determine whether a child is a child with a disability within a reasonable period of time following the completion of the evaluation.*

**Lack of Agreement between Parents and the School System on Eligibility:**

If more information is not needed and the parents disagree with the proposed eligibility determination, the designated school person or Principal must inform the parent of his/her right to request mediation, file a complaint, and/or request a due process hearing to resolve the disagreement. The school must provide the parent with a reasonable amount of time to exercise his/her rights before implementation of the initial eligibility determination or continued eligibility. (A Prior Written Notice was already provided. See above.)

9. Conduct the IEP meeting if parents and committee members were notified that the IEP meeting would follow the eligibility meeting if child is found eligible for services and the required members are present. (GO TO SECTION ON IEP PROCEDURES).

If the IEP meeting is not scheduled to follow the eligibility meeting, then the IEP meeting is scheduled so that it occurs within 30 days of the determination that the child has a disability and is in need of special education and related services.

**Reevaluation:**

If this eligibility determination is a reevaluation, conduct an IEP following the eligibility determination if it is due at the same time and if the members were informed that the IEP meeting will follow and the required members are present. If the annual review is not due at this time, it is not necessary to conduct one at this time unless there is new evaluation data to be considered by the IEP Team. The eligibility determination is part of the reevaluation process and ends the reevaluation.

10. Designated school person prepares original and copies of all documents for Special Education Office file and parent. School copy is filed in child's cum folder after the eligibility meeting has been completed.
11. Designated school person arranges for a meeting with parents to discuss evaluation results and Parent Prior Written Notice form if parents did not attend the meeting.

**NOTE:****Evaluation Report**

Provide the parent with a copy of the evaluation report and the documentation of eligibility. It is highly recommended that a professional staff review the evaluation report with the parents prior to providing a copy to them.





## **CHILD WITH A DISABILITY**

34 CFR §300.8

**NOTE:** The child must meet criteria for one of the following disabilities and because of that disability needs special education and related services.

### **Autism**

A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the above criteria are satisfied.

### **Deaf-Blindness**

Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

### **Deafness**

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

### **Developmental Delay**

A condition in which a child up to age nine (9) is experiencing a delay below 25% in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and needs special education.

### **Emotional Disturbance**

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (c) Inappropriate types of behavior or feelings under normal circumstances.
- (d) A general pervasive mood of unhappiness or depression.
- (e) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (f) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

### **Hearing Impairment**

An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness.

### **Intellectual Disability (formerly Mental Retardation)**

Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

**Multiple Disability**

Concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

**Orthopedic Impairment**

A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

**Other Health Impairments**

Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette syndrome and sickle cell anemia; and that adversely affects a child's educational performance.

**Specific Learning Disability**

- (i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, to think, speak, read, write, spell, or to do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**Speech or Language Impairment**

A communication disorder, such as stuttering, impaired articulation, language impairment, or voice impairment that adversely affects a child's educational performance.

**Traumatic Brain Injury**

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

**Visual Impairments**

An impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

**Special Education Process  
Evaluation/Reevaluation Questions and Answers (Q&A)**

**PRIOR TO EVALUATION**

**1. Q: What must happen before an evaluation is conducted for my child?**

**A:** As the parent, the DOE must provide you with prior written notice, obtain your informed, written consent, and provide you with a copy of the procedural safeguards (parent rights).

**Source:**

IDEA Regulations: §300.300 Parental Consent, §300.503 Prior notice by the public agency; content of notice; §300.504 Procedural Safeguards Notice

Procedural Safeguards: P.1-Prior Written Notice; P.3 Parental Consent

**2. Q: As a parent, can I request for certain areas to be evaluated?**

**A:** Yes.

**Q: Does the DOE have to agree with my request?**

**A:** No.

**Q: What happens if the DOE does not agree with my request for certain areas to be evaluated?**

**A:** If the DOE refuses, you can request for mediation, file a state complaint, or file a due process complaint.

**Source:**

IDEA Regulations: §300.153, §300.508

Procedural Safeguards: P.16, State Complaint Procedures; P.18, Due Process Complaint Procedures

**3. Q: What happens if I refuse to give my consent?**

**A:** The DOE is not required to conduct the initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. This means the DOE can choose to do nothing about your refusal and your child will not be evaluated.

**Source:**

IDEA Regulations: §300.300 Parental Consent

Procedural Safeguards: P.3-Parental Consent

**TIMELINES**

**4. Q: What is the timeline for DOE to complete the initial evaluation?**

**A:** DOE has 60 calendar days from the time DOE receives your written consent to the completion of the evaluation. This means the number of days includes weekends and holidays.

**Source:**

IDEA Regulations: §300.301 Initial Evaluations

**Special Education Process  
Evaluation/Reevaluation Questions and Answers (Q&A)**

**INDEPENDENT EDUCATIONAL EVALUATIONS (IEE)**

5. **Q: Who pays for medical evaluations such as hearing and vision if it is needed as part of the evaluation to determine if my child is in need of special education and related services?**

**A:** The DOE is responsible for payment of all evaluations. Any evaluations, including medical evaluations, to determine if your child is a child with a disability, must be at no cost to you.

**Source:**

IDEA Regulations: §300.301 Initial Evaluations, §300.304 Evaluation Procedures

6. **Q: What happens if I disagree with the evaluation conducted by the DOE?**

**A:** You may obtain an “Independent Educational Evaluation (IEE)” conducted by an individual outside of the DOE if you disagree with the evaluation conducted by DOE. The individual conducting the IEE must meet the same qualifications as the DOE evaluators. The DOE must provide you, upon request for an IEE, information about where an IEE may be obtained, and the DOE’s criteria applicable for IEEs. As a parent, you do not need DOE’s permission to get an IEE unless you are requesting DOE to pay for it.

**Source:**

IDEA Regulations: §300.502-Independent Educational Evaluation (IEE)

Procedural Safeguards: P.6-Independent Educational Evaluation

7. **Q: Do I have to pay for the Independent Educational Evaluation (IEE)?**

**A:** If you request an IEE to be paid by DOE, the DOE must, without unnecessary delay, either:

- File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- Ensure that an IEE is provided at DOE’s expense, unless the DOE demonstrates in a hearing that the evaluation obtained by you did not meet DOE’s criteria.

If the DOE files a due process complaint notice to request a hearing and the final decision is that the DOE's evaluation is appropriate, you still have the right to an IEE, but not to be paid for by DOE.

**Source:**

IDEA Regulations: §300.502-Independent Educational Evaluation (IEE)

Procedural Safeguards: P.6-Independent Educational Evaluation

8. **Q: What happens if my child was already evaluated by an independent evaluator?**

**A:** The DOE must consider the evaluation results from the independent evaluator.

**Source:**

IDEA Regulations: §300.502 Independent Educational Evaluations

Procedural Safeguards: P. 7 Parent-initiated Evaluations

**Special Education Process**  
**Evaluation/Reevaluation Questions and Answers (Q&A)**

**9. Q: What is the difference between an initial evaluation and a reevaluation?**

**A:** An initial evaluation is the first evaluation that must be conducted within 60 days of receiving your parental consent to determine if your child is a child with a disability. The reevaluation is conducted to determine if your child continues to be a child with a disability, and the educational needs of the child. A “child with a disability” is defined as a child that is evaluated to meet the criteria of one of the IDEA disability categories and as a result of the disability needs special education and related services.

**Source:**

IDEA Regulations: §300.301 Initial Evaluations, §300.305 Additional Requirements for evaluations and reevaluations

**Special Education Process**  
**Eligibility Determination Questions & Answers (Q&A)**

**ELIGIBILITY DETERMINATION:**

**1. Q: How does my child become eligible to receive special education and related services?**

**A:** An initial evaluation must first be conducted with your informed written consent.

**Source:**

IDEA Regulations: §300.301 Initial Evaluations; §300.304 Evaluation Procedures

Procedural Safeguards: P.3-Parental Consent

**2. Q: How is eligibility determined?**

**A:**

- Eligibility is determined by a group of qualified professionals (administrator, general education teacher of your child, special education teacher, individual that can interpret instructional implications of evaluation results) and you, as the parent of the child. If your child is suspected of having a specific learning disability, the group must include:
  - For a child of less than school age, an individual qualified by the DOE to teach a child of his or her age; and
  - At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- Your child must meet the criteria for one of the disabilities under IDEA.
- The team must review 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.
- **For eligibility under the specific learning disability category:** In order to determine if your child has a specific learning disability, the team must determine that your child is not achieving adequately for your child's age or to meet DOE grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for your child's age or DOE-approved grade-level standards:
  - Oral expression
  - Listening expression
  - Written expression
  - Basic reading skill
  - Reading fluency skills
  - Reading comprehension
  - Mathematics calculation
  - Mathematics problem solving
- In addition, the team must determine if the child exhibits a pattern of strengths and weaknesses in performance, achievement or both, related to age, DOE-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.

**Special Education Process  
Eligibility Determination Questions & Answers (Q&A)**

**Source:**

IDEA Regulations: §300.306 Determination of eligibility; §300.307 Specific Learning Disabilities; §300.309 Determining the existence of a specific learning disability

3. **Q: As a parent, can I disagree with the decision made at the eligibility meeting?**

A: Yes.

4. **Q: What happens if I disagree with the eligibility determination?**

A: As a parent, you may request for mediation, file a state complaint, or file a Due Process Complaint. The child must remain in his/her current placement until the matter is resolved.

**Source:**

IDEA Regulations: §300.507-Filing a Due Process Complaint; §300.506-Mediation; §300.507-Filing a State Complaint.

Procedural Safeguards: P.18-Filing a Due Process Complaint; P.20- Mediation; P.16, State Complaint Procedures.



initial evaluation to determine whether the child is a child with a disability if—

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) 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.

(3)(i) 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 paragraph (a)(1) of this section, 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 subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.

(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) 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—

(i) 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

(ii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) *Parental consent for reevaluations.* (1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) 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 paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) 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.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) 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 (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in § 300.322(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

## Evaluations and Reevaluations

### § 300.301 Initial evaluations.

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) *Request for initial evaluation.*

Consistent with the consent requirements in § 300.300, 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.

(c) *Procedures for initial evaluation.* The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

(ii) To determine the educational needs of the child.

(d) *Exception.* The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section 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 under § 300.8.

(e) The exception in paragraph (d)(2) of this section 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.

(Authority: 20 U.S.C. 1414(a))

**§ 300.302 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)(1)(E))

**§ 300.303 Reevaluations.**

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) 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

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

**§ 300.304 Evaluation procedures.**

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) 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);

(2) 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

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

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

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

(ii) 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;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) 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;

(5) 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 § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, 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.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

**§ 300.305 Additional requirements for evaluations and reevaluations.**

(a) *Review of existing evaluation data.*

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) 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.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and

other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) *Requirements if additional data are not needed.* (1) 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 must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents 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.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) *Evaluations before change in eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must 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))

#### **§ 300.306 Determination of eligibility.**

(a) *General.* Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(c) *Procedures for determining eligibility and educational need.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) 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

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

#### **Additional Procedures for Identifying Children With Specific Learning Disabilities**

##### **§ 300.307 Specific learning disabilities.**

(a) *General.* A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of

this section in determining whether a child has a specific learning disability.

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

##### **§ 300.308 Additional group members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a)(1) The child's regular teacher; or

(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

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) 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))

##### **§ 300.309 Determining the existence of a specific learning disability.**

(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—

(1) 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:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2)(i) 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 paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) 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 §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2)

of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) 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 must consider, as part of the evaluation described in §§ 300.304 through 300.306—

(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

(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.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

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

#### § 300.310 Observation.

(a) The public agency must 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.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) 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

(2) Have at least one member of the group described in § 300.306(a)(1) 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, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must 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))

#### § 300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(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;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and

(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or  
(B) 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 § 300.309(a)(2)(ii);

(6) 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

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be

collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

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

#### Individualized Education Programs

##### § 300.320 Definition of individualized education program.

(a) *General.* As used in this part, 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 §§ 300.320 through 300.324, and that must include—

(1) A statement of the child's present levels of academic achievement and functional performance, including—

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

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

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) 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

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of—

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) 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;

(4) A statement of the special education and related services and



## INDIVIDUALIZED EDUCATION PROGRAM (IEP) POLICY

34 CFR §300.112

It is the policy of the GDOE that an IEP is developed, reviewed, and revised for each child with a disability in accordance with the IDEA requirements.

### Parental consent for services

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The GDOE ensures that it obtains informed consent from the parent of the child before the initial provision of special education and related services to the child. The GDOE must make reasonable efforts to obtain informed written consent from the parent for the initial provision of special education and related services to the child.

If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the GDOE:

- May not use the mediation and due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- 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 GDOE requests consent; and
- Is not required to convene an IEP Team meeting or develop an IEP as required by IDEA for the child for the special education and related services for which the GDOE requests such consent.

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the GDOE:

- May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- May not use the mediation and due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- 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 GDOE requests consent; and
- Is not required to convene an IEP Team meeting or develop an IEP as per IDEA for the child for the special education and related services for which the GDOE requests such consent.

### Definition of Individualized Education Program

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34 CFR §300.320

The Individualized Education Program (IEP) is a written statement for each child with disability that is developed, reviewed, and revised in an IEP Team meeting that includes:

- A statement of the child's present levels of academic achievement and functional performance, including:
  - how the child's disability affects the child's involvement and progress in the general education curriculum; and
  - for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

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

**NOTE:** For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

- A description of how the child's progress toward meeting the annual goals 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;
- 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 for the child:
  - To advance appropriately toward attaining the annual goals;
  - To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
  - To be educated and participate with other children with disabilities and nondisabled children in these activities;
- An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular education environment;
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on GDOE-wide assessments; and
  - If the IEP Team determines that the child must take an alternate assessment on the GDOE-wide assessments of student achievement, a statement of:
    - why the child cannot participate in the regular assessment; and
    - why the particular alternate assessment selected is appropriate for the child; and
    - The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications;
- Transition Services  
Beginning not later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:
  - Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
  - The transition services (including courses of study) needed to assist the child in reaching those goals.
- Transfer of Rights At the Age of Majority  
Beginning not later than one year before the child reaches the age of majority under Guam Law (i.e. 18 years old), the IEP must include a statement that the child has been informed of the child's rights under IDEA, if any, that will transfer to the child on reaching the age of majority.

**NOTE:** Nothing in this section shall be construed to require that additional information be included



in a child's IEP beyond what is explicitly required in this section of IDEA or the 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.

## **IEP Team**

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### **34 CFR §300.321**

The GDOE must ensure that the IEP Team for each child with a disability includes:

- Parent(s) of the child with a disability.
- Not less than one general education classroom teacher of such student (if the student is, or may be, participating in the general education environment);
- Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of such student;
- A representative of the GDOE, (Principal or designee) who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, knowledgeable about the general curriculum, and knowledgeable about the availability of resources of the GDOE.
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team, other than the parent, described above;
- At the discretion of the parent or the GDOE, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate; and
- Whenever appropriate the student with a disability. (See also transition requirements.)

### Transition Service Participants:

- The GDOE must invite a child with a disability to attend the child's IEP Team meeting if the 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.
- If the child does not attend the IEP Team meeting, the GDOE must take other steps to ensure the child's preferences and interests are considered.
- To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the IEP transition requirements, the GDOE must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

### Determination of Knowledge and Special Expertise

The determination of the knowledge or special expertise of any individual who has been invited at the discretion of the parent or GDOE, based on their knowledge or special expertise regarding the student must be made by the parent or GDOE who invited them.

### Designating a GDOE Representative:

GDOE may designate a GDOE member of the IEP Team to also serve as the GDOE Representative if they meet the criteria as defined above. Typically, the GDOE Representative is the school principal or assistant principal. The GDOE representative must be approved by the superintendent.

### IEP Team Attendance (Attendance not Necessary and Excusal)

A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the GDOE 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.



A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, even when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if:

- The parent, in writing, and the GDOE consent to the excusal; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

#### Initial IEP Team Meeting for a Child Under Part C

In the case of a child who was previously served under Part C of IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C Service Coordinator or other representative of the Part C system to assist with the smooth transition of services.

### **Parent Participation**

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34 CFR §300.322

GDOE responsibility:

The GDOE 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;

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- Scheduling the meeting at a mutually agreed on time and place.

#### Information Provided to the Parents

- The notice required under this section must:
  - Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - Inform the parents of the provisions relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child, and section 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.
  - For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must indicate:
    - That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with IDEA; and
    - That the GDOE will invite the student; and
    - Identify any other agency that will be invited to send a representative.

#### Other Methods to Ensure Parent Participation

If neither parent can attend an IEP Team meeting, the GDOE must use other methods to ensure parent participation. The parent of the child with a disability and the GDOE may agree to use alternative means of meeting participation, such as video conferences and conference calls.

#### Conducting an IEP Team Meeting Without a Parent in Attendance

A meeting may be conducted without a parent in attendance if the GDOE is unable to convince the parents that they should attend. In this case, the GDOE must keep a record of its attempts to arrange a mutually agreed time and place such as:

- Detailed records of telephone calls made or attempted and the results of the calls
- Copies of correspondence sent to the parents and any responses received; and

- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

#### Use of Interpreters or Other Action

The GDOE must take whatever action necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

#### Parent copy of child's IEP

The GDOE must give the parent a copy of the child's IEP at no cost to the parent.

### **When Must IEP's Be in Effect**

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#### 34 CFR §300.323

- At the beginning of each school year, the GDOE must have in effect an IEP for each child with a disability.
- IEP for children aged three through five: It shall be the policy of the GDOE to utilize the IEP for children aged three to five.

#### Initial IEPs/ Provision of Services

- A meeting to develop an IEP for the child must be conducted within **30 days** of determination of eligibility that the child is in need of special education and related services.
- As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

#### Accessibility of the Child's IEP to Teachers and Others

- The GDOE ensures that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.
- Each teacher and provider is informed of:
  - His or her responsibilities related to implementing the child's IEP; and
  - The specific accommodations, modification, and supports that must be provided for the child in accordance with the child's IEP.

#### IEP's for Children who transfer from one public school to another in the GDOE

If a child with a disability who had an IEP in effect in one public school transfers to a new public school within the GDOE and enrolls in the new public school within the same year, the new public school must provide FAPE to the child, including the same services described in the child's IEP. The new public school is responsible for ensuring timelines for review are followed.

#### IEP's for Children Who Transfer From Another State

If a child with a disability, who had an IEP that was in effect in a previous public agency in another state, transfers to the GDOE within the same school year, the GDOE in consultation with the parents, must provide the child with FAPE including services comparable to those described in the child's IEP from the previous public agency, until the GDOE:

- Conducts an evaluation, if determined to be necessary by GDOE;
- Develops, adopts, and implements a new IEP if appropriate, consistent with IDEA and GDOE requirements.

An interim IEP based on comparable services shall be developed and filed in school's records until such time that the student is determined eligible and a new IEP is developed based on GDOE's criteria for eligibility.

#### Transmittal of Records

To facilitate the transition for a child transferring from one GDOE school to another or from out of state, the new school in which the child enrolls must 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 (or school) from which the child was enrolled.

The previous public agency in which the child was enrolled must take responsible steps to promptly respond to the GDOE request.

### **Development, Review, and Revision of IEP Policy**

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34 CFR §300.324

#### Development of IEP:

- In developing each child's IEP, the IEP Team must consider:
  - The strengths of the child;
  - The concerns of the parents for enhancing the education of their child;
  - The results of the initial or most recent evaluation of the child; and
  - The academic, developmental, and functional needs of the child.

#### Consideration of special factors. The IEP Team must

- 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;
- 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;
- 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;
- 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
- Consider whether the child needs assistive technology devices and services.

#### Requirement with respect to regular education teacher

A regular education teacher of a child with a disability, as a member of the IEP Team, must, 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 IDEA.

### 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 GDOE may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- If changes are made to the child's IEP in accordance with this section, the GDOE must ensure that the child's IEP Team is informed of those changes.

### Consolidation of IEP Team meetings

- To the extent possible, the GDOE must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

### Amendments

- Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

### Review and revision of IEPs

The GDOE ensures that 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:
  - Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
  - The results of any reevaluation conducted;
  - Information about the child provided to, or by, the parents;
  - The child's anticipated needs; or
  - Other matters.
- Consideration of special factors:  
In conducting a review of the child's IEP, the IEP Team must consider the special factors in this section.
- Requirement with respect to regular education teacher:  
A regular education teacher of the child, as a member of the IEP Team, must participate in the review and revision of the IEP of the child.

### Failure to meet transition objectives:

Participating agency failure:

If a participating agency, other than the GDOE, fails to provide the transition services described in the IEP in accordance with IDEA, the GDOE must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

- Nothing in this part 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.

### 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

Guam Law and incarcerated in adult prisons:

- The requirements contained in section 612(a)(16) of the Act and Sec. 300.320(a)(6) (relating to participation of children with disabilities in general assessments).
- The requirements relating to transition planning and transition services do not apply with respect to the children whose eligibility under IDEA 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.

#### Modifications of IEP or placement

- The IEP Team of a child with a disability who is convicted as an adult under Guam Law and incarcerated in an adult prison may modify the child's IEP or placement if the GDOE has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- The requirements relating to IEPs, and relating to LRE, do not apply with respect to the modifications described in this section.

### **Private school placements by GDOE**

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34 CFR §300.325

Developing IEPs:

- Before the GDOE places a child with a disability in, or refers a child to, a private school or facility, the GDOE must initiate and conduct a meeting to develop an IEP for the child in accordance with IDEA.
- The GDOE must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the GDOE must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- 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 GDOE.
  - If the private school or facility initiates and conducts these meetings, the GDOE must ensure that the parents and a GDOE 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.

Responsibility:

Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the GDOE.

**Forms:** Parent and Committee Meeting Notice  
Prior Written Notice to Parents (complete  
AFTER the meeting)

**Responsible Person:** Designated school person

**Timeline:** Notify the parents early enough to ensure they will have an opportunity to attend.

## **Updates**

DSP submits an “Update” to make changes to the student’s information that do not require an IEP meeting.

Examples: name change, grade, school, services not delivered, DYA placement, etc.

Forms: 31A Data Entry Sheet and 45 Student Update Information and as appropriate, additional evidence of verification (i.e. withdrawal form, birth certificate, etc.)

Complete demographic information.

Indicate “Update” on Form 31A. Complete only the information that is being updated and circle or highlight. Attach completed Form 45 and additional evidence, if needed.



## INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETING PROCEDURES

### Required members:

- Agency (GDOE) Representative or designee that meets the following criteria:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general curriculum; and
  - Is knowledgeable about the availability of resources and able to commit resources of the public agency (i.e. GDOE). Since the GDOE is bound by the IEP that is developed at an IEP meeting, the representative must have the authority to commit GDOE resources and to ensure that whatever services are provided in the IEP will actually be provided.
  - Is able to attend entire IEP meeting.

If the parent of the child is also the agency representative for the school, the administrator of the school must request for an administrator from another school to serve as the agency representative.

If the school administrator designates another individual to serve as the agency representative, that individual must meet the above criteria and a copy of the designation attached to the IEP when submitted to the central office.

The school administrator must submit a list of designees who meet the above criteria to the superintendent for approval.

If the administrator is also the DSP, the administrator must request a DSP from another school.

- Parents of the child

If the child has reached the age of majority, all rights afforded to the parents transfer to the child. Parent notification of an IEP meeting must be given to the child. The student is now the IEP Team member. The parent must receive a copy of the IEP Meeting Notice, but does not have the right to attend. (Remember the GDOE must provide any notice required by IDEA, Part B, to both the individual and the parents after the transfer of rights.) If the school wishes to invite the parent as an individual with knowledge or expertise about the child, the child must be informed that the parent is being invited to the meeting.

When the child reaches the age of majority which is 18, the parent may be invited as someone who has knowledge or expertise about the child and invited by GDOE. They may have the right to attend. However, if the student does not wish for the parent to be in attendance, try to get the student to agree to the parent's attendance. If no agreement can be reached, then in the best interests of the student, it may be recommended that the parent not attend the meeting.

- At least one general education teacher of the child (if the child is, or may be, participating in the regular education environment)
- At least one special education teacher of the child, or if appropriate, at least one special education provider of such child
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above. (Except for the parent or student.);
- To the extent appropriate and with the consent of the parent, the agency who may be responsible for providing or paying for transition services if transition is to be discussed.



- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services person as appropriate, and
  - If appropriate, the child with a disability, and when transition is to be discussed.
1. Designated school person (DSP) notifies the parent early enough to ensure that they will have an opportunity to attend, and schedules the meeting at a mutually agreed on time and place. If the parent cannot attend in person, the school may offer alternative means of meeting participation. DSP sends home Parent and Committee Meeting Notice. The notice must inform parents that the determination of the knowledge or special expertise of any individual described above must be made by the party (parents or GDOE) who invited the individual to be a member of the IEP. Parents must be notified of who will be in attendance. If this is the initial IEP meeting for a child previously served under Part C, the notice must inform the parent that an invitation to the initial IEP meeting must be sent to the Part C coordinator or other representative at the parent's request.
  2. Designated school person sends out Parent and Committee Member Notice to all committee members.  
  
If the student is transitioning from Guam Early Intervention System to preschool, 5th to 6th, or 8th to 9th, the IEP meeting shall be held at the receiving school. The meeting shall include the required IEP team members from the sending school as well as a representative from the receiving school.  
  
Upon receipt of appropriate, timely notice, the related service providers and evaluators shall submit written reports to the DSP prior to the date of the meeting.
  3. Except for the Agency (GDOE) Representative or designee who may NEVER be excused from an IEP meeting or from participation in the review of the IEP, if done without a meeting, required members of the IEP Team may be excused if both the parent AND GDOE consent to the excusal in writing. There are two bases for the excusal:
    - A required member of the IEP Team may be excused from attendance at an IEP meeting, in whole or in part, if the parent and GDOE agree that their attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting; or
    - A required member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting DOES involve a modification to or discussion of the member's area of the curriculum or related services, if the parent and GDOE consent to the excusal in writing; AND the member submits, in writing to the parent and the IEP Team, input into the development of the IEP BEFORE the meeting.
    - It is the GDOE that determines the personnel to fill the roles of the required members of the IEP team. GDOE may not routinely or unilaterally excuse IEP Team members from attending meetings.

"We believe that the excusals from IEP Team meetings apply to the members of the IEP Team in paragraphs (a)(2) through (5) in Sec. 300.321, that is, to the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in Sec. 300.321(a) (4); and an individual who can interpret the instructional implications of evaluation results. We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the

parent or the public agency because such individuals are not required members of an IEP Team.” (OSEP discussion in the IDEA regulations.)

**NOTE:** GDOE may give the parents more rights than what is stated in IDEA. If GDOE does not wish to allow excusals, that would be allowable as it gives more rights to the parents.

The agreement/consent for either excusal must be in writing.

If both the parent and the GDOE do not agree to the excusal, the required member must attend the IEP meeting, even if their attendance is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.

**NOTE:** Simply sending the parent and committee notification home with child does not constitute adequate parent notice. Designated school person must ensure that the parent had actually received the notice.

4. Parent returns signed Parent and Committee Meeting Notice.  
Verify if the parent is in need of a sign language interpreter and/or an interpreter for the parent who speaks a language other than English The DSP shall make the request to the GDOE Division of Special Education office at least two weeks prior to the date of the meeting. Refer to SOP for obtaining an interpreter.
5. DSP contacts the parent at least 2 to 3 days before the meeting to remind them of the meeting and confirm attendance/participation at the meeting.
6. If the parent indicates on the form that he or she will not attend, the DSP calls parents to be sure there are no problems and to try to convince them to attend. If neither parent can attend, the school must use other methods to ensure parent participation, including individual or conference telephone calls. If parent does not return signed Parent and Committee Meeting Notice, the designated school person must document alternative methods of confirming that the parent received the notice and any records of attempts to arrange a mutually agreed on time and place. A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. However, documents of attempts must be recorded.

Such documentation may include but not be limited to the following:

- Detailed records of telephone calls made or attempted and the results of those calls;
  - Copies of correspondence sent to the parents and any responses received; and
  - Detailed records of visits made to the parent’s home or place of employment and the results of those visits.
7. DSP sends out or make phone call reminders to other IEP committee members of scheduled meeting.

**Forms:**

Functional Behavior Assessment (if appropriate)  
Present Levels of Academic Achievement and Functional Performance  
Progress Report  
Student Preferences and Interests (Age 14 and above)  
Behavior Management Plan (if appropriate)  
The IEP: Goals and Short-term Objectives  
Placement  
Transportation Request (if transportation is appropriate)

Services Not Delivered (if appropriate)  
Prior Written Notice  
DWA Accommodations Checklist (if appropriate)  
Transfer of Rights (if appropriate)

**Responsible Person:** Designated school person

**Timeline:** Initial IEP must be conducted within 30 days of determination that the child needs special education and related services. Review must be conducted periodically but not less than annually.

## Individualized Education Program Meeting

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1. Designated school person confirms whether parent has confirmed attendance.  
If parents indicated that they would not attend and the school has been unable to convince them to attend, proceed with meeting. The designated school person must maintain a record of all its attempts to arrange a mutually agreed on time and place such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.

A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. When scheduling the meeting, the school should pursue alternative means to conduct the meeting if the parent indicates a difficulty in being present at the meeting, but a desire to participate.

If this is an amendment to the annual IEP, the school may agree with the parent that an IEP meeting is not necessary for purposes of making changes to the IEP, and may instead develop a written document to amend or modify the child's IEP. The school must have the parent sign the written confirmation of this agreement. If changes are made to the IEP using this process, the GGDOE must ensure the child's IEP Team is informed of those changes. The IEP may be amended rather than redrafting the entire IEP. Upon request, the parent must be provided a revised copy of the IEP. Prior written notice must be attached to the amendment form.

2. The principal or approved designee chairs and facilitates the meeting. At the beginning of the school year, all school principals must provide the Superintendent of Education a list of their designees for IEP meetings in the event they are unable to attend. The principal makes the final approval of these designees. Upon approval, the DSP must attach a copy of the written designee for each meeting that the administrator is unable to attend.
3. Review the agenda for the meeting:
  - a. Introductions
  - b. Components of the IEP
4. Discuss and provide a statement regarding the components of the IEP using appropriate forms:  
Postsecondary Goals based on age-appropriate assessment at age 14 or younger if appropriate:
  - Include courses of study
  - For age 3 and above 16: Transition services

Postsecondary goals are required for employment and education/training and for independent living if appropriate. If this is an IEP that addresses transition, all IEP components should be

directly related to postsecondary goals.

#### **A. Present Levels of Academic Achievement and Functional Performance**

- 1) Present levels of academic achievement and functional performance: How is the child currently doing in school. "This information usually comes from the evaluation results such as classroom tests and assignments, individual tests given to decide eligibility for services or during reevaluation, and observations made by parents, teachers, related service providers, and other school staff." (OSEP IEP Guide.)

Review results of the initial evaluation or most recent evaluation including information from parents and how the child's disability affects the child's involvement and progress in the general curriculum. Complete Form 16A : Present Levels of Academic Achievement and Functional Performance using information provided by the committee members. Teachers must be prepared to provide information about the levels of academic achievement and functional performance of the child.

As appropriate, the results of the child's performance on any general island-wide assessment programs must be considered.

**NOTE:** "General curriculum" is the same curriculum as for nondisabled children.

Present levels of academic achievement and functional performance (PLAAFP) statements must include: date of assessment, description of assessment, and results of assessment. Statements must be written in measurable and observable terms. The PLAAFP must include the child's present levels of academic achievement and functional performance. There must be written document to support the statements of academic achievement and functional performance.

#### **Example of Academic Achievement:**

**Date of assessment:** 5/10/11

**Description of assessment:** Ekwall/Shanker Reading Inventory

**Results:** Oral reading fluency-Able to read 162 words per minute (wpm) using 3rd grade reading passage; Comprehension-Independent reading level at 3rd grade

#### **Example of Functional Performance:**

**Date of assessment:** Child observed on 5/11, 5/12, 5/13, 2011

**Description of assessment:** Observation with data collection

**Results:** Child is unable to transition from one classroom to another independently without prompts.

- 2) Identify child's unique needs, strengths and concerns of the parents, for enhancing the education of their child, including parent goals.

Beginning at 14 years, have the child complete the Student Preferences and Interest prior to the meeting.

- 3) For preschool children, as appropriate, determine how the disability affects the child's participation in appropriate activities. (Complete Form 16A for preschool-aged children).

- 4) **ANNUAL REVIEWS:**

(Also see previous IEP Section on standards for the amendment of the IEP without a meeting.) The IEP should also include the child's progress related to the annual goals. If the related service provider was not able to attend the meeting, the related service provider must

submit a written and signed report to the designated school person. The report must include present levels of performance related to the specific goals and other unique needs. (Complete Form 16B). The review must:

Determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address:

- (A) Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted;
- (C) Information about the child provided to, or by, the parents;
- (D) The child's anticipated needs; or
- (E) Other matters.

In conducting a review of the child's IEP, the IEP Team must consider the special factors. A general education teacher of the child, as a member of the IEP Team, must participate in the review and revision of the IEP of the child.

If a participating agency, other than the GDOE, fails to provide the transition services described in the IEP, the GDOE must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

## **B. Measurable Annual Goals**

- 1) Discuss and determine measurable annual goals and, benchmarks or short-term objectives, that are related to the following:
  - Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e. the same curriculum as for nondisabled children); for preschool children, as appropriate, to participate in appropriate activities; and
  - Meeting each of the child's other educational needs that result from the child's disability.
- 2) The annual goals and, benchmarks or short-term objectives must be related to the deficit areas and unique needs discussed in the present levels of academic achievement and functional performance. The IEP team is not required to include in an IEP, annual goals that relate to areas of the general curriculum, in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum. If the child only needs modifications or accommodations in order to progress in a particular area(s) of the general curriculum, there also does not need be an annual goal. However, the IEP must specify those accommodations/modifications (IDEA 1997 Regulations: Appendix A).

If this is a "transition IEP", then the annual goals must be related to the postsecondary goals. For students ages 16 and above or if student will turn 16 during the duration of the IEP, include annual goals related to the student's transition service needs.

If the child is learning the general curriculum, then goals are not needed unless the IEP is modifying the standards.

- 3) Using IEP Goals and Objectives form, write in measurable annual goals related to the PLAAFP. The IEP must include short-term objectives for students taking an alternate assessment.

**Example:** Annual Goal (8/02-8/03:) Mary will lose 40 pounds.

Short-term objectives are only required for students taking alternate assessments.

**Benchmarks or Short-term Objectives:**

By the end of 1st quarter, Mary will lose 10 lbs.

By the end of 2nd quarter, Mary will lose 20 lbs.

By the end of 3rd quarter, Mary will lose 30

By 8/03, Mary will lose 40 lbs.

Complete the description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided.

The IEP team must reach consensus on the annual goals and benchmarks or short-term objectives when appropriate. It is allowable for the school team to meet to discuss their proposal with out the parents. However, if the parent does not agree with the GDOE's proposal, the school must provide the parents with prior written notice of the school's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. This offer of FAPE from the school, MUST BE completed prior to determination of placement.

Prior written notice must indicate any and all refusals of service (s) requested by parent and/or discussed as part of the IEP meeting.

- i) Goals and benchmarks or short-term objectives are not lesson plan objectives.
- ii) Goals and benchmarks or short-term objectives may be drafted prior to the meeting. If the school is going to provide parents with a draft, it should include the PLAAFP and annual goals and short-term objectives when appropriate (i.e. for students taking alternate assessment). However, the parent must be provided the opportunity to review them, participate with the IEP Team in a meaningful manner in the decision-making process at the meeting, including providing input prior to reaching consensus and completion of the IEP.

If a related service is being provided, annual goals are not required unless the related service is the special education. The related services must relate to the special education.

**Example:** If speech and language therapy is being provided, there should be an annual goal for communication or the speech and language may be related to a reading goal.

**C. Special Education and Related Services, Supplementary aids and Services, Modifications and Supports**

- 1) Discuss, determine, and document needed special education.
  - **Special education** is defined as specially designed instruction to meet the unique needs of a student. Specially designed means adapting content, methodology, or delivery of instruction.
  - **Example 1:** Individualized, intensive reading instruction, 5x/wk, 50 min/day. Individualized instruction does not mean one-to-one instruction. Individualized means providing instruction to meet the unique needs of a student.
  - **Example 2:** Provision of a sign-language interpreter for a student who is deaf.
- 2) Discuss, determine, and document needed related services.
  - The IEP team must identify the related services that are required to assist a child with a disability to benefit from the special education (i.e. the specially-designed instruction).



- The related services must be required in order to assist the child in achieving the annual goals and the benchmarks or short-term objectives when appropriate (i.e. for students taking alternate assessments).
- Separate annual goals and benchmarks or short-term objectives are not required for the related services. The related services should be supporting the achievement of the goals and objectives.

**Example 1:** To increase Mary's communication of needs and wants by 50%.

**Related service needed:** speech therapy

**Example 2:** To increase Joseph's mobility from one class period to another by 100%

**Related service needed:** Mobility training that may be provided by OT/O&M Specialist

- The related service provider, regardless of attendance at the IEP meeting, must provide a written recommendation of the frequency, location, and duration of services

**Example:** Speech therapy: Frequency-2x/wk, 30 min. each session, location-speech therapy room, until January 20, 2013.

- A separate annual goal and benchmarks or short-term objectives are not necessary for transportation if the transportation is required to access the special education and/or a related service. However, if an annual goal and benchmarks or short-term objective include the transportation, it should be noted. Example: Behavior goal related to behavior in school and to and from school in the transportation provided.

3) Discuss, determine and document supplementary aids and services.

- Supplementary aids and services are aids, services, and other supports, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate

4) Discuss, determine and document **program modifications** and **supports** for school personnel:

The modifications and supports determined by the IEP team must be required in order for the child:

- To advance appropriately toward attaining the annual goals; to be involved and progress in the General curriculum; to participate in extracurricular and other nonacademic activities; and, to be educated and participate with other children with or without disabilities in the general education classroom, extracurricular, and other nonacademic activities.

**Example:** Child has a visual-motor problem and has an annual goal addressing this need . Examples of appropriate modifications: outline of notes on board for student to fill in, copy of notes from peer (use of carbon paper), and ability to respond to answer questions on the same sheet of paper.

**D. The Start Date, Anticipated frequency, Location, and Duration of those services and modifications**

Complete sections for the projected dates for the beginning of the special education and related services and supplementary aids and service program modifications or supports for school personnel that will be provided for the child and the anticipated frequency, location, and duration of those services and notifications and the responsible person.

For each service and modification to be provided, identify the start date, anticipated frequency, location, and duration of the services and modifications. “The amount of services to be provided must be stated in the IEP, so that the level of the agency’s commitment of resources will be clear to parents and other IEP team members. ... The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.” (IDEA 1997 regulations, Appendix A)

**Example:** Speech therapy – Start date: 10/20/03, Frequency: 2x/week for 30 45 minutes per session for 9 weeks, Location: General education classroom, ongoing until the next IEP review

#### **E. Explanation of Nonparticipation**

The IEP must include a statement of the explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities.

For any nonparticipation, the IEP must include justification for the classes and/or activities that the child will not be participating as their peers without disabilities.

**Example:** Child is receiving reading in the resource room. Child needs direct instruction in a remedial reading program.

#### **F. Participation in Statewide assessment:**

- 1) The IEP must include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment
- 2) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on the statewide assessment. If the IEP determines that the child will not participate in all or parts of the statewide assessment, the committee must complete the section on the IEP form responding to the following:
  - (a) indicating why that assessment is not appropriate for the child, and
  - (b) how the child will be assessed and why the alternate assessment is appropriate for the child.

The IEP may determine that the child may take parts of the statewide assessment.

**Example:** Child will take an alternate assessment for reading and will take the Social Studies and Science SAT-10 with modifications (i.e. test will be read to them).

For those students where an Alternate Assessment is being considered, complete Alternate Assessment Determination Form.

#### **G. Transition**

Transition Service Needs Beginning at Age 14 (or younger if determined appropriate):

The post-secondary goals for age 14 must be based on age-appropriate assessments. Age-appropriate assessments must be conducted to address education/training and employment, and as appropriate, independent living.

Identify the transition services that will reasonably enable the student to meet his or her post-secondary goals. Use Transition Plan Form to indicate the transition needs in the areas of instruction, related services, community experiences, or development of employment and



other post-school adult living objectives, and if appropriate, acquisition of daily living skills, and provision of a functional vocational evaluation. Indicate the agency (ies) responsible, provider, and payer.

In the appropriate section of the IEP or on an attached sheet, the IEP team must write a statement of the transition service needs of the student that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program). The statement should include the courses the student will be enrolled in during the duration of the IEP. This should be updated annually and based on the student's preferences and interests. The courses of study shall include all courses for the four years of high school. The courses of study should be directly related to the post-secondary goals and that will reasonably enable the student to meet his or her post-secondary goals.

**Example:**

9th grade	10th grade	11th grade	12th grade
English 9	English 10	English 11	English 12
Guam History	World Geography	US History	Government
Physical Science	Biology	General Science	CBE
Construction I	Construction II	Construction III	CBE
Construction I	Construction II	Construction III	CBE
PE	Chamorro	Consumer Math	CBE

**Needed Transition Services Beginning Not Later than the First IEP in Effect at Age 16:**

In the appropriate section of the IEP form, the IEP team must indicate the appropriate measurable postsecondary goals for the child based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The transition services needed to assist the child in reaching those goals, including courses of study, must be included in the IEP. This should include activities based on the individual student's needs, taking into account the student's preferences and interests, including those determined through a functional vocational evaluation, and includes:

- Instruction
- Related services
- Community Experiences
- Development of employment and other post-school adult living objectives
- Acquisition of daily living skills, when appropriate

**Example:**

Instruction: Vocational class in carpentry

Related Services: Mobility training in the use of the Guam Mass Transit

**H. Notification of Transfer of Rights**

- 1) The IEP must indicate, at least one year before the age of majority (i.e. 18 on Guam) and every IEP after reaching the age of majority that the child and parent has been informed of the rights under the IDEA, if any, that will transfer to the child on reaching the age of majority. Designated school person completes and provides child and parents a copy of Notification of Transfer of Rights.
- 2) All rights under Part B of IDEA that belonged to the parent are transferred to the child unless the child has been declared incompetent by a court of law.

### **I. Statement of how parents will be regularly informed of Progress**

- 1) On the appropriate section of the IEP, indicate how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided. (Such as through the use of mid-quarter, quarterly or other periodic reports, concurrent with the issuance of report cards.)
- 2) Each resource room teacher, general education teacher, related service personnel, and other service providers must provide parents, at least on a quarterly basis, a progress report on the child's annual goals.

The DSP shall ensure that parents are provided with progress report(s). A copy is filed in school records as well as with the Division of Special Education.

- 3) If the IEP Team determines a more frequent reporting schedule is appropriate to ensure FAPE, the service providers (special and general educators, related service personnel, and other providers) must comply with the schedule as per the IEP.
- 4) If the progress reports indicate that the student will not progress towards the annual goals by the anniversary of the IEP, the IEP team must consider the need to conduct a review of the IEP and revise as appropriate.

### **J. Consideration of Special Factors**

- 1) In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior.

In the case of a child whose misconduct results in removal from the child's current placement for more than 10 school days or placement in an interim alternative educational setting (irrespective of whether the behavior is a manifestation of the child's disability), the child must receive, as appropriate, a functional behavior assessment, behavioral interventions services and modifications that are designed to address the behavior violation so that it does not recur.

Document on appropriate forms.

- 2) In the case of a child with limited English proficiency, the IEP team must consider the language needs of the child as those needs relate to the child's IEP.
- 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.
- 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 communication with peers and professional persons 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
- 5) Consider whether the child requires assistive technology devices and services. An assistive technology device does not include a medical device that is surgically implanted, or the replacement of the device.

Document on appropriate forms.

If in considering the special factors described above, the IEP determines that a child needs a particular device or service (including an intervention, accommodation, or other program

modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

The IEP Team must consider and determine whether a waiver of any local requirements (Chamorro, P.E.) should be made in order to ensure the provision of a free appropriate public education (FAPE). The IEP team must also provide written justification if a decision is made to replace CBE with academics.

#### **K. Extended School Year**

- 1) The IEP committee must consider all children with disabilities for extended school year (ESY) services.
- 2) The committee must consider the factors below when making decisions about the need for ESY.
  - Regression and recoupment
  - Degree of Progress
  - Emerging Skills / Breakthrough opportunities
  - Interfering Behavior
  - Nature / Severity of Disability
  - Special Circumstances
- 3) Discuss and review current data demonstrating that the child has demonstrated regression without extended school year programming or there is a probability of regression and limited recoupment if such programming is not provided. (Predictive data may be relevant to the determination of whether a child needs ESY services.)
  - Is the child in need of services beyond the school year in order to maintain the skills taught during the regular school year?
  - Is the child likely to lose critical skills or fail to recover these skills within a reasonable time?
  - What is the degree of progress toward IEP goals and objectives (if applicable)?
  - Will a lengthy summer break cause significant problems for the child who is learning a key skill?
  - Does the child's behavior interfere with his/her ability to benefit from special education?
  - Does the nature and/or severity of the child's disability require attention beyond the regular school year?
  - Are there special circumstances that interfere with the child's ability to benefit from special education?
- 4) Determine what current annual goals and benchmarks or short-term objectives need to be implemented during the period beyond the school year in order to maintain or prevent the probability of regression or the continuation of the skills as described above in factors for consideration.

5. Upon complete discussion and determination of the IEP components, the committee shall proceed with determining placement in the least restrictive environment. Please note that placement must not be discussed and determined until the IEP components have been completed. Refer to section on ***Placement in the Least Restrictive Environment*** for placement procedures.
6. Upon completion of the IEP and determination of placement, the designated school person shall complete the Prior Written Notice form and accompanied by the IEP no later than five (5) business days after the IEP/Placement meeting. The implementation of any changes to the IEP must not occur prior to documented evidence that the parent has received the ***Prior Written Notice form*** and the IEP.
7. As with all other special education and related services, ESY is not compulsory and participation in the program is discretionary with the parents, who may choose to refuse the ESY service. If the choice of the parent is to refuse the ESY services, the designated school person must make sure the parent understands that it is the determination of the IEP Team that the child requires the ESY for the provision of FAPE to the child and document the refusal in writing and file in the child's school and special education files.
8. If reevaluation is going to occur during the school year, the IEP Team must review existing data and determine what additional data is necessary to determine continued eligibility. GO to EVALUATION SECTION!

**For initial IEPS:** Informed parental consent is required prior to the initial provision of special education and related services. If parents do not give or revoke their consent after initial consent is given, the DOE may not pursue consent.



# **Special Education Process**

## **Individualized Education Program (IEP) Questions and Answers (Q&A)**

### **PRE- IEP MEETING ISSUES**

**1. Q: Who can I call to help me during the IEP meeting?**

**A:** Refer to listing below:

- Parent Services: Laura Taisipic, Parent Services Coordinator – 300-1322
- Guam Legal Services – 477-9811
- Parent Mentors

**2. Q: How often should IEP meetings be conducted?**

**A:** Every IEP must be reviewed at least annually. However, a parent may request for an IEP prior to the review date. If an IEP is being requested prior to the review date and you are not considering any changes, it is recommended that a parent conference with the teachers be scheduled instead of an IEP.

**Source:**

IDEA Regulations: §300.324 Development, Review, and Revision of IEP

**3. Q: May I ask for an IEP Review meeting at any time?**

**A:** Yes, but the DOE is only required to review the IEP at least annually. If DOE refuses, it must provide you with prior written notice which includes the basis for the decision.

**Source:**

IDEA Regulations: §300.324 Development, Review, and Revision of IEP, §300.503- Prior Notice by the public agency;

Procedural Safeguards: P.1 Prior Written Notice

**4. Q: When and where should the meeting be scheduled?**

**A:** The schedule and location for the IEP meeting should be mutually agreed upon by the school and you as the parent. The notice for the meeting must be given to you early enough to ensure that you have the opportunity to participate.

**Source:**

IDEA Regulations: §300.322 Parent Participation

**5. Q: Can the school conduct the IEP meeting without my attendance?**

**A:** Yes, but they must document that they made every effort to convince you to attend the meeting. This may include records of phone calls made or attempted and the results of the calls; copies of letters sent to you and any responses received; and detailed records of visits made to your home or place of work and the results of those visits. The school may also offer you other methods to participate such as individual or conference telephone calls or video calls.

**Source:**

IDEA Regulations: §300.322 Parent Participation, §300.328 Alternative Means of meeting participation

**Special Education Process**  
**Individualized Education Program (IEP) Questions and Answers**  
**(Q&A)**

6. **Q: Can I request for the information that will be discussed at the IEP prior to the meeting such as the present levels of academic achievement and functional performance (PLAAFP) and/or the annual goals?**

A: Yes. However, it is not a requirement of IDEA. DOE is encouraged to provide you with the information in advance so that you will be able to participate on the same level as the school personnel.

7. **Q: Am I allowed to bring in a list of recommended needs and services for the IEP?**

A: As a parent, you are a critical member of the IEP Team and the DOE is required to obtain your input. This includes your concerns for improving the education of your child.

**Source:**

IDEA Regulations: §300.324 Development, Review, and Revision of IEP

8. **Q: Is the school required to inform the parents of any individual that will be attending the IEP?**

A: Yes. However, if DOE is inviting a representative that is likely to be responsible for providing or paying for transition services, it must obtain your parental consent prior to inviting the agency.

**Source:**

IDEA Regulations: §300.322 Parent Participation

9. **Q: Can I have the 1:1 aide present at the IEP meeting?**

A: Yes – make the request with the school. However, the teacher should be the primary individual providing information on the child's progress.

**Source:**

IDEA Regulations: §300.322 Parent Participation

10. **Q: Am I required to inform the school if I am bringing someone with me to the meeting?**

A: No. However, the DOE must inform you that you may bring any individual that has knowledge or expertise about your child. As the parent, you determine if the individual you are bringing to the meeting has the knowledge or expertise about your child.

**Source:**

IDEA Regulations: §300.322 Parent Participation

11. **Q: If English is not my primary language or I am deaf or hard of hearing, do I have the right to an interpreter?**

A: Yes. It is recommended that you inform the school of your need for an interpreter when they contact you about the meeting. It is the DOE's responsibility to do whatever is necessary to ensure that you understand the IEP meeting including arranging for an interpreter if you are deaf or if your primary language is other than English.

**Source:**

IDEA Regulations: §300.322 Parent Participation

## Special Education Process

### Individualized Education Program (IEP) Questions and Answers (Q&A)

**12. Q: Am I allowed to tape record the meeting?**

A: According to the USDOE Office of Special Education (OSEP), *“Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official.”* As a parent, you need to inform the school and make the request. The school will inform you if it allowable to record the meeting.

### **CONTENT OF THE IEP**

**13. Q: What is the PLAAFP and how should it be written?**

A: The PLAAFP refers to your child’s present levels of academic achievement and functional performance (PLAAFP). Examples of academic achievement areas are reading, math, and language arts (writing). Examples of functional performance areas are communication, mobility, self-help, etc. It should also include a statement of how your child is performing in the identified areas and how the disability affects involvement and progress in the general education curriculum (i.e. the same curriculum as for students without disabilities). The PLAAFP statements must be measurable (you can count it) and observable (you can see it).

**14. Q: Should there be a PLAAFP for every goal?**

A: Yes. Every goal should have a present level of performance statement.

**15. Q: How do we determine which goals should be included in the IEP?**

A: There should be academic and functional goals that are designed to meet your child’s needs that result from your child’s disability in order for your child to be involved in and make progress in the general education curriculum. In other words, it should be goals that are needed as a result of your child’s disability. Goals are not needed in a specific content area if the child is learning the general curriculum. Related service goals are not needed but should be identified to support the special education goals.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**16. Q: Who decides whether my child should receive an assistive technology?**

A: The IEP Team. The school is required to consider whether the child needs assistive technology devices and services. The IEP Team determines the specific area of need such as writing, reading, communication, etc. and the Division of Special Education conducts an assessment for the type of technology.

**Source:**

IDEA Regulations: §300.324 Development, Review, and Revision of IEP –  
Consideration of Special Factors



**Special Education Process**  
**Individualized Education Program (IEP) Questions and Answers**  
**(Q&A)**

**17. Q: What is an assistive technology device?**

**A:** *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**Source:**

IDEA Regulations: §300.5

**18. Q: What is an assistive technology service?**

**A:** *Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing
- (d) assistive technology devices;
- (e) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (f) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (g) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

**Source:**

IDEA Regulations: §300.6

**19. Q: How is the need for an assistive technology device and/or service determined?**

**A:** Based on the child's performance, the IEP must decide if the child needs an assistive technology device and/or service to help the child increase, maintain, or improve his/her functional capabilities. This could be related to reading, writing, communication, etc.

**Source:**

IDEA Regulations: 300.324 Development, Review, and Revision of IEP - Consideration of Special Factors

**Special Education Process**  
**Individualized Education Program (IEP) Questions and Answers**  
**(Q&A)**

**20. Q: Does a 1:1 aide fall under related services or AT?**

**A:** Related services. If it determined there is a need for a 1:1 aide, the IEP should also include a plan to decrease and/or eliminate the need for the aide. There should be annual goals that indicate the need for the 1:1 aide to achieve the goals.

**Source:**

IDEA Regulations: §300.34 Related Services

**21. Q: Do I have the right to select a specific individual for my child's 1:1 aide?**

**A:** No. However, there is no regulation or statute that prevents you from making a request. The school will make the final decision.

**22. Q: Can I request for training for school personnel?**

**A:** Yes. The IEP must address the supports needed for school personnel.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**23. Q: How often should I receive a progress report on my child's annual IEP goals?**

**A:** At least quarterly or as often as all other students receive a progress report.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**24. Q: What are related services?**

**A:** Any services that are provided to help your child with a disability to benefit from the special education (specially-designed instruction). Examples: speech-language, transportation, occupational therapy, physical therapy, parent training and counseling, etc. It is not limited to only those listed in the regulations.

**Source:**

IDEA Regulations: §300.34 Related Services

**25. Q: May I request that a service be included in the IEP?**

**A:** Yes.

**Q: Does DOE have to comply with my request?**

**A:** No. However, they must provide you with prior written notice if they are refusing the service you have requested.

**Source:**

IDEA Regulations: §300.503-Prior Notice by the public agency;

## **Special Education Process Individualized Education Program (IEP) Questions and Answers (Q&A)**

### **TRANSITION**

**26. Q: What are transition services?**

**A:** Transition services must include postsecondary goals based on age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. It must also include transition services (including courses of study) needed to assist your child in reaching the postsecondary goals.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**27. Q: When should the IEP address transition services?**

**A:** IDEA requires that transition services begin no later than the first IEP to be in effect when the child turns 16, or younger if determined appropriately by the IEP Team, and updated annually.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**28. Q: What are some of the requirements prior to discussion of transition from high school to post high school life?**

**A:** The student must be invited to the meeting. Agencies that may be responsible for transition services must be invited with your consent or your child if he/she is 18 and above.

**Source:**

IDEA Regulations: §300.321 Development, review, and revision of IEP

**29. Q: What should be included in the IEP related to transition?**

**A:**

- Post secondary measurable goals based on age-appropriate assessments in:
  - Employment: Example: Will get a job as a mechanic
  - Education: Will attend the Guam Community College and earn an AA in automotive body
  - Independent living (if appropriate): Will obtain a driver's license and drive to and from work
- Transition services needed to assist the child in reaching the goals
- Annual goals aligned with the post-secondary goals
- Courses of study that is related to the post secondary measurable goals
  - Example: If the child is interested in being a carpenter, the child may be enrolled in carpentry classes as part of his courses of study.
- Prior to graduation, the school must provide the student with a summary of performance.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

**30. Q: What happens when my child turns 18?**

**A:** Your rights transfer to your child when he/she reaches the age of 18 (age of

## **Special Education Process**

### **Individualized Education Program (IEP) Questions and Answers (Q&A)**

majority on Guam). If your child is determined not to be able to make his/her own decisions, the DOE's procedures are to appoint you as the surrogate parent. You and your child must be informed of this transfer of rights at least one year before he/she reaches 18.

The child must be informed when the school invites the parent even when the rights have been transferred. The DOE has the right to invite anyone who has knowledge or expertise about the child. If your child disagrees, the DOE must work with you and your child to determine what is in the best interest of your child.

**Source:**

IDEA Regulations: §300.320 Definition of Individualized Education Program (IEP)

### **OTHER**

**31. Q: Am I required to provide consent for every IEP?**

**A:** You are only required to provide consent for initial provision of special education and related services. However, you may revoke (cancel) your consent at any time. The signature on an IEP is a signature documenting attendance at the meeting.

**Source:**

IDEA Regulations: §300.300(b) Parental Consent

Procedural Safeguards: P.4 Parental Consent

**32. Q: What happens if the school does not agree with my recommendations?**

**A:** If the school disagrees with your recommendations for services to be included in the IEP, it must provide you with prior written notice and inform you of your option to request for mediation, file a State Complaint, or file a due process hearing.

**Source:**

IDEA Regulations: §300.503-Prior Notice by the public agency; §300.507-Filing a Due Process Complaint; §300.506-Mediation;

Procedural Safeguards: P.1 Prior Written Notice; P.18-Filing a Due Process Complaint; P.20-Mediation; P.16 Filing a State Complaint

**33. Q: What happens if I do not agree with the IEP proposed by the school?**

**A:** As the parent, you must be provided with prior written notice and informed of your right to request for mediation, file a State Complaint, or file a due process complaint. As the parent, you will be informed of when the IEP will be implemented. If you do not submit a request for mediation, or file a State Complaint, or file a due process complaint within the timeframe given, the IEP will be implemented as developed. The school is responsible for implementing the IEP as soon as possible.

**Source:**

IDEA Regulations: §300.507-Filing a Due Process Complaint; §300.153- filing a state complaint; §300.506-Mediation;

**Special Education Process**  
**Individualized Education Program (IEP) Questions and Answers**  
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**34. Q: Is the school required to provide me with a copy of the IEP?**

**A:** Yes. The copy must be at no cost to the parent.

**Source:**

IDEA Regulations: §300.322 Parent Participation

**35. Q: Who is responsible for ensuring that the IEP is implemented?**

**A:** The principal of the school. However, the IEP PC or CRT is designated as the liaison between the school and the DOE Division of Special Education.

**36. Q: What happens if my child's 1:1 aide does not show up?**

**A:** It is the school's responsibility to provide an alternate aide. The child must continue to receive the services even in the absence of the regular 1:1 aide.

**37. Q: Can the school call me to pick up my child or have my child sit in an office when the aide is absent?**

**A:** No. Your child must be provided with another individual to meet the IEP requirement of the provision of a one to one aide or notify you that services will not be delivered if the lack of provision of a 1:1 is for an extended period of time.

**38. Q: What is the purpose of the 1:1 aide?**

**A:** The aide is to support the provision of special education (i.e. specially-designed instruction). There must be annual goals that are supported by the provision of the aide. When the provision of a 1:1 aide is being considered, the IEP Team must determine if this the least restrictive support for the child. It is recommended that the IEP include a plan to decrease and/or eliminate the need for the aide.

**39. Q: What happens if my child isn't receiving the related services as stated in the IEP?**

**A:** The DOE must provide you with prior written notice that the service is not being delivered and efforts must be made to provide the services in a timely manner.

**Source:**

IDEA Regulations: §300.503 Prior Notice by the Public Agency; content of notice

**40. Q: What should I do if I am asked to sign a "blank" IEP?**

**A:** Do not sign a blank IEP. The IEP should be completed at the meeting. It is recommended that you don't leave the IEP meeting without a copy.

of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) 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 must consider, as part of the evaluation described in §§ 300.304 through 300.306—

(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

(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.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

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

#### **§ 300.310 Observation.**

(a) The public agency must 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.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) 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

(2) Have at least one member of the group described in § 300.306(a)(1) 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, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must 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))

#### **§ 300.311 Specific documentation for the eligibility determination.**

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(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;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and

(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or  
(B) 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 § 300.309(a)(2)(ii);

(6) 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

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be

collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

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

#### **Individualized Education Programs**

##### **§ 300.320 Definition of individualized education program.**

(a) *General.* As used in this part, 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 §§ 300.320 through 300.324, and that must include—

(1) A statement of the child's present levels of academic achievement and functional performance, including—

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

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

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) 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

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of—

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) 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;

(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—

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has

been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

(d) *Construction.* Nothing in this section shall be construed to require—

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The 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.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

#### § 300.321 IEP Team.

(a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes—

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(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; and

(7) Whenever appropriate, the child with a disability.

(b) *Transition services participants.*

(1) In accordance with paragraph (a)(7) of this section, the public agency must 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 under § 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) *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 paragraph (a)(4) of this section are satisfied.

(e) *IEP Team attendance.* (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section 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.

(2) A member of the IEP Team described in paragraph (e)(1) of this section 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—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) *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 must, 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))

#### § 300.322 Parent participation.

(a) *Public agency responsibility—general.* Each public agency must 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—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.*

(1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (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).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) *Other methods to ensure parent participation.* If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

(d) *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 must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) *Use of interpreters or other action, as appropriate.* The public agency must

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.

(f) *Parent copy of child's IEP.* The public agency must 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))

#### **§ 300.323 When IEPs must be in effect.**

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(b) *IEP or IFSP for children aged three through five.* (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) *Initial IEPs; provision of services.*

Each public agency must ensure that—

(1) 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

(2) 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.

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that—

(1) 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

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) *IEPs for children who transfer public agencies in the same State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.

(f) *IEPs for children who transfer from another State.* 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 a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

(g) *Transmittal of records.* To facilitate the transition for a child described in paragraphs (e) and (f) of this section—

(1) The new public agency in which the child enrolls must 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



(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)–(C))

#### Development of IEP

#### § 300.324 Development, review, and revision of IEP.

(a) *Development of IEP*—(1) *General*. In developing each child's IEP, the IEP Team must consider—

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

(2) *Consideration of special factors*. The IEP Team must—

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) Consider whether the child needs assistive technology devices and services.

(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, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).

(4) *Agreement*. (i) 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.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) *Consolidation of IEP Team meetings*. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) *Amendments*. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) *Review and revision of IEPs*—(1) *General*. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) *Consideration of special factors*. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) *Requirement with respect to regular education teacher*. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) *Failure to meet transition objectives*—(1) *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 § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) *Construction*. Nothing in this part 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.

(d) *Children with disabilities in adult prisons*—(1) *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:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (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.

(2) *Modifications of IEP or placement*.

(i) Subject to paragraph (d)(2)(ii) of this section, 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.

(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) 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))

#### § 300.325 Private school placements by public agencies.

(a) *Developing IEPs*. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.

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

(b) *Reviewing and revising IEPs.* (1) 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.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

#### **§ 300.326 [Reserved]**

#### **§ 300.327 Educational placements.**

Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(Authority: 20 U.S.C. 1414(e))

#### **§ 300.328 Alternative means of meeting participation.**

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as 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))

#### **Subpart E—Procedural Safeguards Due Process Procedures for Parents and Children**

#### **§ 300.500 Responsibility of SEA and other public agencies.**

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.

(Authority: 20 U.S.C. 1415(a))

#### **§ 300.501 Opportunity to examine records; parent participation in meetings.**

(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) *Parent participation in meetings.*

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) *Parent involvement in placement decisions.* (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

(Authority: 20 U.S.C. 1414(e), 1415(b)(1))

#### **§ 300.502 Independent educational evaluation.**

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) *Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at



## **LEAST RESTRICTIVE ENVIRONMENT (LRE) POLICY**

34 CFR §300.114

It is the policy of the GDOE to have in effect policies and procedures to ensure that schools in the GDOE meet the LRE requirements of this section and continuum of alternative placements except for children with disabilities in adult prisons who are covered under 300.324.

The GDOE ensures that:

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

Additional requirement--State funding mechanism:

- A GDOE funding mechanism does not result in placements that violate the LRE requirements and;
- The GDOE does not use a funding mechanism by which the GDOE distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.
- Assurance. If the GDOE does not have policies and procedures to ensure compliance with this section, the GDOE must provide the Secretary an assurance that the GDOE will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate the LRE requirements.

### **Continuum of alternative placements**

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34 CFR §300.115

- The GDOE ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- The continuum required in this section must:
  - Include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
  - Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

### **Placement**

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34 CFR §300.116

In determining the educational placement of a child with a disability, including a preschool child with a disability, the GDOE ensures that:

- The placement decision:
  - Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
  - Is made in conformity with the LRE provisions of this section;

- The child's placement:
  - Is determined at least annually;
  - Is based on the child's IEP; and
  - as close as possible to the child's home;
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

## **Nonacademic settings**

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34 CFR §300.117

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

## **Children in public or private institutions**

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34 CFR §300.118

Except for exceptions regarding GDOE's responsibility for general supervision for some individuals in adult prisons, the GDOE ensures that the LRE requirement is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

## **Technical assistance and training activities**

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34 CFR §300.119

The GDOE must carry out activities to ensure that teachers and administrators in all schools:

- Are fully informed about their responsibilities for implementing the LRE requirement; and
- Are provided with technical assistance and training necessary to assist them in this effort.

## **Monitoring activities**

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34 CFR §300.120

- The GDOE must carry out activities to ensure that the LRE requirement is implemented by each school.
- If there is evidence that a school makes placements that are inconsistent with LRE requirement, the GDOE must:
  - Review the school's justification for its actions; and
  - Assist in planning and implementing any necessary corrective action.

## LEAST RESTRICTIVE ENVIRONMENT (LRE) PROCEDURES

**Form:** IEP Placement Form  
Parent Prior Written Notice  
**Responsible Person:** Designated School Person

### Procedures:

1. Conduct placement meeting after the development of the IEP.
2. Determine least restrictive environment setting where goals and benchmarks and short-term objectives (if applicable) can be met with the provision of supplementary aids and services. Using the continuum of alternative placements, discuss the appropriateness of each placement for the child going from least restrictive to more restrictive environments. (In order to be a child with a disability, the child must receive special education. However, special education can be provided at all points along the continuum.)

### CONTINUUM OF ALTERNATIVE PLACEMENTS:

Instruction in general education classes



Special Classes



Special Schools



Home instruction



Instruction in hospitals and institutions

- The continuum must include the alternative placements listed above.
- The placement must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with the regular class.
- The placement decision must be:
  - Made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
  - Is made in conformity with the LRE provisions of IDEA.
- Is determined at least annually;
- Is based on the child's IEP; and
- Is as close as possible to the child's home.
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.
- In selecting the LRE, consideration is given to any harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education curriculum.
- The GDOE must ensure that each eligible child with a disability participates with children without disabilities in the extracurricular services and activities to the maximum extent appropriate to the needs of the child.

- The GDOE must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in the nonacademic settings.

### **3. Next School Year's Placement:**

If an IEP is developed, and placement determined, and will extend into the next school year, the committee may discuss the placement for the following year and document on the Placement form if the placement is to differ from the current placement. (The IEP must be capable of being implemented in the next year's placement. Otherwise, it would be necessary for the DOE to conduct another IEP review.) The Placement committee must document the reason for the recommended changes and parents must receive prior written notice prior to implementation. If there is a need to change the placement the following year, the placement committee will reconvene at such a time. The child must have an IEP in effect at the beginning of each school year.

### **4. Transition From Elementary To Middle And Middle To High:**

If a child is transitioning from elementary to middle and middle to high school, the IEP review conducted in the preceding year must address the needs of the child at the next level. The decisions must be based on the IEP and not on availability of programs/services. The decision of placement must be based on the presumption that the child will be educated with children without disabilities unless the education of the child cannot be achieved satisfactorily in a general education setting with the use of supplementary aids and services. (See continuum of alternative placements.)

### **5. Placement Not Via IEP: Court Or Mental Health Ordered Placement:**

#### **(a) Procedures for Children Incarcerated at Department of Youth Affairs (DYA) or other Separate Day School:**

- 1) If a child is incarcerated at DYA or other Separate School as a result of the court system, the DYA or other Separate Day School liaison will notify the designated school person of such a placement; and the designated school person will forward a copy of the child's current IEP and latest Re-evaluation documents in return with parental consent within 24 hours. To the greatest extent possible, the educational services as per IEP must continue while the child is incarcerated. The DSP must provide parent/guardian with Prior Written Notice form stating that the school is proposing to implement court-ordered placement. The DSP shall also inform related service providers of student's remanded placement.

#### **(b) Special Procedures for Children with Disabilities in Adult Prisons:**

The procedures for an identified adult with a disability shall be similar to the procedures for a student incarcerated at DYA. The DSP shall coordinate access to the adult correction facility with the Division of Special Education.

The following requirements do not apply to children with disabilities who are convicted as adults under Guam law and incarcerated in adult prisons.

- 1) The requirements related to participation of children with disabilities in general assessments;
- 2) The requirements relating to transition planning and transition services if eligibility for special education services will end, because of their age, before they will be released from prison;
- 3) If a child with a disability is convicted as an adult under Guam law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the IEP requirements of least restrictive environment and contents of the IEP if the GDOE



has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

- 4) The DSP shall contact the Division of Special Education's Program Coordinator for Behavioral Supports. Arrangements shall be made to provide FAPE within the adult prison. Parent Participation:

## **6. Parents attend IEP and Placement Meeting:**

**Initial IEP and Placement:** If parents participated in the development of the IEP and placement decision, they sign the IEP, are provided Prior Written Notice on the proposal to provide FAPE and placement and are provided copies of all documents. Parent consent is required for Initial provision of services. If parents disagree and file for due process, the student must remain in the placement prior to the GDOE's proposed IEP until the disagreement is resolved. Dispute resolution procedures will follow.

Signatures on the annual or revised IEP represent attendance and not consent.

**Annual Reviews:** Consent for services is not required for the continued provision of services. However, parents are a participant in the review of the IEP and the annual determination of placement. The parent must be given a Prior Written Notice on the proposal to provide FAPE after the IEP is reviewed and revised and proposed placement, a reasonable amount of time prior to implementation of a change.

Upon agreement of the IEP Team, the school must inform all service providers of their responsibility in the implementation of the IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. The school must ensure that the child's IEP is accessible to all teachers and other service providers who are responsible for its implementation. The IEP must be implemented as soon as possible after the meeting.

Parents Do Not Attend IEP or Placement Meeting:

**Initial IEP and Placement:** Designated school person arranges a meeting with the parents to discuss the IEP results, obtains consent for initial provision of services, and provides copies of all documents. The IEP must be implemented as soon as possible after the meeting and receipt of consent.

**Annual Reviews:** Consent is not needed to implement the new IEP unless parent has revoked their initial consent for services. However, parents must receive prior written notice before implementation of the new IEP and any change in placement.

## **7. Disagreements with the IEP and Placement:**

If there is a disagreement, parents are notified of their right to request mediation and/or due process hearing. Principal informs the Division of Special Education if there is a request for Mediation and/or Due Process. If the parents do not request mediation and/or due process immediately, but verbally indicate that they disagree with the IEP, the Principal must make attempts to resolve the disagreement. If this fails, then the Principal must notify the Assistant Superintendent, Special Education, in writing of the possible case.

**Initial IEP:** If there is a disagreement with the proposed IEP, the school may not implement it without consent. The GDOE has no authority to take the parent to due process for refusing to consent to the IEP. (§300.300).

**Annual IEP Review:** If there is a disagreement with the proposed IEP and no written request for mediation, due process, and/or complaint was officially submitted in writing, the school must provide parents with a reasonable amount of time to exercise his/her rights prior to implementing the revised IEP.



When the parent files for a due process hearing regarding a dispute over the IEP and/or placement, the child must remain in the placement prior to the dispute.

**8. AGREEMENT with IEP and Placement:**

Designated school person distributes and files all copies of IEP documents in child's school folder upon completion of the IEP meeting.

**9. Upon agreement of the parents with the initial IEP, the School administrator must ensure the following:**

- (a) The IEP is implemented as soon as possible following the meeting.
- (b) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation.
- (c) Each teacher and service provider described above is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (d) Parents are provided a copy of the IEP prior to implementation.

**10. Closure of IEP Meeting:**

The IEP is considered closed upon DOE's proposal for the initial and/or revised IEP and acceptance or disagreement of all or parts of the IEP by the parents. No IEP meeting can be tabled as a result of a disagreement. For an initial IEP, implementation must not occur without parental consent for Initial provision of special education and related services.

SPECIAL EDUCATION PROCESS  
Least Restrictive Environment (PLACEMENT) Questions and Answers

**1. Q: What is the definition of least restrictive environment (LRE)?**

**A:** LRE means that children with disabilities are learning with children without disabilities to the “maximum extent appropriate” (as much as possible) regardless of the severity of their disability and that removal from the regular classroom occurs only when the nature or severity of the disability is such that learning in regular classes with the use of supplemental aids and services did not have satisfactory results.

This also applies to the provision of supports and assistive technology and not just placement.

A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. Example: Child is placed in the resource room for social studies and science because his reading level is below grade level and he is unable to read the textbook.

**Source:**

IDEA Regulations: §300.114 LRE Requirements, §300.115 Continuum of Alternative Placements, §300.116 Placements

**2. Q: Can I disagree with the placement?**

**A:** Yes. However, it is the DOE’s responsibility to provide FAPE in the LRE. If you disagree, you must inform the DOE in writing. As a parent, you may:

- Request for mediation,
- File a state complaint, or
- File a Due Process Complaint

While you and DOE resolve the issue, the child “stays put” in the placement prior to the disagreement.

**Source:**

IDEA Regulations: §300.507-Filing a Due Process Complaint; §300.506-Mediation

**§ 300.108 Physical education.**

The State must ensure that public agencies in the State comply with the following:

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

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

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

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

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5)(A))

**§ 300.109 Full educational opportunity goal (FEOG).**

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2))

**§ 300.110 Program options.**

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

**§ 300.111 Child find.**

(a) *General.* (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Use of term developmental delay.* The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of *developmental delay* under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

**§ 300.112 Individualized education programs (IEP).**

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, except as provided in § 300.300(b)(3)(ii).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(4))

**§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.**

(a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) *External components of surgically implanted medical devices.* (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

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

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(1), 1401(26)(B))

**Least Restrictive Environment (LRE)****§ 300.114 LRE requirements.**

(a) *General.* (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and

services cannot be achieved satisfactorily.

(b) *Additional requirement—State funding mechanism*—(1) *General.* (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) *Assurance.* If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.115 Continuum of alternative placements.**

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

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.116 Placements.**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.117 Nonacademic settings.**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.118 Children in public or private institutions.**

Except as provided in § 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.119 Technical assistance and training activities.**

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.114; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **§ 300.120 Monitoring activities.**

(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

#### **Additional Eligibility Requirements**

##### **§ 300.121 Procedural safeguards.**

(a) *General.* The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536.

(b) *Procedural safeguards identified.* Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(6)(A))

##### **§ 300.122 Evaluation.**

Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(7))

##### **§ 300.123 Confidentiality of personally identifiable information.**

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))



## **CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS POLICY**

### **Definition of parentally-placed private school children with disabilities**

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34 CFR §300.130

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined by IDEA, other than children with disabilities placed or referred by the GDOE.

### **Child find for parentally-placed private school children with disabilities**

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34 CFR §300.131

- The GDOE must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, and secondary schools located in the school district served by the school, in accordance with the procedures in this section, and Sections 300.111 and 300.201.
- Child find design. The child find process must be designed to ensure:
  - The equitable participation of parentally-placed private school children; and
  - An accurate count of those children.
- Activities. In carrying out the requirements of this section, the school, or, if applicable, the GDOE, must undertake activities similar to the activities undertaken for the GDOE's public school children.
- Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the GDOE has met its obligation related to expenditures.
- Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the GDOE consistent with initial evaluation requirements.
- Out-of-State children. The GDOE in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

### **Provision of services for parentally-placed private school children with disabilities—basic requirement**

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34 CFR §300.132

- To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the GDOE, provision is made for the participation of those children in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with the determination of equitable services, unless the Secretary has arranged for services to those children under the by-pass provisions in Sections 300.190 through 300.198.

- Services plan for parentally-placed private school children with disabilities. In accordance with the previous section and Sections 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the GDOE in which the private school is located to receive special education and related services under IDEA.
- Record keeping. The GDOE must maintain in its records the following information related to parentally-placed private school children covered under Sections 300.130 through 300.144:
  - The number of children evaluated;
  - The number of children determined to be children with disabilities; and
  - The number of children served.

## **Expenditures**

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### **34 CFR §300.133**

Formula. To meet the requirement of Sec. 300.132, the GDOE must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

- For children aged 3 through 21, an amount that is the same proportion of the GDOE's total subgrant under section 611(f) of the IDEA as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the GDOE, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
- For children aged three through five, an amount that is the same proportion of the GDOE's total subgrant under section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the GDOE, is to the total number of children with disabilities in its jurisdiction aged three through five.
- As described in this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school.
- If the GDOE has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the GDOE must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the GDOE, after timely and meaningful consultation with representatives of private schools under Sec. 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located on Guam.
- Annual count of the number of parentally-placed private school children with disabilities. The GDOE must:
  - After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with Sec. 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located on Guam; and

- Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
- The count must be used to determine the amount that the GDOE must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under the IDEA.

## **Consultation**

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### **34 CFR §300.134**

To ensure timely and meaningful consultation, the GDOE must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- Child find. The child find process, including:
  - How parentally-placed private school children suspected of having a disability can participate equitably; and
  - How parents, teachers, and private school officials will be informed of the process.
- Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated.
- Consultation process. The consultation process among the GDOE, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - The types of services, including direct services and alternate service delivery mechanisms; and
  - How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - How and when those decisions will be made;
  - Written explanation by GDOE regarding services. If the GDOE disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the GDOE will provide to the private school officials a written explanation of the reasons why the GDOE chose not to provide services directly or through a contract.



## **Written affirmation**

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### **34 CFR §300.135**

When timely and meaningful consultation, as required by Sec. 300.134, has occurred, the GDOE must obtain a written affirmation signed by the representatives of participating private schools.

## **Compliance**

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### **34 CFR §300.136**

- If the private school official is dissatisfied with the decision of the GDOE, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance described in this section; and
- The GDOE must forward the appropriate documentation to the U.S. Secretary of Education.

## **Equitable services determined**

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### **34 CFR §300.137**

- No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- Decisions.
  - Decisions about the services that will be provided to parentally-placed private school children with disabilities under Sections 300.130 through 300.144 must be made in accordance with this section and Sec. 300.134(c).
  - The GDOE must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- Services plan for each child served under Sections 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from the GDOE, the GDOE must:
  - Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
  - Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the GDOE shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

## **Equitable services provided**

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### **34 CFR §300.138**

- General.
  - The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of Sec. 300.18.
  - Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

- Services provided in accordance with a services plan.
  - Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the GDOE will provide to the child in light of the services that the GDOE has determined, through the process described in Sections 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
  - The services plan must, to the extent appropriate:
    - Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and
    - Be developed, reviewed, and revised consistent with IEP requirements.
- Provision of equitable services.
  - The provision of services pursuant to this section and Sections 300.139 through 300.143 must be provided:
    - By employees of the GDOE; or
    - Through contract by the GDOE with an individual, association, agency, organization, or other entity.
  - Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

## **Location of services and transportation**

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### **34 CFR §300.139**

- Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- Transportation:
  - General.
    - If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation:
      - From the child's school or the child's home to a site other than the private school; and
      - From the service site to the private school, or to the child's home, depending on the timing of the services.
    - GDOE is not required to provide transportation from the child's home to the private school.
  - Cost of transportation. The cost of the transportation described in this section may be included in calculating whether the GDOE has met the requirement of Sec. 300.133.

## **Due process complaints and State complaints**

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### **34 CFR §300.140**

- Due process not applicable, except for child find. (1) Except as provided in this section, the procedures in Sections 300.504 through 300.519 do not apply to complaints that the GDOE has failed to meet the requirements of Sections 300.132 through 300.139, including the provision of services indicated on the child's services plan.

- Child find complaints: To be filed with the GDOE in which the private school is located.
  - The procedures in Sections 300.504 through 300.519 apply to complaints that the GDOE has failed to meet the child find requirements in Sec. 300.131, including the requirements in Sections 300.300 through 300.311.
  - Any due process complaint regarding the child find requirements (as described in this section) must be filed with the GDOE.
- State complaints
  - Any complaint that the GDOE has failed to meet the requirements in Sections 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Sections 300.151 through 300.153.
  - A complaint filed by a private school official under Sec. 300.136(a) must be filed with the GDOE in accordance with the procedures in Sec. 300.136(b).

### **Requirement that funds not benefit a private school**

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#### **34 CFR §300.141**

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

### **Use of personnel**

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#### **34 CFR §300.142**

- Use of public school personnel. The GDOE may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:
  - To the extent necessary to provide services under Sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and
  - If those services are not normally provided by the private school.
- Use of private school personnel. The GDOE may use funds available under sections 611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services under Sections 300.130 through 300.144 if:
  - The employee performs the services outside of his or her regular hours of duty; and
  - The employee performs the services under public supervision and control.

### **Separate classes prohibited**

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#### **34 CFR §300.143**

The GDOE may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the children if:

- The classes are at the same site; and
- The classes include children enrolled in public schools and children enrolled in private schools.

#### Property, equipment, and supplies

- The GDOE must control and administer the funds used to provide special education and related services under Sections 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- The GDOE may place equipment and supplies in a private school for the period of time needed for the IDEA Part B program.
- The GDOE must ensure that the equipment and supplies placed in a private school:
  - Are used only for IDEA Part B purposes; and
  - Can be removed from the private school without remodeling the private school facility.
- The GDOE must remove equipment and supplies from a private school if:
  - The equipment and supplies are no longer needed for IDEA Part B purposes; or
  - Removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA Part B purposes.
- No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.



## **CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES POLICY**

### **Applicability of Sections 300.146 through 300.147.**

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34 CFR §300.145

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by the GDOE as a means of providing special education and related services.

### **Responsibility of SEA**

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34 CFR §300.146

The GDOE ensures that a child with a disability who is placed in or referred to a private school or facility by the GDOE:

- Is provided special education and related services--
  - In conformance with an IEP that meets the requirements of Sections 300.320 through 300.325; and
  - At no cost to the parents;
- Is provided an education that meets the standards that apply to education provided by the GDOE including:
  - The requirements of IDEA except for Sec. 300.18 and Sec. 300.156(c); and
- Has all of the rights of a child with a disability who is served by the GDOE.

### **Implementation by SEA**

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34 CFR §300.147

In implementing Sec. 300.146, the GDOE must:

- Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- Disseminate copies of applicable standards to each private school and facility to which the GDOE has referred or placed a child with a disability; and
- Provide an opportunity for those private schools and facilities to participate in the development and revision of GDOE standards that apply to them.

## **CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE**

### **Placement of children by parents when FAPE is at issue**

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34 CFR §300.148

The GDOE is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the GDOE made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the GDOE must include that child in the population whose needs are addressed.

### Disagreements about FAPE

Disagreements between the parents and the GDOE regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures.

### Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of the GDOE, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the GDOE, a court or a hearing officer may require the GDOE to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the GDOE had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the GDOE standards that apply to education provided by the GDOE.

### Limitation on reimbursement

The cost of reimbursement described in this section may be reduced or denied:

- If:
  - At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the GDOE to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
  - At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the GDOE of the information described in this section;
- If, prior to the parents' removal of the child from the public school, the GDOE informed the parents, through the notice requirements, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- Exception. Notwithstanding the notice requirement in this section, the cost of reimbursement:
  - Must not be reduced or denied for failure to provide the notice if:
    - The school prevented the parents from providing the notice;
    - The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in this section; or
    - Compliance with this section would likely result in physical harm to the child; and
  - May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
    - The parents are not literate or cannot write in English; or
    - Compliance with this section would likely result in serious emotional harm to the child.

**§ 300.124 Transition of children from the Part C program to preschool programs.**

The State must have in effect policies and procedures to ensure that—

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(9))

**§§ 300.125–300.128 [Reserved]****Children in Private Schools****§ 300.129 State responsibility regarding children in private schools.**

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10))

**Children With Disabilities Enrolled by Their Parents in Private Schools****§ 300.130 Definition of parentally-placed private school children with disabilities.**

*Parentally-placed private school children with disabilities* means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.131 Child find for parentally-placed private school children with disabilities.**

(a) *General.* Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary

schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.

(b) *Child find design.* The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) *Activities.* In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) *Cost.* The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.

(e) *Completion period.* The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.

(f) *Out-of-State children.* Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

**§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.**

(a) *General.* To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198.

(b) *Services plan for parentally-placed private school children with disabilities.* In accordance with paragraph (a) of this section and §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school

child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) *Record keeping.* Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

**§ 300.133 Expenditures.**

(a) *Formula.* To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal



year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) *Annual count of the number of parentally-placed private school children with disabilities.* (1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) *Supplement, not supplant.* State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

#### § 300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) *Child find.* The child find process, including—

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) *Proportionate share of funds.* The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) *Consultation process.* The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) *Provision of special education and related services.* How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) *Written explanation by LEA regarding services.* How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

#### § 300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))

#### § 300.136 Compliance.

(a) *General.* A private school official has the right to submit a complaint to the SEA that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1412(a)(10)(A)(v))

#### § 300.137 Equitable services determined.

(a) *No individual right to special education and related services.* No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) *Decisions.* (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) *Services plan for each child served under §§ 300.130 through 300.144.* If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and

(2) Ensure that a representative of the religious or other private school attends

each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

(Approved by the Office of Management and Budget under control number 1820-0030)  
(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.138 Equitable services provided.**

(a) *General.* (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) *Services provided in accordance with a services plan.* (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

(c) *Provision of equitable services.* (1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

**§ 300.139 Location of services and transportation.**

(a) *Services on private school premises.* Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) *Transportation.*—(1) *General.* (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) *Cost of transportation.* The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.140 Due process complaints and State complaints.**

(a) *Due process not applicable, except for child find.* (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) *Child find complaints—to be filed with the LEA in which the private school is located.* (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) *State complaints.* (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance

with the procedures described in §§ 300.151 through 300.153.

(2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.141 Requirement that funds not benefit a private school.**

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.142 Use of personnel.**

(a) *Use of public school personnel.* An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) *Use of private school personnel.* An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.143 Separate classes prohibited.**

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.144 Property, equipment, and supplies.**

(a) A public agency must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

**Children With Disabilities in Private Schools Placed or Referred by Public Agencies**

**§ 300.145 Applicability of §§ 300.146 through 300.147.**

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.146 Responsibility of SEA.**

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.18 and § 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.147 Implementation by SEA.**

In implementing § 300.146, the SEA must—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

**Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue**

**§ 300.148 Placement of children by parents when FAPE is at issue.**

(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to

reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(C))

#### **SEA Responsibility for General Supervision and Implementation of Procedural Safeguards**

##### **§ 300.149 SEA responsibility for general supervision.**

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the educational standards of the SEA (including the requirements of this part).

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1416)

##### **§ 300.150 SEA implementation of procedural safeguards.**

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures to inform

each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

#### **State Complaint Procedures**

##### **§ 300.151 Adoption of State complaint procedures.**

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

##### **§ 300.152 Minimum State complaint procedures.**

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

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

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously



## DISCIPLINING CHILDREN WITH DISABILITIES PROCEDURES

**Forms:** Prior Written Notice  
Form 19: Manifestation Determination Form

**Timeline:**

- Parent Notice must be given on the date on which the decision is made to make a removal that constitutes a change of placement
- For Manifestation Determination: Within 10 days of determination to remove child for disciplinary reasons for more than 10 days
- For provision of services after removal: On the 11th day of removal

**Responsible Person:** Principal

1. Child with a disability violates a student code of conduct (i.e. breaks a school rule).
2. Depending on the violation, school personnel takes one of the actions below:
  - Action A:** Proposes to remove the child for less than 10 consecutive days and total for the year is less than 10 cumulative school days.
  - Action B:** Proposes to remove the child for less than 10 consecutive days but total removals are more than 10 school days in the school year.
  - Action C:** Proposes to remove the child for 11 or more consecutive school days.

### **Action to be taken:**

#### Action A:

1. School removes child for less than 10 consecutive days.
2. School is not required to provide educational services when removing a child with a disability for less than 10 consecutive days if they do not provide services for students without disabilities who are removed for the same amount of time.

#### Action B:

1. School removes the child for less than 10 consecutive days but removals total more than 10 school days in the school year.

The school must determine if the current removal is a pattern of removal that may be considered a change of placement. A change of placement occurs if:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern:
  - Because the series of removals total more than 10 school days in a school year; or
  - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- The GDOE determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- This determination is subject to review through due process and court proceedings.

2. If the IEP Team determines that the removal is not a change of placement, then the school must by the 10th cumulative school day of removal in the same school year, consult with at least one of the child's teachers to determine the extent to which FAPE services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.
3. If the IEP Team determines that the removal is a change of placement, then the IEP Team must conduct a manifestation determination. Go to Section on Manifestation Determination.
4. If the IEP Team determines there is no manifestation between disability and the behavior in question, the school may remove the child for the number of days specified. However, the school must provide services starting on the 11th day of suspension for the school year.
5. If the IEP Team determines there is a manifestation, proceed with procedures for removals of more than 10 days.

#### Action C:

1. School proposes to remove the child for 11 or more consecutive days. The removal of a child for more than 10 consecutive days is considered a change of placement.
2. School notifies parents immediately of the decision to change the placement for disciplinary reasons, and provides them with a copy of the parent rights (procedural safeguards).
3. Within 10 school days of decision to remove student for disciplinary reasons, the school, the parent (s) and relevant members of the IEP Team, must review relevant information and make a manifestation determination.
4. Follow procedures for manifestation determination.

### **Manifestation Determination**

#### **Step 1:**

Principal or designee notifies relevant members of the child's IEP Team (as determined by parent and the school), including the parent, of the meeting to make a manifestation determination.

#### **Step 2:**

Principal or designee facilitates manifestation determination meeting by going through the following process:

IEP team reviews all relevant information to include but not limited to the following:

- All information in the child's file
- Child's IEP
- Any teacher observations
- Any relevant information provided by the parents

#### **Step 3:**

The IEP team must determine:

1. Was the conduct in question caused by, or had a direct and substantial relationship to, the child's disability?, or
2. Was the conduct in question the result of the school's failure to implement the IEP?

If the answer to either question is **YES**, the conduct must be determined to be a manifestation of the child's disability. **Go to Step 5.** If the answer is **NO** to both, the conduct must be determined not to be a manifestation of the child's disability. Proceed with the next step.



**Step 4:**

The school may use the same disciplinary procedures as that used for students without disabilities. The IEP Team must determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum and progress toward meeting IEP goals. The school may remove the child for more than 10 days, but must provide services on the 11th day of suspension for the school year. **STOP HERE.**

**Step 5:**

If the conduct was a manifestation of the child's disability and the conduct in question was the result of the school's failure to implement the IEP, then the school must take steps to correct the deficiencies.

**Step 6:**

If the conduct was a result of the school's failure to implement the IEP and/or if the conduct was a manifestation of the child's disability and there is a direct and substantial relationship between the behavior and the disability, then the school must follow the procedures below:

- Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior occurred that resulted in the change of placement; and
- Implement a behavioral intervention plan for the child; if the behavioral intervention plan has already been developed, review the plan, and make changes, as necessary, to address the behavior; and
- Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the behavior intervention plan.

**Special Circumstances**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of GDOE;
  2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the GDOE; or
  3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the GDOE.
- The school must notify the parents on the date on which the decision is made to make a removal that constitutes a change of placement, of a child with a disability because of a code of student conduct, of the decision, and provide the parents with their parent rights. Conduct manifestation determination.

**Determination of Setting**

The child's IEP Team determines the interim alternative educational setting for services mentioned above.



#### Definitions in this section:

- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). Any drug as defined in the five categories of the federal Controlled Substances Act of 1970. The categories, or schedules, cover opium and its derivatives, hallucinogens, depressants, and stimulants.
- *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under IDEA or under any other provision of Federal law.
- *Serious bodily injury* has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. Bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 USC[From the ‘Lectric Law Library’s Lexicon].
- *Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. Section 930 of title 18, United States Code defines a “dangerous weapon” as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”

#### Appeal for Interim Alternative Placement

The parent of a child with a disability who disagrees with any decision regarding placement due to drugs, weapons, or serious bodily injury, or the manifestation determination, or the GDOE believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint as per due process hearing procedures.

- A hearing officer hears and makes a determination regarding an appeal based on the reasons given above.
- In making the determination, the hearing officer may:
  - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sec. 300.530 or that the child’s behavior was a manifestation of the child’s disability; or
  - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- The procedures under this section may be repeated, if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

#### Expedited due process hearing

- Whenever a hearing is requested in this section, the parents or the GDOE involved in the dispute must have an opportunity for an impartial due process hearing consistent with the due process requirements as outlined in the Dispute Resolution section of the GDOE Special Education Handbook, except as provided in this section.
- The GDOE is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

- Unless the parents and GDOE agree in writing to waive the resolution meeting, or agree to use the mediation process:
  - (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
  - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- GDOE may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in this section, the GDOE must ensure that the requirements are met.
- The decisions on expedited due process hearings are appealable as per procedures found in the section on Dispute Resolution.

#### Placement during appeals

When an appeal has been made by either the parent or the GDOE, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in the discipline procedures, whichever occurs first, unless the parent and the GDOE agree otherwise.

#### Protections for children not determined eligible for special education and related services

A child who has not been determined to be eligible for special education and related services under Part B of IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for under IDEA if the GDOE had knowledge (as determined in this section) that the child was a child with a disability before the behavior that initiated the disciplinary action occurred.

#### Basis of knowledge

The GDOE is determined to have knowledge that a child is a child with a disability if before the behavior that initiated the disciplinary action occurred:

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the GDOE, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child; or
- (3) The teacher of the child, or other personnel of the GDOE, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education coordinator of the GDOE or to other supervisory personnel of the GDOE.

#### Exception

The GDOE is not determined to have knowledge if:

- (1) The parent of the child:
  - (i) Has not allowed an evaluation of the child as per evaluation procedures; or
  - (ii) Has refused services under Part B of IDEA; or
- (2) The child has been evaluated in accordance with evaluation procedures and determined to not be a child with a disability under Part B of IDEA.

#### Conditions that apply if no basis of knowledge

- (1) If the GDOE does not have knowledge that a child is a child with a disability (in accordance with this section) prior to taking disciplinary measures against the child, the disciplinary measures

applied to children without disabilities may be applied to the child who engages in comparable behaviors.

- (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the GDOE and information provided by the parents, the GDOE must provide special education and related services as per the discipline procedures in Part B of IDEA.

#### Referral to and action by law enforcement and judicial authorities

Nothing in Part B of IDEA prohibits the GDOE from reporting a crime committed by a child with a disability to appropriate authorities or prevents Guam law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

#### Transmittal of records

- If the GDOE reports a crime committed by a child with a disability, it must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the GDOE reports the crime.
- When the GDOE reports a crime under this section, it may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

#### Change of placement because of disciplinary removals

- For purposes of removals of a child with a disability from the child's current educational placement under discipline procedures, a change of placement occurs if:
  1. The removal is for more than 10 consecutive school days; or
  2. The child has been subjected to a series of removals that constitute a pattern:
    - (i) Because the series of removals total more than 10 school days in a school year; or
    - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; or
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- The GDOE determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- This determination is subject to review through due process and judicial proceedings. Definitions

SPECIAL EDUCATION PROCESS  
Discipline Questions and Answers (Q&A)

1. **Q: What is the requirement if my child has needs related to behaviors?**

**A:** If the child's behavior is affecting his learning or that of others, the IEP team must consider the use of positive behavior interventions and supports, and other strategies to address the behavior.

Positive behavior interventions and supports:

- Addresses the need for changes within the environment (such as moving the child away from distracting items, closer to the teacher, etc.);
- Determines what skills need to be taught to the child to replace the inappropriate behavior; and,
- Addresses positive and negative consequences.

The team must develop a Behavior Management Plan (BMP). The BMP must include the following:

- Specific behaviors that are affecting the child's learning—the behaviors should be written so that anyone reading it will understand what it means.
- **Example:** The child is biting other students **AND NOT** the child is disruptive.
- Specific plan for changing the behaviors
  - Academic and/or Social skills to be taught
  - Positive consequences: What will happen if the child demonstrates the appropriate behaviors
  - Negative consequences: What will happen if the child engages in inappropriate behaviors
  - Changes in the environment that must occur for the child's behavior to change

**Source:**

IDEA Regulations: §300.324 Development, Review, and Revision of IEP

2. **Q: Can the school suspend my child for more than 10 days or recommend expulsion for breaking a major rule at school?**

**A:** Yes. However, the school must follow certain procedures. The school must determine if the behavior was the result of the disability (Manifestation Determination). If the behavior is caused by the disability, then your child cannot be suspended for more than 10 days or expelled. If the behavior is not related to the disability, your child may be suspended for more than 10 days or expelled, but services must be provided after the 10<sup>th</sup> day. Also, your child must be treated in the same manner as all other students who commit the same offense.

**Source:**

IDEA Regulations: 300.530 Authority of School Personnel

Procedural Safeguards: P.32

reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

(Authority: 20 U.S.C. 1415(m))

#### **§§ 300.521–300.529 [Reserved]**

#### **Discipline Procedures**

##### **§ 300.530 Authority of school personnel.**

(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) *General.* (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) *Additional authority.* For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) *Services.* (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting,

and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) *Manifestation determination.* (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) *Determination that behavior was a manifestation.* If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section

202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1) and (7))

#### **§ 300.531 Determination of setting.**

The child's IEP Team determines the interim alternative educational setting for services under § 300.530(c), (d)(5), and (g).

(Authority: 20 U.S.C. 1415(k)(2))

#### **§ 300.532 Appeal.**

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

(b) *Authority of hearing officer.* (1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may

be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) *Expedited due process hearing.* (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with § 300.514.

(Authority:

20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

#### **§ 300.533 Placement during appeals.**

When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A))

#### **§ 300.534 Protections for children not determined eligible for special education and related services.**

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) *Conditions that apply if no basis of knowledge.* (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under



§ 300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))

**§ 300.535 Referral to and action by law enforcement and judicial authorities.**

(a) *Rule of construction.* Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) *Transmittal of records.* (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6))

**§ 300.536 Change of placement because of disciplinary removals.**

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k))

**§ 300.537 State enforcement mechanisms.**

Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))

**§§ 300.538–300.599 [Reserved]**

**Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information**

**Monitoring, Technical Assistance, and Enforcement**

**§ 300.600 State monitoring and enforcement.**

(a) The State must monitor the implementation of this part, enforce this part in accordance with § 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under this part.

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established

by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(Approved by the Office of Management and Budget under control number 1820–0624)

(Authority: 20 U.S.C. 1416(a))

**§ 300.601 State performance plans and data collection.**

(a) *General.* Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in § 300.600(d).

(b) *Data collection.* (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information





## CONFIDENTIALITY OF INFORMATION

### Definitions

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34 CFR §300.611

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *DOE* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

### Personally identifiable

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34 CFR §300.32

*Personally identifiable* means information that includes:

- (a) Your child’s name, your name as the parent, or the name of another family member;
- (b) Your child’s address;
- (c) A personal identifier, such as your child’s social security number or student number; **or**
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

### Notice to parents

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34 CFR §300.612

The DOE must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in Guam;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the DOE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that schools must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout Guam of these activities.

## **Access rights**

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### **34 CFR §300.613**

The DOE must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the DOE under Part B of IDEA. The DOE must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the DOE to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the DOE provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The DOE may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable Guam law governing such matters as guardianship, separation, and divorce.

## **Record of access**

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### **34 CFR §300.614**

Each DOE must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the DOE), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## **Records on more than one child**

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### **34 CFR §300.615**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## **List of types and locations of information**

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### **34 CFR §300.616**

On request, each DOE must provide you with a list of the types and locations of education records collected, maintained, or used by the DOE.

## **Fees**

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### **34 CFR §300.617**

The DOE may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The DOE may not charge a fee to search for or to retrieve information under Part B of IDEA.

## **Amendment of records at parent's request**

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### **34 CFR §300.618**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the DOE that maintains the information to change the information.

The DOE must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the DOE refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity for a hearing***.

## **Opportunity for a hearing**

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### **34 CFR §300.619**

The DOE must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **Hearing procedures**

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### **34 CFR §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## **Result of hearing**

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### **34 CFR §300.620**

If, as a result of the hearing, the DOE decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the DOE decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the DOE.

Such an explanation placed in the records of your child must:

1. Be maintained by the DOE as part of the records of your child as long as the record or contested portion is maintained by the DOE; **and**
2. If the DOE discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

## **Consent for disclosure of personally identifiable information**

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### **34 CFR §300.622**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of the

DOE. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of the DOE for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under Guam law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in the private school and officials in the DOE.

## **Safeguards**

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### **34 CFR §300.623**

The DOE must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at the DOE must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding Guam's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

The DOE must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## **Destruction of information**

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### **34 CFR §300.624**

The DOE must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) *Report to Congress.* The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)–(e)(3), (e)(5))

#### **§ 300.605 Withholding funds.**

(a) *Opportunity for hearing.* Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§ 300.180 through 300.183.

(b) *Suspension.* Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) *Nature of withholding.* (1) If the Secretary determines that it is appropriate to withhold further payments under § 300.604(b)(2) or (c)(2), the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under § 300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under § 300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under § 300.603(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(e)(4), (e)(6))

#### **§ 300.606 Public attention.**

Any State that has received notice under §§ 300.603(b)(1)(ii) through (iv) must, by means of a public notice, take such measures as may be necessary to notify the public within the State of the pendency of an action taken pursuant to § 300.604.

(Authority: 20 U.S.C. 1416(e)(7))

#### **§ 300.607 Divided State agency responsibility.**

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to § 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under § 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under § 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

(Authority: 20 U.S.C. 1416(h))

#### **§ 300.608 State enforcement.**

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under § 300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))

#### **§ 300.609 Rule of construction.**

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12.

(Authority: 20 U.S.C. 1416(g))

#### **Confidentiality of Information**

##### **§ 300.610 Confidentiality.**

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.627.

(Authority: 20 U.S.C. 1417(c))

##### **§ 300.611 Definitions.**

As used in §§ 300.611 through 300.625—

(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e–3, 1412(a)(8), 1417(c))

##### **§ 300.612 Notice to parents.**

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.123, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the

notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.613 Access rights.**

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.614 Record of access.**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.615 Records on more than one child.**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.616 List of types and locations of information.**

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.617 Fees.**

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.618 Amendment of records at parent's request.**

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.619 Opportunity for a hearing.**

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.620 Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in

the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.621 Hearing procedures.**

A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.622 Consent.**

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.623 Safeguards.**

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for

ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.123 and 34 CFR part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.624 Destruction of information.**

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.625 Children's rights.**

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding educational records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.626 Enforcement.**

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **§ 300.627 Department use of personally identifiable information.**

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

#### **Reports—Program Information**

##### **§ 300.640 Annual report of children served—report requirement.**

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, 1820-0517, and 1820-0677)

(Authority: 20 U.S.C. 1418(a))

##### **§ 300.641 Annual report of children served—information required in the report.**

(a) For purposes of the annual report required by section 618 of the Act and § 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0621, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a), (b))

##### **§ 300.642 Data reporting.**

(a) *Protection of personally identifiable data.* The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) *Sampling.* The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0518, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(b))

##### **§ 300.643 Annual report of children served—certification.**

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under § 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0043)

(Authority: 20 U.S.C. 1418(a)(3))

##### **§ 300.644 Annual report of children served—criteria for counting children.**

The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§ 300.132 through 300.144.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a))

##### **§ 300.645 Annual report of children served—other responsibilities of the SEA.**

In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must—

(a) Establish procedures to be used by LEAs and other educational institutions







## STATE COMPLAINT PROCEDURES

### Differences between the procedures for due process complaints and hearings and for state complaints

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by the DOE or any other public agency. Only you or the DOE may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the DOE generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the DOE's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The DOE must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading Model Forms.

	State Complaint	Due Process Complaint
<b>Who can file?</b>	Individual or organization	Parent/guardian or the DOE
<b>Reason for filing?</b>	Violation of Part B requirement by the DOE or any other agency	Disagreement on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child
<b>Timeline for Resolution</b>	60-calendar days unless the timeline is properly extended	An impartial Hearing Officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after end of resolution period unless the Hearing Officer grants a specific extension of the timeline at your request or the DOE's request.
<b>Process</b>	Investigation by DOE	Hearing conducted by an impartial hearing officer

There are separate procedures for State Complaints and for Due Process Complaints and hearings. A chart describing the differences is given below:

### **Adoption of state complaint procedures**

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34 CFR §300.151

#### **General**

The DOE must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the DOE;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

#### **Remedies for denial of appropriate services**

In resolving a State complaint in which the DOE has found a failure to provide appropriate services, the DOE must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

### **Minimum state complaint procedures**

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34 CFR §300.152

#### **Time limit; minimum procedures**

Each DOE must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the DOE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the DOE or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the DOE or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the DOE's final decision.

#### **Time extension; final decision; implementation**

The DOE's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances

exist with respect to a particular State complaint; **or** (b) you and the DOE or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in Guam.

2. Include procedures for effective implementation of the DOE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

### **State complaints and due process hearings**

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the DOE must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the DOE), then the due process hearing decision is binding on that issue and the DOE must inform the complainant that the decision is binding.

A complaint alleging the DOE's or other public agency's failure to implement a due process hearing decision must be resolved by the DOE.

### **Filing a state complaint**

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34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that the DOE or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

If the complaint involves another public agency, the party filing the State complaint must forward a copy of the complaint to the other public agency serving the child at the same time the party files the complaint with the DOE.



(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(C))

### **SEA Responsibility for General Supervision and Implementation of Procedural Safeguards**

#### **§ 300.149 SEA responsibility for general supervision.**

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the educational standards of the SEA (including the requirements of this part).

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1416)

#### **§ 300.150 SEA Implementation of procedural safeguards.**

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures to inform

each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

### **State Complaint Procedures**

#### **§ 300.151 Adoption of State complaint procedures.**

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

#### **§ 300.152 Minimum State complaint procedures.**

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

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

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section and due process hearings under*

*§ 300.507 and §§ 300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously

been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

### **§ 300.153 Filing a complaint.**

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child—

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

### **Methods of Ensuring Services**

#### **§ 300.154 Methods of ensuring services.**

(a) *Establishing responsibility for services.* The Chief Executive Officer of a State or designee of that officer must

ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.* (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an

agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(c) *Special rule.* The requirements of paragraph (a) of this section may be met through—

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.

(d) *Children with disabilities who are covered by public benefits or insurance.*

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

**§ 300.506 Mediation.**

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) *Impartiality of mediator.* (1) An individual who serves as a mediator under this part—

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(e))

**§ 300.507 Filing a due process complaint.**

(a) *General.* (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(b)(6))

**§ 300.508 Due process complaint.**

(a) *General.* (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process



complaint through a meeting held pursuant to § 300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

(e) *LEA response to a due process complaint.* (1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

#### § 300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other

document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b) for filing a State complaint.

(Authority: 20 U.S.C. 1415(b)(8))

#### § 300.510 Resolution process.

(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in § 300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) *Resolution period.* (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and

documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537.

(e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

#### § 300.511 Impartial due process hearing.

(a) *General.* Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.

(b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute,

State regulation, or a written policy of the SEA.

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.

(e) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) *Exceptions to the timeline.* The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

### § 300.512 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information.* (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must 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.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h))

### § 300.513 Hearing decisions.

(a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

(b) *Construction clause.* Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available.

(c) *Separate request for a due process hearing.* Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

### § 300.514 Finality of decision; appeal; impartial review.

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516.

(b) *Appeal of decisions; impartial review.* (1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

#### **§ 300.515 Timelines and convenience of hearings and reviews.**

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

#### **§ 300.516 Civil action.**

(a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a

due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

#### **§ 300.517 Attorneys' fees.**

(a) *In general.* (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or

against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) *Prohibition on use of funds.* (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506.

(iii) A meeting conducted pursuant to § 300.510 shall not be considered—

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

#### **§ 300.518 Child's status during proceedings.**

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and

related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

#### **§ 300.519 Surrogate parents.**

(a) *General.* Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) *Duties of public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) *Criteria for selection of surrogate parents.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) *Unaccompanied homeless youth.*

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) *Surrogate parent responsibilities.*

The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) *SEA responsibility.* The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

#### **§ 300.520 Transfer of parental rights at age of majority.**

(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) *Special rule.* A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has





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**Authority:** 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

**Subpart A—General****Purposes and Applicability****§ 300.1 Purposes.**

The purposes of this part are—  
 (a) To ensure that all children with disabilities have available to them a free appropriate public education that

emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d))

**§ 300.2 Applicability of this part to State and local agencies.**

(a) *States.* This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.

(b) *Public agencies within the State.* The provisions of this part—

(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:

(i) The State educational agency (SEA).

(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of § 300.148.

(Authority: 20 U.S.C. 1412)

**Definitions Used in This Part****§ 300.4 Act.**

*Act* means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a))

**§ 300.5 Assistive technology device.**

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1))

**§ 300.6 Assistive technology service.**

*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

**§ 300.7 Charter school.**

*Charter school* has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.* (ESEA).

(Authority: 20 U.S.C. 7221(i)(1))

**§ 300.8 Child with a disability.**

(a) *General.* (1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional

disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays.* *Child with a disability* for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

(1)(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational

performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) *Specific learning disability*—(i) *General*. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are

congenital or degenerative, or to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

### § 300.9 Consent.

*Consent* means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(Authority: 20 U.S.C. 1414(a)(1)(D))

### § 300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4))

### § 300.11 Day; business day; school day.

(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).

(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3)

### § 300.12 Educational service agency.

*Educational service agency* means—

(a) A regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))

### § 300.13 Elementary school.

*Elementary school* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6))

### § 300.14 Equipment.

*Equipment* means—

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))

### § 300.15 Evaluation.

*Evaluation* means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c))

### § 300.16 Excess costs.

*Excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

(Authority: 20 U.S.C. 1401(8))

**§ 300.17 Free appropriate public education.**

*Free appropriate public education* or *FAPE* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(9))

**§ 300.18 Highly qualified special education teachers.**

(a) *Requirements for special education teachers teaching core academic subjects.* For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) *Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that—

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) *Requirements for special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed

to effectively teach to those standards, as determined by the State.

(d) *Requirements for special education teachers teaching multiple subjects.* Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOSSE covering multiple subjects.

(e) *Separate HOSSE standards for special education teachers.* Provided that any adaptations of the State's HOSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOSSE for regular education teachers—

(1) A State may develop a separate HOSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOSSE evaluations that cover multiple subjects.

(f) *Rule of construction.*

Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) *Applicability of definition to ESEA; and clarification of new special*

*education teacher.* (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of § 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) *Private school teachers not covered.* The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under § 300.138.

(Authority: 20 U.S.C. 1401(10))

#### § 300.19 Homeless children.

*Homeless children* has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

(Authority: 20 U.S.C. 1401(11))

#### § 300.20 Include.

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e-3)

#### § 300.21 Indian and Indian tribe.

(a) *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the **Federal Register** list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

(Authority: 20 U.S.C. 1401(12) and (13))

#### § 300.22 Individualized education program.

*Individualized education program* or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

#### § 300.23 Individualized education program team.

*Individualized education program team* or *IEP Team* means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B))

#### § 300.24 Individualized family service plan.

*Individualized family service plan* or *IFSP* has the meaning given the term in section 636 of the Act.

(Authority: 20 U.S.C. 1401(15))

#### § 300.25 Infant or toddler with a disability.

*Infant or toddler with a disability—*

(a) Means an individual under three years of age who needs early intervention services because the individual—

(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at a State's discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include—

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

(Authority: 20 U.S.C. 1401(16) and 1432(5))

#### § 300.26 Institution of higher education.

*Institution of higher education—*

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and

(b) Also includes any community college receiving funds from the

Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*

(Authority: 20 U.S.C. 1401(17))

#### § 300.27 Limited English proficient.

*Limited English proficient* has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18))

#### § 300.28 Local educational agency.

(a) *General. Local educational agency* or *LEA* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) *Educational service agencies and other public institutions or agencies.*

The term includes—

(1) An educational service agency, as defined in § 300.12; and

(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

(c) *BIA funded schools.* The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

(Authority: 20 U.S.C. 1401(19))

#### § 300.29 Native language.

(a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the

language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20))

### **§ 300.30 Parent.**

(a) *Parent* means—

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

(Authority: 20 U.S.C. 1401(23))

### **§ 300.31 Parent training and information center.**

*Parent training and information center* means a center assisted under sections 671 or 672 of the Act.

(Authority: 20 U.S.C. 1401(25))

### **§ 300.32 Personally identifiable.**

*Personally identifiable* means information that contains—

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

### **§ 300.33 Public agency.**

*Public agency* includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11))

### **§ 300.34 Related services.**

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services* includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by

qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

**§ 300.35 Scientifically based research.**

*Scientifically based research* has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

**§ 300.36 Secondary school.**

*Secondary school* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(27))

**§ 300.37 Services plan.**

*Services plan* means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.38 Secretary.**

*Secretary* means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

**§ 300.39 Special education.**

(a) *General.* (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) *Individual special education terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education* means—



(i) The development of—  
 (A) Physical and motor fitness;  
 (B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

#### **§ 300.40 State.**

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(31))

#### **§ 300.41 State educational agency.**

*State educational agency* or *SEA* means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(Authority: 20 U.S.C. 1401(32))

#### **§ 300.42 Supplementary aids and services.**

*Supplementary aids and services* means aids, services, and other supports

that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

(Authority: 20 U.S.C. 1401(33))

#### **§ 300.43 Transition services.**

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

#### **§ 300.44 Universal design.**

*Universal design* has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

#### **§ 300.45 Ward of the State.**

(a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is—

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 300.30.

(Authority: 20 U.S.C. 1401(36))

### **Subpart B—State Eligibility**

#### **General**

##### **§ 300.100 Eligibility for assistance.**

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a))

#### **FAPE Requirements**

##### **§ 300.101 Free appropriate public education (FAPE).**

(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) *FAPE for children beginning at age 3.* (1) Each State must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(A))

##### **§ 300.102 Limitation—exception to FAPE for certain ages.**

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:



# **Local Law, P.L. 31-158**

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**CHAPTER 9**  
**EDUCATION AND TRAINING FACILITIES AND OPPORTUNITIES**  
**FOR INDIVIDUALS WITH DISABILITIES**

**SOURCE:** This entire Chapter was repealed and reenacted by P.L. 22-119:1; and by P.L. 27-017:1. Amended by P.L. 31-158:2 (Jan. 4, 2012).

**2009 NOTE:** P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education. References to Guam Public School System have been changed to Department of Education pursuant to P.L. 30-050:3.

- § 9101. Declaration of Public Policy.
- § 9102. Definitions.
- § 9103. Child Find.
- § 9104. Special Education Teachers, Classes, Materials, Opportunities, Day Schools, Hospital Classes and Home Instruction.
- § 9105. Administration of the Chapter.
- § 9106. Cooperation with Other Agencies. Gifts and Donations.
- § 9107. Advisory Panel.

**§ 9101. Declaration of Public Policy.**

It is and *shall* be the duty of the various divisions and schools of the Department of Education to make available a free appropriate public education to all children with disabilities residing on Guam between the ages of three (3) through twenty-one (21), including children with disabilities who have been suspended or expelled. The Department of Education *shall* make available early intervention services for eligible infant toddlers ages birth through two (2). This Section and all other sections *shall* be in conformity with the Individuals with Disabilities Education Act (IDEA), its amendments, implementing regulations, and all other laws and regulations relating to the education of children with disabilities. The exception to Free Appropriate Public Education (FAPE) *shall* be made for students ages eighteen (18) through twenty-one (21) who, in the last educational placement prior to their incarceration to an adult correction facility, (a) were *not* actually identified as being a child with a disability; and (b) did *not* have an Individualized Education Program (IEP) under IDEA. The purpose of this Chapter is to ensure that special education and related services are provided

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to all children with disabilities of public school age, or within the broader age limits provided in this Chapter.

**§ 9102. Definitions.**

(a) All identified children with disabilities from birth through age twenty-one (21) described in the following paragraphs (b, c, d) are subject to the policies of the Guam Education Board (Board).

(b) The term *children with disabilities* means those children evaluated in accordance with the requirements of IDEA as having an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disabilities, an orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or ~~a~~multiple disabilities, and who because of that impairment needs special education and related services. For students ages eighteen (18) to twenty-one (21), the Board *shall* promulgate policies that are aligned with current policies on the education for all students.

(c) The term *infant or toddler with a disability* means an infant or toddler with a disability under three (3) years of age who needs early intervention services because they are experiencing developmental delays or have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. This includes infants or toddlers under three (3) years of age who are at risk of having substantial developmental delays, as measured by appropriate diagnostic instruments and procedures, if early intervention services are *not* provided.

(d) For individuals ages three (3) through five (5), the term *children with disabilities* means those children who are experiencing developmental delays, as defined by the Board and as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and for that reason, these children need special education and related services.

(e) *Department* means the Department of Education.

(f) *Board* means the Guam Education Board.

(g) *FAPE* means Free Appropriate Public Education.

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- (h) *IEP* means Individualized Education Program.
- (i) *IDEA* means Individuals with Disabilities Education Act.
- (j) *Parent* for purpose of IDEA means:
  - (1) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, (but *not* the local government if the child is a ward of the government);
  - (2) a person acting in the place of a biological or adoptive parent (such as grandparent or stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare);
  - (3) a surrogate parent who has been appointed in accordance with IDEA;
  - (4) a foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); or
  - (5) a biological or adoptive parent of a child.

**§ 9103. Child Find.**

(a) The continuing IDEA Part "B" eligibility documents for Special Education will ensure that all children residing on Guam, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. This also applies to highly mobile children with disabilities (such as migrant and homeless children, and wards of the government) and children suspected of being a child with a disability, as defined in this Act, and in need of special education, even though they are advancing from grade to grade. The policies and procedures for referral, evaluation, eligibility, or placement and the provision of FAPE *shall* be established by the Board through required continuing eligibility documents under Part "B" of IDEA, and its amendments, and the Handbook for the Delivery of Special Education services.

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(b) Referral. Pursuant to IDEA, children suspected of having a disability and who are in need of special education and related services are to be referred for an evaluation.

(c) In any procedure related to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, the Department of Education *shall* comply with those procedures stated in IDEA, its amendments, and implementing regulations. These include evaluation procedures, the development and implementation of an Individualized Education Program (IEP), determination of placement in the least restrictive environment, and the provision of a free appropriate public education.

(d) For individuals with disabilities from birth through age two (2), an Individualized Family Services Plan will:

(1) be developed by a multidisciplinary team (involved in the provision of early intervention services), including the parents;

(2) be based on a multidisciplinary assessment of the unique strengths and needs of the infant or toddler, and the identification of services appropriate to meet such needs; and

(3) be based on a family-directed assessment of the resources, priorities, and concerns of the family, and the identification of the support and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler with a disability.

**§ 9104. Special Education Teachers, Classes, Materials, Opportunities, Day Schools, Hospital Classes and Home Instruction.**

The Department of Education *shall*, subject to the limitations specified in this Chapter, ensure appropriate special education teachers, aides, and materials for all children identified in accordance with IDEA as needing special education and related services, so that such children *shall* be provided instruction in the least restrictive environment, and the establishment and maintenance of special classes occurs *only* when the nature and severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services *cannot* be achieved satisfactorily. In addition, the Department of Education *shall* (i) provide for the proper training and development of special education teachers, aides and staff to ensure continued quality special education

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services; (ii) ensure that appropriate educational materials and supplies are furnished; and (iii) ensure that appropriate educational facilities are provided to ensure the provision of a free appropriate public education, as set forth in this Chapter. Such classrooms *shall* be located in an appropriate area within a school campus, given specific needs such as proximity to the special transportation pick-up and drop-off point, proximity to the nurse's office, and the like. Such classrooms, when specifically built for or utilized by children with disabilities, *shall not* be reassigned for any other educational program needs, *unless* this reassignment is to relocate the children with disabilities to another appropriate classroom.

**§ 9105. Administration of the Chapter.**

This Chapter *shall* be administered by the Superintendent of Education, and the Board *shall* promulgate such rules and regulations as it may deem necessary for the proper administration of this Chapter. The Board *shall* prescribe the standards under which facilities are furnished or services purchased. The Superintendent of Education *shall* be responsible for administering such standards and conditions.

**§ 9106. Cooperation with Other Agencies. Gifts and Donations.**

The Division of Special Education, and other school agencies, are required to cooperate with other agencies within Guam, both public and private, that are interested in working toward the education or training of children with disabilities. Educational agencies are authorized to accept gifts, donations, or aid from such private agencies.

**§ 9107. Advisory Panel.**

The Superintendent of Education *shall* establish and maintain an advisory panel on disabilities. Membership and roles of the panel *shall* comply with the requirements outlined in IDEA, its amendments, and implementing regulations. The members of the Advisory Panel *shall* be appointed by the Superintendent.

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# **General Education Board Policy on Special Education**

Descriptor Term:	Descriptor Code:	Issued Date:
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<b>SPECIAL EDUCATION</b>	Rescinds:	Issued:

## **BOARD POLICY**

### **PURPOSE**

In order for the Guam Education Policy Board, now hereafter referred to as the GEPB, to make available a free appropriate public education (FAPE), to children with disabilities between the ages of birth through 21 (inclusive), including children who have been suspended or expelled, in accordance with local and federal laws, and regulations, the GEPB does hereby resolve to implement the following policies:

#### **I. CHILD IDENTIFICATION**

It shall be the policy of the Guam Public School System to ensure that children with disabilities residing on Guam, including children with disabilities who are homeless children or are wards of the State attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services. This policy shall apply to highly mobile children with disabilities (including migrant children) and children who are suspected of being a child with a disability and in need of special education and related services even though they are advancing from grade to grade.

The term “Children with Disabilities” means those children evaluated as having mental retardation, hearing impairments including deafness, speech or language impairment visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairments, specific learning disability, deaf-blindness, or multiple disabilities, and who because of that impairment needs special education and related services.

The GEPB shall ensure that all identified children with disabilities, birth through 21 are eligible for services as per the criteria listed below in each of the categories described below:

Autism	Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child’s educational performance. Other characteristics often associated with autism, are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance as defined by federal law. A child who
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manifests the characteristics of autism after age three could be identified as having autism if the other criteria are satisfied.

Deaf-Blindness	Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
Deafness	Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing with or without amplification that adversely affects a child's educational performance.
Developmental Delays	<p>Those children who are eligible for services under this category include those who are functioning two or more standard deviations below the mean in one or more of the following developmental areas, or who are functioning one and a half (1.5) standard deviations below the mean in two or more of the following developmental areas (as determined by a multidisciplinary assessment team):</p> <ul style="list-style-type: none"><li>a. Cognitive development;</li><li>b. Physical development, including vision and hearing</li><li>c. Communication development;</li><li>d. Social or emotional development; or</li><li>e. Adaptive development; and</li><li>f. Who, by reason thereof, need special education and related services.</li></ul>
Hearing Impairment	Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, and does not meet the definition of deafness.
Mental Retardation	Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period, that adversely affects a child's educational performance.
Multiple Disabilities	Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.
Orthopedic Impairment	Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly impairments caused by disease (e.g. poliomyelitis, bone tuberculosis) and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause

contractures.)

**Other Health Impairment** Other health impairments means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environmental, that is due to chronic or acute health problems such as heart condition, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder or attention deficit hyperactivity disorder, Tourette syndrome, or diabetes, that adversely affects a child's educational performance.

**Emotional Disabilities** Emotional Disabilities is defined as follows:

1. The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.
  - a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - b. an inability to build or maintain satisfactory interpersonal relations with peers and teachers;
  - c. inappropriate types of behaviors or feelings under normal circumstances;
  - d. a general pervasive moods of unhappiness or depression, or
  - e. a tendency to develop physical symptoms or fears associated with personal or school problems.
2. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability.

**Specific Learning Disability**

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**Speech or Language Impairment**

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

## Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

## Visual Impairment Including blindness

Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

For children ages three (3) through five (5), the term "child with a disability" means those children aged 3 through 5, who are experiencing developmental delays, as defined by the GEPB and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas; physical development, cognitive development, communication development, social or emotional development, or adaptive development; and for that reason, need special education and related services.

For infants and toddlers, the "infant or toddler with a disability" means an individual under 3 years of age who requires early intervention services because the individual—

- (i) is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or
- (ii) has a diagnosed physical or mental condition, which has a high probability of resulting in developmental delay.

The term "at-risk infant or toddler" means a child under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. These children may currently demonstrate no abnormality but have biological or environmental factors associated with their medical history or home context that increases a potential delay in the future.

1. Biological – includes those children whose families or medical history includes biological conditions that may increase the possibility of delay in the future.
2. Environmental – includes children whose histories of care include risk factors that may increase the possibility of delay in the future.

## **II. PROCEDURAL SAFEGUARDS**

It shall be the policy of the Guam Public School System that the child with a disability and his or her parents shall be provided with safeguards, as required by law, throughout the identification, evaluation, and placement process, and the provision of a free appropriate public education (FAPE).

## **III. FULL AND INDIVIDUAL EVALUATION**

It shall be the policy of the Guam Public School System to conduct a full and individual evaluation before the initial provision of special education and related services to a child.

The evaluation shall be conducted to:

- (a) determine if the child is a “child with a disability”, and
- (b) to determine the educational needs of the child.

The Guam Public School System shall ensure the requirements of the Individuals with Disabilities Education Act as amended are met when conducting an evaluation, including the following requirements:

- 1) Use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the child, including information provided by the parent;
- 2) 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;
- 3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- 4) Assess the child in his or her 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 do so;
- 5) Select, administer, and use testing materials and procedures that are not racially or culturally biased;
- 6) Use tests that have been validated for the specific purpose for which they are used;
- 7) Have tests administered by trained and knowledgeable personnel qualified in accordance with all federal regulations and Guam standards;
- 8) Administer tests in conformance with the instructions provided by the producer;
- 9) Evaluate child in all areas of suspected disability;
- 10) Include assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Additional Evaluation Requirements:

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall review existing evaluation data on the child; including evaluations and information provided by the parents of the child, current classroom-based, Guam assessments and classroom-based observations, and teacher and related service providers observation; and on the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine (1) whether the child has a particular category of disability, and the educational needs of the child, or in the case of a reevaluation whether the child continues to have such a disability, and the educational needs of the child; (2) the present levels of academic achievement and related developmental needs of the child; (3) whether the child needs special education and related services, or 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 Individualized Education Program of the child and to participate, as appropriate, in the general curriculum.

#### **IV. INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

It shall be the policy of the Guam Public School System that an Individualized Education Program (IEP) will be developed for each child with a disability who needs special education. The IEP shall be designed to meet the unique educational needs of the child in accordance with the Individuals with Disabilities Education Act as amended and local laws. Parents shall participate in the design and development of the IEP in accordance with the requirements of the Individuals with Disabilities Education Act as amended and local laws. The IEP shall be reviewed and revised at least annually.

#### **V. LEAST RESTRICTIVE ENVIRONMENT**

It shall be the policy of the Guam Public School System that the education of children with disabilities shall occur in the least restrictive environment; to the maximum extent appropriate, children with disabilities (including children in public or private institutions or other care facilities) are educated with children who do not have disabilities; special classes, separate schooling, or other removal of individuals with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved.

#### **VI. PLACEMENT**

It shall be the policy of the Guam Public School System that a continuum of alternative placement is available to meet the needs of children with disabilities for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and must make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. In determining the educational placement of the child, the placement decision shall be made by a group of persons including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The child's placement shall be determined at least annually, is to be based on the child's IEP, and is to be as close as possible to the child's home school in their designated area. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if non-disabled and in selecting the Least Restrictive Environment (LRE), consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

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

#### **VII. CONFIDENTIALITY OF INFORMATION**

It shall be the policy of the Guam Public School System that the confidentiality of personally identifiable information relating to children with disabilities and their parents and families shall be protected at collection, storage, disclosure, and destruction, and a Division of Special Education official and an individual school official shall be assigned the responsibility for protecting the confidentiality of personally identifiable information. The Guam Public School System shall adhere to all federal and local statutes related to the confidentiality of information.

## **VIII. RESOLVING DISPUTES**

It shall be the policy of the Guam Public School System to resolve matters regarding the identification, evaluation, educational placement or the provision of a free appropriate public education and allegations of non-compliance of the Individuals with Disabilities Education Act as amended and local statutes implementing the Individuals with Disabilities Education Act as amended. Parents shall resolve issues through mediation, the complaint, and/or due process procedures. The Guam Public School System shall develop procedures for each of these processes.

## **IX. PARENT**

The term parent means a biological or adoptive parent of a child, a foster parent, unless prohibited by Territorial law, regulations, or contractual obligations with a Territorial entity that prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State), and individual acting in place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare or a surrogate parent who has been appointed. It shall be the policy of the Guam Public School System that whenever the parent(s) of a child with a disability are not known, or after reasonable efforts, cannot be located, an individual who will serve as the surrogate parent will be appointed.

If a judicial decree or order identifies a specific person or persons described above, except for surrogate parent, to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent".

Unless there is such judiciary decree or order, a biological or adoptive parent, when attempting to act as the parent and when more than one person described above is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

## **X. SURROGATE PARENT**

A person appointed as a surrogate may not be an employee of a public agency that is involved in the education or care of the child; and have no personal or professional interest that conflicts with the interest of the child he or she represents; and must have knowledge and skills that ensure adequate representation of the child.

## **XI. STATEWIDE OR DISTRICT-WIDE ASSESSMENT**

It shall be the policy of the Guam Public School System to ensure that children with disabilities are included in local assessment programs, with appropriate accommodations, where necessary. As appropriate, GPSS shall develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in these assessment programs and develops and conducts those alternative assessments.

## **XII. FREE APPROPRIATE PUBLIC EDUCATION**

It shall be the policy of the Guam Public School System to ensure that FAPE is made

available to all children with disabilities residing on Guam between the ages of birth through 21 (inclusive) including children who have been suspended (over 10 school days in a school year) or expelled. The Board shall ensure that FAPE is available to a child with a disability who needs special education and related services even though the child is advancing from grade to grade.

### **XIII. FACILITIES, PERSONNEL, AND INSTRUCTIONAL MATERIALS**

The Guam Education Policy Board shall provide special education facilities, teachers, aides, and materials for all individuals identified, in accordance with the Individuals with Disabilities Education Act (IDEA) as amended and special education and related services, so that such children are educated in the least restrictive environment. For the same purpose, the Guam Education Policy Board shall remove all architectural and other barriers as mandated in the American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 to ensure that eligible students are provided a free appropriate public education (FAPE) in the least restrictive environment.

Any public school classroom built for and utilized by children with disabilities, utilizing either federal or local funds shall meet ADA and Section 504 accessibility requirements. Such classrooms shall be located in the most appropriate area within a school campus, given specific needs, such as proximity to the special transportation pick-up and drop-off point, proximity to the nurse's office, etc. Such classrooms, when specifically built for and/or utilized by children with disabilities, shall not be reassigned for any other educational program needs, unless this reassignment is to relocate the children with disabilities to a more appropriate classroom.

### **XIV. CHILDREN IN PRIVATE SCHOOLS**

#### **(A) Children enrolled in Private Schools by Their Parents**

It shall be the policy of the Guam Public School System that children with disabilities who are enrolled by their parents in private elementary and secondary schools, to ensure that a provision is made for the participation of those children by providing for such children special education and related services with the following requirements:

- (1) amounts expended for the provision of those services by the educational agency shall be equal to a proportionate amount of Federal funds made available under Part B of the individuals with Disabilities Education Act:
- (2) such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

#### **(B) Children Placed In, or Referred To, Private Schools By Public Agencies**

It shall be the policy of the Guam Public School System that children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program (IEP), at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the school system. All other rights of the Individuals with Disabilities Education Act as amended shall apply.

#### **(C) Payment for Education of Children Enrolled In Private Schools Without Consent Of Or Referral by the Public Agency**

The Guam Public School System (GPSS) subject to section (A) above, will not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if GPSS made a free appropriate public education (FAPE) available to the child and the parents elected to place the child in such private school or facility. Reimbursement shall be made only if required by court or by a hearing officer if there is a finding that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. All limitations in the Individuals with Disabilities Education Act as amended on reimbursement shall apply.

## **XV. PERFORMANCE GOALS AND INDICATORS**

The Guam Public School System shall establish performance goals for children with disabilities that are consistent, to the maximum extent appropriate, with other goals and standards for children established by Guam.

The Guam Public School System shall establish performance indicators that it will use to assess the progress toward achieving the goals that, at a minimum, address the performance of children with disabilities on assessments, dropout rates, and graduation rates.

## **XVI. ADVISORY PANEL**

The Superintendent of Education shall appoint an Advisory panel on Disabilities composed of persons involved in or concerned with the education of individuals with disabilities. The membership must include at least one person representative of each of the following groups:

- 1) Individuals with disabilities; (3 year appointment)
- 2) Teachers; (2 year appointment)
- 3) Parents of children with disabilities ages birth through 26; (3 year appointment)
- 4) State and District Educational officials, including officials who carry out the homeless assistance act; (2 year appointment)
- 5) Special education program administrators; (3 year appointment)
- 6) A representative from the Legislature, to be appointed by the Speaker of the Legislature; 2 year appointment to coincide with legislative term)
- 7) Representative of institutions of higher education that prepare special education and related services personnel; (2 year appointment)
- 8) Representative of other agencies involved in the financing or delivery of related services to children with disabilities; (2 year appointment)
- 9) Representative of private schools and public charter schools; (2 year appointment)
- 10) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; (2 year appointment)
- 11) Representatives from the Department of Youth Affairs (DYA) and the Department of Corrections (DOC); (2 year appointment)
- 12) A representative from the state welfare agency responsible for foster care; (2 year appointment)

The Superintendent of Education shall ensure that:



- (a) a majority of the members of the panel are individuals with disabilities or parents of children with disabilities;
- (b) Broad representation within professional groups (e.g. regular education personnel; special educators, including teachers, teacher trainers, and administrators who can properly represent various dimensions in the education of individuals with disabilities, and appropriate related services personnel);

The Advisory Panel must:

- (1) Advise the GPSS of unmet needs within the island in the education of individuals with disabilities;
  - (2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
  - (3) Advise the GPSS in developing evaluations and reporting on data to the U.S. Secretary of Education;
  - (4) Advise the GPSS in developing corrective action plans to address findings identified in Federal monitoring reports under Individuals with Disabilities Education Act as amended Part B; and
  - (5) Advise the GPSS in developing and implementing policies related to the coordination of services for children with disabilities.
- (c) Advisory panel procedures:
- (1) The advisory panel shall meet as often as necessary to conduct its business.
  - (2) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the GPSS. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.
  - (3) Official minutes must be kept on all panel meetings and must be made available to the public on request.
  - (4) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be opened to the public.
  - (5) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The GPSS may pay for these services from funds under administration.
  - (6) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The GPSS may use funds under administration for this purpose.

## DEFINITIONS

### Free Appropriate Public Education

Free appropriate public education means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Guam Education Policy Board, including the requirements of Individuals with Disabilities Education Act as amended and Guam laws.
3. Include an appropriate preschool, elementary, or secondary school education on the island of Guam; and
4. Are provided in conformity with an IEP (Individualized Education Program) that meets Guam and Federal requirements.

### Least Restrictive Environment (LRE)

Least restrictive environment means the educational placement in which the IEP is to be carried out for a child with a disability, conforming to the following requirements:

1. Children with disabilities, including those in public or private institutions or other care facilities, must be educated with non-disabled children to the maximum extent appropriate.
2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### Related Service

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

### Special Education

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability. Specially designed instruction, means adapting as appropriate to the needs of as eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that results from the child's disability and to ensure access of the child to the general curriculum so that the child can meet the educational standards of Guam that apply to all children.

The policies and procedures to implement the above Board Policy shall be developed by the Guam Public School System, Division of Special Education, in accordance with the Eligibility Documents, the Individuals with Disabilities Education Act (IDEA), and the local special education statute. The Division of Special Education shall be responsible for monitoring the compliance of the requirements.

This amended policy shall go into effect upon adoption by the Guam Education Policy Board.

ADOPTED:

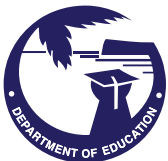
**AMENDED: 11/28/07**

# **Notice of Procedural Safeguards**

Guam Department of Education - Division of Special Education

# Notice of Procedural Safeguards (Parent Rights)

MARCH 2011



Guam Department of Education  
Division of Special Education



# Part B Procedural Safeguards Notice

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This model Procedural Safeguards Notice was Revised by the U.S. Department of Education, Office of Special Education in June 2009 and Adopted and Revised by the Guam Department of Education, Division of Special Education as Applicable.

The Individuals with Disabilities Education Act (IDEA), the federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations. A copy of this notice must be given to you only one time per school year, except that a copy must also be given to you: (1) upon initial referral or your request for evaluation; (2) upon receipt of your first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of your first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request. [34 CFR §300.504(a)]

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148 (unilateral placement of a child in a private school at public expense), §§300.151 through 300.153 (State complaint procedures), §300.300 (parental consent), §§300.502 and 300.503 (IEP and prior written notice), §§300.505 through 300.518 (other procedural safeguards, e.g., mediation, due process complaints, resolution process, and impartial due process hearing), §§300.530 through 300.536 (procedural safeguards in Subpart E of the Part B regulations), and §§300.610 through 300.625 (confidentiality of information provisions in Subpart F). This model form is a format that the Department of Education (hereafter referred to as DOE) has chosen to use to provide information about procedural safeguards to parents.

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# General Information

## GENERAL INFORMATION

### **Prior written notice**

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34 CFR §300.503

#### **Notice**

The Department of Education (DOE) must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

#### **Content of notice**

The written notice must:

1. Describe the action that the DOE proposes or refuses to take;
2. Explain why the DOE is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report the DOE used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that the DOE is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
8. Provide a description of other reasons why the DOE proposed or refused the action.

## Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the DOE must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

## Native language

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34 CFR §300.29

*Native language*, when used regarding an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

## Electronic mail

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34 CFR §300.505

The DOE offers parents the choice of receiving the following documents by e-mail:

1. Prior written notice;

2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## **Parental Consent - Definition**

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34 CFR §300.9

### **Consent**

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part and that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the DOE is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

## **Parental consent**

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34 CFR §300.300

### **Consent for initial evaluation**

The DOE cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings **Prior Written Notice** and **Parental Consent**.

The DOE must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the DOE to start providing special education and related services to your child.

The DOE may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the DOE to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, the DOE may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The DOE will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### **Special rules for initial evaluation of wards of the State**

If a child is a ward of Guam and is not living with his or her parent —

The DOE does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the DOE cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; or
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

Ward of the State, as used in IDEA, means a child who, as determined by Guam where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

### **Parental consent for services**

The DOE must obtain your informed consent before providing special education and related services to your child for the first time.

The DOE must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, the DOE may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the DOE does not provide your child with the special education and related services for which it sought your consent, the DOE:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**

2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the DOE may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

### **Parental consent for reevaluations**

The DOE must obtain your informed consent before it reevaluates your child, unless the DOE can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the DOE may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, the DOE does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

### **Documentation of reasonable efforts to obtain parental consent**

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of Guam for initial evaluations. The documentation must include a record of the DOE's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**

3. Detailed records of visits made to your home or place of employment and the results of those visits.

### **Other consent requirements**

Your consent is not required before the DOE may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the DOE may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

### **Independent educational evaluations**

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34 CFR §300.502

#### **General**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by the DOE.

If you request an independent educational evaluation, the DOE must provide you with information about where you may obtain an independent educational evaluation and about the DOE's criteria that apply to independent educational evaluations.



## Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the DOE responsible for the education of your child.

*Public expense* means that the DOE either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow Guam to use whatever local, Federal, and private sources of support are available in Guam to meet the requirements of Part B of the Act.

## Right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by the DOE, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, the DOE must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the DOE demonstrates in a hearing that the evaluation of your child that you obtained did not meet the DOE's criteria.
2. If the DOE requests a hearing and the final decision is that the DOE's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the DOE may ask why you object to the evaluation of your child obtained by the DOE. However, the DOE may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the DOE's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time the DOE conducts an evaluation of your child with which you disagree.

### **Parent-initiated evaluations**

If you obtain an independent educational evaluation of your child at public expense or you share with the DOE an evaluation of your child that you obtained at private expense:

1. The DOE must consider the results of the evaluation of your child, if it meets the DOE's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or the DOE may present the evaluation as evidence at a due process hearing regarding your child.

### **Requests for evaluations by hearing officers**

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

### **School district criteria**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the DOE uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, the DOE may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

# Confidentiality of Information

## Definitions

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34 CFR §300.611

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *DOE* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

## Personally identifiable

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34 CFR §300.32

*Personally identifiable* means information that includes:

- (a) Your child’s name, your name as the parent, or the name of another family member;
- (b) Your child’s address;
- (c) A personal identifier, such as your child’s social security number or student number; **or**
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## Notice to parents

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34 CFR §300.612

The DOE must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in Guam;

2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the DOE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that schools must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout Guam of these activities.

## **Access rights**

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### **34 CFR §300.613**

The DOE must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the DOE under Part B of IDEA. The DOE must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the DOE to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the DOE provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**

3. Your right to have your representative inspect and review the records.

The DOE may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable Guam law governing such matters as guardianship, separation, and divorce.

### **Record of access**

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34 CFR §300.614

Each DOE must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the DOE), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

### **Records on more than one child**

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34 CFR §300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

### **List of types and locations of information**

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34 CFR §300.616

On request, each DOE must provide you with a list of the types and locations of education records collected, maintained, or used by the DOE.

### **Fees**

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34 CFR §300.617

The DOE may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The DOE may not charge a fee to search for or to retrieve information under Part B of IDEA.

## **Amendment of records at parent's request**

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34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the DOE that maintains the information to change the information.

The DOE must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the DOE refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity for a hearing***.

## **Opportunity for a hearing**

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34 CFR §300.619

The DOE must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **Hearing procedures**

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34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## **Result of hearing**

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34 CFR §300.620

If, as a result of the hearing, the DOE decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the DOE decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the DOE.

Such an explanation placed in the records of your child must:

1. Be maintained by the DOE as part of the records of your child as long as the record or contested portion is maintained by the DOE; **and**
2. If the DOE discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

### **Consent for disclosure of personally identifiable information**

34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of the DOE. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of the DOE for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under Guam law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in the private school and officials in the DOE.



## **Safeguards**

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### **34 CFR §300.623**

The DOE must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at the DOE must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding Guam's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

The DOE must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## **Destruction of information**

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### **34 CFR §300.624**

The DOE must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

# State Complaint Procedures

# STATE COMPLAINT PROCEDURES

## Differences between the procedures for due process complaints and hearings and for state complaints

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by the DOE or any other public agency. Only you or the DOE may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the DOE generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the DOE's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The DOE must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading **Model Forms**.

There are separate procedures for State Complaints and for Due Process Complaints and hearings. A chart describing the differences is given below:

	State Complaint	Due Process Complaint
<b>Who can file?</b>	Individual or organization	Parent/guardian or the DOE
<b>Reason for filing?</b>	Violation of Part B requirement by the DOE or any other agency	Disagreement on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child
<b>Timeline for Resolution</b>	60-calendar days unless the timeline is properly extended	An impartial Hearing Officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after end of resolution period unless the Hearing Officer grants a specific extension of the timeline at your request or the DOE's request.
<b>Process</b>	Investigation by DOE	Hearing conducted by an impartial hearing officer

## **Adoption of state complaint procedures**

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34 CFR §300.151

### **General**

The DOE must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the DOE;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### **Remedies for denial of appropriate services**

In resolving a State complaint in which the DOE has found a failure to provide appropriate services, the DOE must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

## **Minimum state complaint procedures**

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34 CFR §300.152

### **Time limit; minimum procedures**

Each DOE must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the DOE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Provide the DOE or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the DOE or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the DOE's final decision.

### **Time extension; final decision; implementation**

The DOE's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the DOE or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in Guam.
2. Include procedures for effective implementation of the DOE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

### **State complaints and due process hearings**

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the DOE must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the

DOE), then the due process hearing decision is binding on that issue and the DOE must inform the complainant that the decision is binding.

A complaint alleging the DOE's or other public agency's failure to implement a due process hearing decision must be resolved by the DOE.

## **Filing a state complaint**

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### 34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that the DOE or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

If the complaint involves another public agency, the party filing the State complaint must forward a copy of the complaint to the other public agency serving the child at the same time the party files the complaint with the DOE.

# **Due Process Complaint Procedures**

### **Filing a due process complaint**

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34 CFR §300.507

#### **General**

You or the DOE may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the DOE knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The DOE specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The DOE withheld information from you that it was required to provide you under Part B of IDEA.

#### **Information for parents**

The DOE must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the DOE file a due process complaint.

### **Due process complaint**

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34 CFR §300.508

#### **General**

In order to request a hearing, you or the DOE (or your attorney or the DOE's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the DOE with a copy of the complaint.



## Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the DOE) at the time.

## Notice required before a hearing on a due process complaint

You or the DOE may not have a due process hearing until you or the DOE (or your attorney or the DOE's attorney) files a due process complaint that includes the information listed above.

## Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the DOE) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the DOE) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the DOE in writing immediately.

## Complaint amendment

You or the DOE may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading **Resolution Process**; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the DOE) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

## DOE's response to a due process complaint

If the DOE has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the DOE must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the DOE proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the DOE used as the basis for the proposed or refused action; **and**
4. A description of the other factors that is relevant to the DOE's proposed or refused action.

Providing the information in items 1-4 above does not prevent the DOE from asserting that your due process complaint was insufficient.

## Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **DOE's response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## Model forms

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34 CFR §300.509

The DOE must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, the DOE does not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

## Mediation

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34 CFR §300.506

### General

The DOE must develop procedures that make mediation available to allow you and the DOE to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the DOE's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The DOE may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
2. Who would explain the benefits of, and encourage the use of, the mediation process to you.

The DOE must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The DOE must select mediators on a random, rotational, or other impartial basis.

The DOE is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the DOE.

If you and the DOE resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the DOE who has the authority to bind the DOE.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of Guam receiving assistance under Part B of IDEA.

## Impartiality of mediator

The mediator:

1. May not be an employee of the DOE that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of the DOE solely because he or she is paid by the DOE to serve as a mediator.

Fees may not be awarded for mediation.

## Resolution process

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34 CFR §300.510

### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the DOE must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the DOE who has decision-making authority on behalf of the DOE; **and**
2. May not include an attorney of the DOE unless you are accompanied by an attorney.

You and the DOE determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the DOE has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the DOE agree in writing to waive the meeting; or
2. You and the DOE agree to use the mediation process, as described under the heading **Mediation**.

## Resolution period

If the DOE has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the DOE have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the DOE is not able to obtain your participation in the resolution meeting, the DOE may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the DOE's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the DOE fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

## **Adjustments to the 30-calendar-day resolution period**

If you and the DOE agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the DOE agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the DOE agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the DOE withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

## **Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the DOE must enter into a legally binding agreement that is:

1. Signed by you and a representative of the DOE who has the authority to bind the DOE; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the DOE, if Guam has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

## **Agreement review period**

If you and the DOE enter into an agreement as a result of a resolution meeting, either party (you or the DOE) may void the agreement within 3 business days of the time that both you and the DOE signed the agreement.

# Hearings on Due Process Complaints



### Impartial due process hearing

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34 CFR §300.511

#### General

The DOE is responsible for convening due process hearings. Guam has a “one-tier” due process system. An appeal from a due process hearing decision is filed directly with a court.

Whenever a due process complaint is filed, you or the DOE involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

#### Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the DOE that is involved in the education or care of the child. However, a person is not an employee of the DOE solely because he or she is paid by the DOE to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer’s objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The DOE must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

#### Subject matter of due process hearing

The party (you or the DOE) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

## Timeline for requesting a hearing

You or the DOE must request an impartial hearing on a due process complaint within two years of the date you or the DOE knew or should have known about the issue addressed in the complaint.

### Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The DOE specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The DOE withheld information from you that it was required to provide to you under Part B of IDEA.

## Hearing rights

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34 CFR §300.512

### General

You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney or non-attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your option, electronic findings of fact and decisions.

7. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
8. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
9. Obtain written, or, at your option, electronic findings of fact and decisions.

### **Additional disclosure of information**

At least five business days prior to a due process hearing, you and the DOE must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the DOE intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### **Parental rights at hearings**

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

### **Hearing decisions**

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34 CFR §300.513

#### **Decision of the hearing officer**

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as “an incomplete IEP Team”), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering the DOE to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

### **Separate request for a due process hearing**

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### **Findings and decision provided to the advisory panel and general public**

The DOE or the DOE, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and
2. Make those findings and decisions available to the public.

# Appeals

### **Finality of decision; Appeal; Impartial review**

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34 CFR §300.514

#### **Finality of hearing decision**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the DOE) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

### **Timelines and convenience of hearings and reviews**

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34 CFR §300.515

The DOE must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the DOE).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **Civil actions, including the time period in which to file those actions**

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34 CFR §300.516

#### **General**

Any party (you or the DOE) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court

that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

### **Time limitation**

The party (you or the DOE) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

### **Additional procedures**

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the DOE's request;  
**and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### **Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

4. Rule of construction

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative

remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

### **The child's placement while the due process complaint and hearing are pending**

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34 CFR §300.518

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the DOE agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the DOE is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the DOE must provide those special education and related services that are not in dispute (those which you and the DOE both agree upon).

If a hearing officer in a due process hearing conducted by the DOE agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.



## Attorneys' fees

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34 CFR §300.517

### General

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing DOE to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing DOE, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

### Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - (a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
  - (b) The offer is not accepted within 10 calendar days; **and**

- (c) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the DOE the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the DOE unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

# **Procedures when Disciplining Children with Disabilities**

## Authority of school personnel

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34 CFR §300.530

### Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

#### General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the DOE must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading ***Services***.

#### Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

## Services

The DOE does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

## Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the DOE, you, and other relevant members of the IEP Team (as determined by you and the DOE) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the DOE's failure to implement the child's IEP.

If the DOE, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the DOE, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the DOE's failure to implement the IEP, the DOE must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the DOE, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the DOE had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the DOE must return your child to the placement from

which your child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special circumstances**

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the DOE or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the DOE or a school district; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the DOE or a school district.

### **Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

## Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the DOE must notify you of that decision, and provide you with a procedural safeguards notice.

## Change of placement because of disciplinary removals

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34 CFR §300.536

A removal of your child with a disability from your child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - (a) The series of removals total more than 10 school days in a school year;
  - (b) Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; **and**
  - (c) Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the DOE and, if challenged, is subject to review through due process and judicial proceedings.

## Determination of setting

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34 CFR § 300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.



## Appeal

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34 CFR § 300.532

### General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; ***or***
2. The manifestation determination described above.

The DOE may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

### Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, or that your child's behavior was a manifestation of your child's disability; ***or***
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the DOE believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or the DOE files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The DOE must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the DOE agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. Guam may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the DOE may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading **Appeal**).

### **Placement during appeals**

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34 CFR §300.533

When, as described above, you or the DOE file a due process complaint related to disciplinary matters, your child must (unless you and the DOE agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

## Protections for children not yet eligible for special education and related services

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34 CFR §300.534

### General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the DOE had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

### Basis of knowledge for disciplinary matters

The DOE will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the DOE, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
3. Your child's teacher or other DOE personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the DOE's director of special education or to other supervisory personnel of the DOE.

### Exception

The DOE would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, the DOE does not have knowledge that your child is a child with a disability,

as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the DOE, and information provided by you, the DOE must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## **Referral to and action by law enforcement and judicial authorities**

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34 CFR §300.535

Part B of IDEA does not:

1. Prohibit the DOE from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent Guam law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

## **Transmittal of records**

If the DOE reports a crime committed by a child with a disability, the DOE:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

# **Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense**

## REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

### **General**

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#### **34 CFR §300.148**

Part B of IDEA does not require the DOE to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the DOE made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the DOE where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

### **Reimbursement for private school placement**

If your child previously received special education and related services under the authority of the DOE, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the DOE, a court or a hearing officer may require the DOE to reimburse you for the cost of that enrollment if the court or hearing officer finds that the DOE had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the DOE.

### **Limitation on reimbursement**

The cost of reimbursement described in the paragraph above may be reduced or denied:

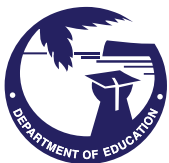
1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the DOE to provide FAPE to

your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the DOE of that information;

2. If, prior to your removal of your child from the public school, the DOE provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if:  
(a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if:  
(a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.



**Guam Department of Education**  
Division of Special Education





# **OSERS Questions and Answers on IEPs, Evaluations, and Reevaluations**

# **Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations**

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Revised September 2011  
(Revised F-1 and F-3)

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. In addition, supplemental Part B regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise, or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), local educational agencies (LEAs), parents, and other stakeholders with information regarding the IDEA requirements relating to individualized education programs (IEPs), evaluations, and reevaluations. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supersedes the Department's guidance, entitled: Questions and Answers on Individualized Education Programs (IEPs), Evaluations and Reevaluations, Revised June, 2010.

Generally, the questions and corresponding answers presented in this Q&A document required interpretation of the IDEA and its implementing regulations; the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C>.

If you are interested in commenting on this guidance, please e-mail your comments to [OSERSguidancecomments@ed.gov](mailto:OSERSguidancecomments@ed.gov) and include IEPs, Evaluations and Reevaluations in the subject of your e-mail, or write to us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, SW, room 4108, Washington, DC 20202.

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## **A. Transfer of Students with IEPs from One Public Agency to a New Public Agency**

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**Authority:** The requirements for IEPs for students who transfer from one public agency to a new public agency within the same school year are found in 34 CFR §300.323(e), (f), and (g). The requirements governing parental consent for initial evaluations are found in 34 CFR §300.300(a).

**Question A-1:** What if a student whose IEP has not been subject to a timely annual review, but who continues to receive special education and related services under that IEP, transfers to a new public agency in the same State? Is the new public agency required to provide a free appropriate public education (FAPE) from the time the student arrives?

**Answer:** If a child with a disability who received special education and related services pursuant to an IEP in a previous public agency (even if that public agency failed to meet the annual review requirements in 34 CFR §300.324(b)(1)(i)) transfers to a new public agency in the same State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must, pursuant to 34 CFR §300.323(e), provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either (1) adopts the child's IEP from the previous public agency; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

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**Question A-2:** What options are available when an out-of-state transfer student cannot provide a copy of his/her IEP, and the parent identifies the "comparable" services that the student should receive?

**Answer:** The regulations in 34 CFR §300.323(g) require that, to facilitate the transition for a child described in 34 CFR §300.323(e) and (f)--

(1) the new public agency in which the child enrolls must 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

(2) the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

After taking reasonable steps to obtain the child's records from the public

agency in which the child was previously enrolled, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new public agency is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide special education and related services to the child pursuant to 34 CFR §300.323(f).

Even if the parent is unable to provide the child's IEP from the previous public agency, if the new public agency decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in the IDEA or its implementing regulations would prevent the new public agency from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the new public agency. However, if the child receives special education services while the evaluation is pending, the new public agency still must ensure that the child's evaluation, which would be considered an initial evaluation, is conducted within 60 days of receiving parental consent for the evaluation or within the State-established timeframe within which the evaluation must be conducted, in accordance with 34 CFR §300.301(c)(1). Further, under 34 CFR §300.306(c)(1)-(2), if the new public agency conducts an eligibility determination and concludes that the child has a disability under 34 CFR §300.8 and needs special education and related services, the new public agency still must develop and implement an IEP for the child in accordance with applicable requirements in 34 CFR §§300.320 through 300.324 even though the child is already receiving special education services from the new public agency.

If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or the special education and related services that are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures in 34 CFR §300.506 or, as appropriate, the due process procedures in 34 CFR §§300.507 through 300.516. If a due process complaint requesting a due process hearing is filed, the public agency would treat the child as a general education student while the due process complaint is pending. 71 FR 46540, 46682 (Aug. 14, 2006).

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**Question A-3:** Is it permissible for a public agency to require that a student with a disability who transfers from another State with a current IEP that is provided to the new public agency remain at home without receiving special education and related services until a new IEP is developed by the new public agency?

**Answer:** No. Under 34 CFR §300.323(f), 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 a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Thus, the new public agency must provide FAPE to the child with a disability when the child enrolls in the new school in the public agency in the new State, and may not deny special education and related services to the child pending the development of a new IEP.

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**Question A-4:** What is the timeline for a new public agency to adopt an IEP from a previous public agency or to develop and implement a new IEP?

**Answer:** Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new public agency to adopt the child's IEP from the previous public agency or to develop and implement a new IEP. However, consistent with 34 CFR §300.323(e) and (f), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.

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**Question A-5:** What happens if a child with a disability who has an IEP in effect transfers to a new public agency or LEA in a different State and the parent refuses to give consent for a new evaluation?

**Answer:** Under 34 CFR §300.323(f), if a child with a disability (who has an IEP in effect) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324. Nothing in 34 CFR §300.323(f) would preclude the new public agency in the new State from adopting the IEP developed for the child by



the previous public agency in another State. If the new public agency determines that it is necessary to conduct a new evaluation, that evaluation would be considered an initial evaluation because the purpose of that evaluation is to determine whether the child qualifies as a child with a disability and to determine the educational needs of the child. 71 FR 46540, 46682 (Aug 14, 2006). The public agency must obtain parental consent for such an evaluation in accordance with 34 CFR §300.300(a). However, 34 CFR §300.300(a)(3)(i) provides that if a parent does not provide consent for an initial evaluation, or fails to respond to a request to provide consent, the new public agency may, but is not required to, pursue the initial evaluation by utilizing the Act's consent override procedures, if permissible under State law. The Act's consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300 and include the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.

Because the child's evaluation in this situation is considered an initial evaluation, and not a reevaluation, the stay-put provision in 34 CFR §300.518(a) does not apply. The new public agency would treat the student as a general education student and would not be required to provide the child with comparable services if a due process complaint is initiated to resolve the dispute over whether the evaluation should be conducted. 71 FR 46682. Also, 34 CFR §300.300(a)(3)(ii) is clear that the public agency does not violate its obligation under 34 CFR §§300.111 and 300.301 through 300.311 (to identify, locate, and evaluate a child suspected of having a disability and needing special education and related services) if it declines to pursue the evaluation. Similarly, if the parent does not provide consent for the new evaluation and the new public agency does not seek to override the parental refusal to consent to the new evaluation, the new public agency would treat the student as a general education student.

## **B. Initial Evaluation Timelines and Determination of Eligibility**

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**Authority:** The requirements for initial evaluation timelines are found in 34 CFR §300.301(c) and (d). The requirements for determining eligibility are found in 34 CFR §300.306.

**Question B-1:** Under the IDEA, what must occur during the 60-day time period after the public agency receives parental consent for an initial evaluation? Must a public agency determine eligibility and begin providing special education and related services within this IDEA 60-day initial evaluation timeline?

**Answer:** Under 34 CFR §300.301(c)(1), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The IDEA 60-day timeline applies only to the initial evaluation. Public agencies are not required to make the eligibility determination, obtain parental consent for the initial provision of special education and related services, conduct the initial meeting of the IEP Team to develop the child's IEP, or initially provide special education and related services to a child with a disability during the IDEA 60-day initial evaluation timeline.

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**Question B-2:** Must the assessments and other evaluation measures used to determine eligibility for special education and related services include a doctor's medical diagnosis, particularly for children suspected of having autism or attention deficit disorder/attention deficit hyperactivity disorder?

**Answer:** There is no explicit requirement in the IDEA or the Part B regulations to include a medical diagnosis as part of the eligibility determination for any of the disability categories. The purpose of the evaluation conducted in accordance with 34 CFR §§300.304 through 300.311 is to determine whether the child qualifies as a child with a disability and the nature and extent of the educational needs of the child. Under 34 CFR §300.304(b)(1), in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the educational needs of the child. That information could include information from a physician, if determined appropriate, to assess the effect of the child's medical condition on the child's eligibility and educational needs. However, under 34 CFR §300.304(b)(2), no single measure or assessment may be used as the sole criterion for determining whether the child is a child with a disability and for determining an

appropriate educational program for the child.

Under 34 CFR §300.306(c)(1)(i), in interpreting evaluation data for the purpose of determining whether the child is a child with a disability under Part B of the IDEA and the educational needs of the child, the group of qualified professionals and the parent must 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. Under 34 CFR §300.306(c)(1)(ii), the public agency must ensure that information obtained from all of these sources is documented and carefully considered. There is nothing in the IDEA or the Part B regulations that would prevent a public agency from obtaining a medical diagnosis prior to determining whether the child has a particular disability and the educational needs of the child. Also, there is nothing in the IDEA or the Part B regulations that would prohibit a State from requiring that a medical diagnosis be obtained for purposes of determining whether a child has a particular disability, such as attention deficit disorder/attention deficit hyperactivity disorder or autism, provided the medical diagnosis is obtained at public expense and at no cost to the parents and is not used as the sole criterion for determining an appropriate educational program for the child. Further, if a State requires a medical diagnosis consistent with the above criteria, such a requirement exceeds the requirements of Part B of the IDEA. Under 34 CFR §300.199(a)(2), the State would be required to identify in writing to the LEAs located in the State, and to the Secretary, that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations.

## C. IEP Team Membership and IEP Meetings

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**Authority:** The requirements for participants at IEP Team meetings are found in 34 CFR §300.321.

**Question C-1:** May the representative of the public agency be excused from attending an IEP Team meeting?

**Answer:** Yes. The members who can be excused from attending an IEP Team meeting in whole or in part, subject to the conditions described in 34 CFR §300.321(e)(1) and (e)(2), include a public agency representative described in 34 CFR §300.321(a)(4). Under 34 CFR §300.321(e)(1), a public agency representative is not required to attend an IEP Team meeting in whole or in part, if the parent of the 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. When the meeting does involve a modification to, or discussion of, the member's area of the curriculum or related services, 34 CFR §300.321(e)(2) provides that a representative of the public agency may be excused from attending an IEP Team meeting, in whole or in part, if (i) the parent, in writing, and the public agency consent to the excusal; and (ii) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Allowing the IEP Team members described in 34 CFR §300.321(a)(2) through (a)(5) to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict. 71 FR 46673. However, because the public agency remains responsible for conducting IEP Team meetings that are consistent with the IEP requirements of the IDEA and its implementing regulations, it may not be reasonable for the public agency to agree or consent to the excusal of the public agency representative. For example, the public agency cannot consent to the excusal of the public agency representative from an IEP Team meeting if that individual is needed to ensure that decisions can be made at the meeting about commitment of agency resources that are necessary to implement the IEP being developed, reviewed, or revised. If a public agency representative is excused from attending an IEP Team meeting, consistent with 34 CFR 300.321(e), the public agency remains responsible for implementing the child's IEP and may not use the excusal as a reason for delaying the implementation of the child's IEP.

**Question C-2:** May more than one member of an IEP Team be excused from attending the same IEP Team meeting?

**Answer:** Yes. There is nothing in the IDEA or its implementing regulations that would limit the number of IEP Team members who may be excused from attending an IEP Team meeting, so long as the public agency meets the requirements of 34 CFR §300.321(e) that govern when IEP Team members can be excused from attending IEP Team meetings in whole or in part. 71 FR 46675. The excusal provisions in 34 CFR §300.321(e) apply to the following IEP Team members described in 34 CFR §300.321(a)(2) through (5):

- The regular education teacher(s) of the child (if the child is, or may be, participating in the regular education environment).
- The special education teacher(s) of the child, or where appropriate, the special education provider(s) of the child.
- A representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP Team.

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**Question C-3:** Must the public agency receive consent from a parent to excuse multiple regular education teachers if at least one regular education teacher will attend an IEP Team meeting?

**Answer:** No. As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes “[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . .” Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher. Therefore, if an IEP Team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting.

**Question C-4:** If the designated regular education teacher is excused from attending the IEP Team meeting, would an alternate regular education teacher be required to attend?

**Answer:** No. If the public agency designates a particular regular education teacher as the person who will participate in the IEP Team meeting pursuant to 34 CFR §300.321(a)(2), and that individual is excused from attending the meeting, consistent with the requirements in 34 CFR §300.321(e)(1) and (e)(2), the public agency would not be required to include a different regular education teacher in the IEP Team meeting.

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**Question C-5:** Is there a specific timeline in the IDEA for public agencies to notify parents of a request to excuse an IEP Team member from attending an IEP Team meeting? May a State establish a timeline for this purpose?

**Answer:** Neither the IDEA nor its implementing regulations specify a time period in which a public agency must notify parents of a request for an excusal. In public comments on the proposed Part B regulations, the Department was asked to specify a timeline, through regulations, in which a public agency must notify parents of requests for excusing IEP Team members from attending IEP Team meetings. In declining the commenter's request to regulate, the Department noted that Part B of the IDEA does not specify how far in advance of an IEP Team meeting a public agency must notify a parent of the public agency's request to excuse an IEP Team member from attending the IEP Team meeting. Further, Part B of the IDEA does not specify, when the parent and public agency must sign a written agreement that the IEP Team member's attendance is not necessary, consistent with 34 CFR §300.321(e)(1), or when the parent and agency must provide written consent regarding the IEP Team member's excusal consistent with 34 CFR §300.321(e)(2). 71 FR 46676. The Department also explained that requiring the request for excusal or the written agreement or written consent to occur at a particular time prior to an IEP Team meeting would not account for situations where it would be impossible to meet the timeline (e.g., when an IEP Team member has an emergency). Thus, requiring specific timelines could impede Congressional intent to provide additional flexibility to parents in scheduling IEP Team meetings, as reflected in section 614(d)(1)(C) of the IDEA.

Moreover, we believe that it would be inconsistent with 34 CFR §300.321(e) to permit States to impose timelines for parents and public agencies to agree or consent to the excusal of an IEP Team member. A State may not restrict, or otherwise determine, when an IEP Team member can be excused from attending an IEP Team meeting, or prohibit the

excusal of an IEP Team member, provided the conditions in 34 CFR §300.321(e)(1) and (e)(2) are satisfied.

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**Question C-6:** May State law or regulations regarding IEP Team membership and IEP Team meeting attendance requirements exceed those of the IDEA?

**Answer:** Yes, but with certain caveats. A State may establish laws or regulations for IEP Team membership and IEP Team meeting attendance, but must ensure that in doing so it does not establish provisions that reduce parent rights or are otherwise in conflict with the requirements of Part B of the IDEA and the Federal regulations. Examples of State regulations that could exceed Federal requirements regarding IEP Team membership but would not conflict with the IDEA in this regard would be for a State to require that a regular education teacher attend an IEP Team meeting regardless of whether the child is or may be participating in the regular education environment, that the IEP Team include additional members beyond those required by 34 CFR §300.321(a), or that a parent has the right to bring their child to any or all IEP Team meetings at any age.

If a State were to adopt laws or regulations that exceed the requirements of Part B of the IDEA, note that 34 CFR §300.199(a) requires each State that receives funds under Part B of the IDEA to do the following: (1) ensure that any State rules, regulations, and policies conform to the purposes of 34 CFR Part 300; (2) identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations; and (3) minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the IDEA.

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**Question C-7:** Must an IEP Team document in writing that it considered all of the requirements of 34 CFR §300.324, regarding the development, review, and revision of IEPs?

**Answer:** States and public agencies are required to maintain records to show compliance with program requirements, pursuant to 34 CFR §76.731 of the Education Department General Administrative Regulations (EDGAR). Neither the IDEA nor its implementing regulations specify what documentation must be maintained to demonstrate this compliance with the requirements of 34 CFR §300.324.

The program requirements are found in the IDEA and its implementing regulations. Therefore, IEP Teams must document consideration of the

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requirements of 34 CFR §300.324 with sufficient detail to show compliance with this regulation in the development, review, and revision of IEPs.

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**Question C-8:** How must a public agency document that IEP Team members have been informed of changes to the IEP?

**Answer:** The regulations in 34 CFR §300.324(a)(4)(i) provide that, 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. The regulations require, in 34 CFR §300.324(a)(4)(ii), that if changes are made to the child's IEP in accordance with 34 CFR §300.324(a)(4)(i), the public agency must ensure that the child's IEP Team is informed of those changes. While neither the IDEA nor its implementing regulations specify the manner in which public agencies must document that they have ensured that the child's IEP Team is informed of changes, they must maintain records to show compliance with this program requirement, in accordance with 34 CFR §76.731 of EDGAR.

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**Question C-9:** Who must participate in making changes to the IEP when an IEP is amended without convening an IEP Team meeting pursuant to 34 CFR §300.324(a)(4)(i)?

**Answer:** The regulations provide, in 34 CFR §300.324(a)(4)(i), that 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 purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. The IDEA and its regulations are silent as to which individuals must participate in making changes to the IEP where there is agreement between the parent and the public agency not to convene an IEP Team meeting for the purpose of making the changes.

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**Question C-10:** Must a public agency provide a parent with prior written notice if an IEP is amended without convening a meeting of the IEP Team?

**Answer:** Yes. The regulations in 34 CFR §300.503(a) require that written notice that meets the requirements of 34 CFR §300.503(b) must be given to the parents of a child with a disability a reasonable time before the public

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agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies, even if the IEP is revised without convening an IEP Team meeting, pursuant to 34 CFR §300.324(a)(4).

## D. Consent Provisions

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**Authority:** The requirement for consent to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to the child's IEP Team meeting is found in 34 CFR §300.321(b)(3). See also 34 CFR §300.622(b)(2).

The requirements for parental consent for initial evaluations are found in 34 CFR §300.300(a). The requirements for parental consent for the initial provision of special education and related services are found in 34 CFR §300.300(b)(1)-(2). The requirements for parental consent for reevaluations are found in 34 CFR §300.300(c).

**Question D-1:** Must a public agency obtain parental consent, or the consent of a child with a disability who has reached the age of majority, to invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services to an IEP Team meeting conducted in accordance with 34 CFR §300.321(b)(3)? Do the words "to the extent appropriate" impose a limitation on this requirement?

**Answer:** The regulations specifically provide that, to the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of §300.321(b)(1), the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services (34 CFR §300.321(b)(3)). See also 34 CFR §300.622(b)(2) (requiring consent of the parent or child who has reached the age of majority for disclosure of personally identifiable information to officials of an agency responsible for providing or paying for transition services). Paragraph (b)(1) of 34 CFR §300.321 requires that a child with a disability be invited to an IEP Team meeting if a purpose of a meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 34 CFR §300.320(b).

This consent requirement was included in the Part B regulations to protect the confidentiality of discussions that occur at IEP Team meetings, which other agency representatives would be able to hear as a result of their attendance at such meetings, only because they may be providing or paying for transition services. 71 FR 46672. Because the discussions at each IEP Team meeting are not the same, and confidential information about the child is always shared, we believe that consent of the parent, or of a child with a disability who has reached the age of majority, must be obtained prior to each IEP Team meeting if a public agency proposes to invite a representative of any participating agency that is likely to be

responsible for providing or paying for transition services. The words “to the extent appropriate” were included in §300.321(b)(3) to allow the public agency to determine that such a representative is not needed at a particular meeting. This phrase does not represent a limitation on the responsibility of the public agency to obtain the consent of the parents or the child with a disability who has reached the age of majority to invite such a representative.

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**Question D-2:** Must a public agency pursue the initial evaluation of a child using the procedural safeguards outlined in subpart E of 34 CFR Part 300 in every case where a parent refuses to provide consent for an initial evaluation?

**Answer:** No. As we explained in our response to question A-5 above, 34 CFR §300.300(a)(3)(i) provides that if a parent of a child enrolled in or seeking to be enrolled in public school does not consent to the initial evaluation or fails to respond to the request for consent, the decision whether to use applicable consent override procedures is optional on the part of the public agency. These consent override procedures refer to the procedural safeguards in subpart E of the Part B regulations (including the mediation procedures under 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent. Under 34 CFR §300.300(a)(3)(ii), the public agency does not violate its obligation under §§300.111 and 300.301 through 300.311 (to identify, locate, and evaluate a child suspected of having a disability and needing special education and related services) if it declines to pursue the evaluation.

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**Question D-3:** What may a public agency do if a parent does not respond to the public agency’s request for the parent to provide consent to a reevaluation?

**Answer:** Under 34 CFR §300.300(c)(2), the public agency need not obtain informed parental consent for the reevaluation if the public agency can demonstrate that it made reasonable efforts to obtain consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. This means that a public agency may conduct a reevaluation of a child with a disability without using the consent override procedures if the public agency can demonstrate that it made reasonable efforts to obtain parental consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. Section 300.300(d)(5) of the regulations provides that in order to meet the reasonable efforts requirement, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR §300.322(d). These procedures include detailed records of telephone calls made or attempted

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and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

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**Question D-4:** The regulations provide, in 34 CFR §300.303(b)(2), that a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. What options are available to a public agency if a parent believes that the public agency should continue to provide special education and related services to their child but refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2)?

**Answer:** If a parent refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2), but requests that the public agency continue the provision of special education and related services to their child, the public agency has the following options:

1. The public agency and the parent may, as provided in 34 CFR §300.303(b)(2), agree that the reevaluation is unnecessary. If such an agreement is reached, the three-year reevaluation need not be conducted. However, the public agency must continue to provide FAPE to the child.
2. If the public agency believes that the reevaluation is necessary, and the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the Act's consent override procedures described in 34 CFR §300.300(a)(3), so long as overriding a parental refusal to consent to a reevaluation is permissible under State law. These consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300, including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.
3. If the public agency chooses not to pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3), and the public agency believes, based on a review of existing evaluation data on the child, that the child does not continue to have a disability or does not continue to need special education and related services, the public agency may determine that it will not continue the provision of special education and related services to the child. If the public agency determines that it will not continue the provision of special education and related services to the child, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with 34 CFR

§300.503(a)(2), including the right of the parent to use the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516 if the parent disagrees with the public agency's decision to discontinue the provision of FAPE to the child.

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**Question D-5:** Does the requirement that a public agency obtain parental consent for the initial provision of special education and related services mean that parents must consent to each service included in the initial IEP developed for their child?

**Answer:** No. Under 34 CFR §300.300(b)(1), a public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services. However, this consent requirement only applies to the initial provision of special education and related services generally, and not to the particular special education and related services to be included in the child's initial IEP. In order to give informed consent to the initial provision of special education and related services under 34 CFR §300.300(b)(1), parents must be fully informed of what special education and related services are and the types of services their child might need, but not the exact program of services that would be included in an IEP to be developed for their child. Once the public agency has obtained parental consent and before the initial provision of special education and related services, the IEP Team would convene a meeting to develop an IEP for the child in accordance with 34 CFR §§300.320 through 300.324. Decisions about the program of special education and related services to be provided to the child are left to the child's IEP Team, which must include the child's parents, a public agency representative, and other individuals, consistent with 34 CFR §300.321. While the IDEA does not require public agencies to obtain parental consent for particular services in a child's IEP, under the regulations in 34 CFR §300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services. In cases where a State creates additional parental consent rights, the State must ensure that each public agency in the State has effective procedures to ensure that the parent's exercise of these rights does not result in a failure to provide FAPE to the child.

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**Question D-6:** What recourse is available to parents who consent to the initial provision of special education and related services but who disagree with a particular service or services in their child's IEP?

**Answer:** In situations where a parent agrees with the majority of services in his/her child's IEP, but disagrees with the provision of a particular service or services, such as physical therapy or occupational therapy, the public agency should work with the parent informally to achieve agreement. While the parent and public agency are attempting to resolve their differences, the agency should provide the service or services that are not in dispute.

In situations where a parent disagrees with the provision of a particular special education or related service, and the parent and public agency later agree that the child would be provided with FAPE if the child did not receive that service, the public agency could decide not to provide the service with which the parent disagrees. If, however, the parent and the public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service with which the parent disagrees, and the parent and public agency cannot resolve their differences informally, the parent may use the procedures in subpart E of the IDEA regulations to pursue the issue of whether the service with which the parent disagrees is not appropriate for their child. This includes the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516.

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**Question D-7:** May a foster parent provide consent for an initial evaluation even if the biological parent refuses to provide such consent?

**Answer:** If the biological parent of the child refuses consent for an initial evaluation of the child, and the parental rights of the biological parent have not been terminated in accordance with State law, or a court has not designated a foster parent to make educational decisions for the child in accordance with State law, a foster parent may not provide consent for an initial evaluation. See 34 CFR §300.30(b)(1).

## E. Related Services

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**Authority:** The requirements for related services are found in 34 CFR §300.34.

**Question E-1:** Can artistic and cultural services, such as music therapy, be considered related services under the IDEA? If so, are there qualifications in the IDEA for personnel to provide such services as related services?

**Answer:** Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services can include artistic and cultural services that are therapeutic in nature, regardless of whether the IDEA or the Part B regulations identify the particular therapeutic service as a related service. The Department's long-standing interpretation is that the list of related services in the IDEA and the Part B regulations is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education in order for the child to receive FAPE. As is true regarding consideration of any related service for a child with a disability under Part B of the IDEA, the members of the child's IEP Team (which include the parents, school officials, and whenever appropriate, the child with a disability) must make individual determinations in light of each child's unique abilities and needs about whether an artistic or cultural service such as music therapy is required to assist the child to benefit from special education.

If a child's IEP Team determines that an artistic or cultural service such as music therapy is an appropriate related service for the child with a disability, that related service must be included in the child's IEP under the statement of special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child. 34 CFR §300.320(a)(4). These services are to enable the child to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). If the child's IEP specifies that an artistic or cultural service such as music therapy is a related service for the child, that related service must be provided at public expense and at no cost to the parents. 34 CFR §§300.101 and 300.17.

Regarding the question about personnel qualifications for providers when an artistic or cultural service such as music therapy is considered a related

service, Part B of IDEA does not prescribe particular qualifications or credentials for personnel providing special education and related services. Under 34 CFR §300.156(a), each SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the IDEA are appropriately and adequately prepared and trained. This responsibility includes ensuring that the qualifications for related services personnel and paraprofessionals are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. 34 CFR §300.156(b)(1). In addition, the SEA must ensure that related services personnel who deliver services in their discipline or profession meet applicable State qualification standards and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis. 34 CFR §300.156(b)(2)(ii). Therefore, if a child's IEP includes an artistic or cultural service such as music therapy as a related service, the SEA would be responsible for ensuring that the child received that service from appropriately and adequately trained personnel, consistent with 34 CFR §300.156(b).

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**Question E-2:** Is a public agency responsible for paying for mental health services if the IEP Team determines that a child with a disability requires these services to receive FAPE and includes these services in the child's IEP?

**Answer:** The IEP Team for each child with a disability is responsible for identifying the related services that the child needs in order to benefit from special education and receive FAPE. These services must be included in the child's IEP in the statement of special education, related services, and supplementary aids and services, to be provided to, or on behalf of, the child to enable the child to: advance appropriately toward attaining the annual goals, be involved and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). Mental health services provided as a related service must be provided at no cost to the parents. 34 CFR §§300.101 and 300.17.

An IEP Team may consider whether mental health services are provided as counseling services (34 CFR §300.34(c)(2)) or social work services in schools (34 CFR §300.34(c)(14)). Under 34 CFR §300.34(c)(2), counseling services are defined as including services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. Under 34 CFR §300.34(c)(14)(ii), social work services in



schools includes group or individual counseling for the child and family. However, under 34 CFR §300.34(c)(5), the public agency would not be responsible for paying for mental health services that constitute medical treatment for a child by a licensed physician except to the extent that the services are for diagnostic and evaluation purposes only.

## F. Secondary Transition

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**Authority:** The requirements for the content of the IEP related to transition services are found in 34 CFR §300.320(b).

**Question F-1:** Must an IEP include measurable postsecondary goals relating to training, education, and employment based on age-appropriate transition assessments for every student with a disability who is at least 16 years old, regardless of the student's skill levels? When is a separate goal also required for independent living skills?

**Answer:** Under 34 CFR §300.320(b), the IEP for each child with a disability, must, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. The Department explained in the Analysis of Comments and Changes section of the preamble of the August 2006 final Part B regulations that "...the Act requires a child's IEP to include measurable postsecondary goals in the areas of training, education, **and** employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills.... It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE." [Emphasis added] 71 Fed. Reg. 46668 (Aug. 14, 2006). The requirements for postsecondary IEP goals apply, whether or not the student's skill levels related to training, education, and employment are age appropriate. In all cases, the IEP Team must develop the specific postsecondary goals for the student, in light of the unique needs of the student as determined by age-appropriate transition assessments of the student's skills in these areas.

Regarding postsecondary goals related to training and education, the IDEA and its implementing regulations do not define the terms "training" and "education." However, the areas of training and education can reasonably be interpreted as overlapping in certain instances. In determining whether postsecondary goals in the areas of training and education overlap, the IEP Team must consider the unique needs of each individual student with a disability in light of his or her plans after leaving high school. If the IEP Team determines that separate postsecondary goals in the areas of training and education would not result in the need for

distinct skills for the student after leaving high school, the IEP Team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas. For example, for a student whose postsecondary goal is teacher certification, any program providing teacher certification would include education as well as training. Similarly, a student with a disability who enrolls in a postsecondary program in engineering would be obtaining both education and occupational training in the program. The same is true for students with disabilities enrolled in programs for doctors, lawyers, accountants, technologists, physical therapists, medical technicians, mechanics, computer programmers, etc. Thus, in some instances, it would be permissible for the IEP to include a combined postsecondary goal or goals in the areas of training and education to address a student's postsecondary plans, if determined appropriate by the IEP Team. This guidance, however, is not intended to prohibit the IEP Team from developing separate postsecondary goals in the areas related to training and education in a student's IEP, if deemed appropriate by the IEP Team, in light of the student's postsecondary plans.

On the other hand, because employment is a distinct activity from the areas related to training and education, each student's IEP must include a separate postsecondary goal in the area of employment.

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**Question F-2:** May community access skills be included in the IEP as independent living skills?

**Answer:** The IEP Team must determine whether it is necessary to include appropriate measurable postsecondary goals related to independent living skills in the IEP for a particular child, and, if so, what transition services are needed to assist the child in reaching those goals. Under 34 CFR §300.43, the term "transition services" is defined as "a coordinated set of activities for a child with a disability...to facilitate movement from school to post-school activities," and include among other activities, "independent living, or community participation." Based on the assessment of the student's independent living skills, the IEP Team would need to determine whether transition services provided as community access skills are necessary for the child to receive FAPE. If so, those skills must be reflected in the transition services in the child's IEP.

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**Question F-3:** If an IEP Team chooses to address transition before age 16 (for example, at age 14), do the same requirements apply?

**Answer:** Yes. The regulations provide, in 34 CFR §300.320(b), that beginning not

later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. If the IEP Team for a particular child with a disability determines that it is appropriate to address the requirements of 34 CFR §300.320(b) for a child who is younger than age 16, then the IEP for that child must meet the requirements of 34 CFR §300.320(b). This regulation requires including appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, and employment, and, where appropriate, independent living skills. As discussed in the answer to question F-1 above, a student's IEP may include a combined postsecondary goal or goals in the areas of training and education, if deemed appropriate by the IEP Team, in light of the student's postsecondary plans.

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**Question F-4:** The regulations in 34 CFR §300.320(b)(1) require that appropriate postsecondary transition goals be measurable. Must public agencies measure achievement of the goals once a student has graduated or has aged out?

**Answer:** There is no requirement for public agencies to determine whether the postsecondary goals have been met once a child is no longer eligible for FAPE under Part B of the IDEA. Under 34 CFR §300.101(a), FAPE must be made available to all children residing in the State in mandatory age ranges. However, the obligation to make FAPE available does not apply to children who have graduated from high school with a regular high school diploma (34 CFR §300.102(a)(3)(i)) or to children who have exceeded the mandatory age range for provision of FAPE under State law (34 CFR §300.102(a)(1)). When a child's eligibility for FAPE pursuant to Part B of the IDEA terminates under these circumstances, in accordance with 34 CFR §300.305(e)(3), the LEA must provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. However, nothing in the IDEA requires the LEA to measure the child's progress on these postsecondary transition goals, or provide any special education services to the child after the child has graduated from a regular high school or exceeded the mandatory age range for FAPE.

## **OSERS Questions and Answers on Discipline Procedures**

## **Questions and Answers On Discipline Procedures**

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Revised June 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

This Q&A document supersedes the Department's guidance, entitled *Questions and Answers on Discipline Procedures*, issued January 2007.

The 2004 amendments to section 615(k) of the IDEA were intended to address the needs expressed by school administrators and teachers for flexibility in order to balance school safety issues with the need to ensure that schools respond appropriately to a child's behavior that was caused by, or directly and substantially related to, the child's disability. The reauthorized IDEA and its implementing regulations include provisions that address important disciplinary issues such as: the consideration of unique circumstances when determining the appropriateness of a disciplinary change in placement; expanded authority for removal of a child from his or her current placement for not more than 45 school days for inflicting a serious bodily injury at school or at a school function; the determination on a case-by-case basis as to whether a pattern of removals constitutes a change of placement; and revised standards and procedures related to the manifestation determination.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing

regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov>.

If you are interested in commenting on this guidance, please email your comments to [OSERSguidancecomments@ed.gov](mailto:OSERSguidancecomments@ed.gov) and include Discipline in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, SW, room 4108, Washington, DC 20202.

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**Authority:** The requirements for discipline are found in the regulations at 34 CFR §§300.530 – 300.536.

## **A. Safeguards**

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**Question A-1:** When the parent(s) of a child and the school personnel are in agreement about the child's change of placement after the child has violated a code of student conduct, is it considered to be a removal under the discipline provisions?

**Answer:** No, if the parent(s) of a child and the school district agree to a specific change in the current educational placement of the child.

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**Question A-2:** When a parent consents to the initial provision of some, but not all, of the proposed special education and related services, do the discipline provisions apply if the child violates the school's code of student conduct?

**Answer:** Yes. When a parent consents to the initial provision of some, but not all, of the proposed special education and related services listed in a child's initial individualized education program (IEP), the child has been determined eligible for services and is entitled to all the protections of the IDEA.

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**Question A-3:** Do the discipline provisions apply if the child violates the school's code of student conduct after a parent revokes consent for special education and related services under §300.300(b)?

**Answer:** No. Under §§ 300.9 and 300.300, parents are permitted to unilaterally withdraw their children from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. When a parent revokes consent for special education and related services under §300.300(b), the parent has refused services as described in §300.534(c)(1)(ii); therefore, the public agency is not deemed to have knowledge that the child is a child with a disability and the child will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to IDEA's discipline protections. It is expected that parents will take into account the possible consequences under the discipline procedures before revoking consent for the provision of special education and related services. 73 Federal Register 73012-73013.

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**Question A-4:** In order to receive the protections for disciplinary purposes in 34 CFR §300.534, parents who are concerned that their child may need special education and related services must first **express their concerns in writing**. How are parents informed of this requirement?

**Answer:** Neither the IDEA nor the regulations specifically address this issue. However, in its child find policies and procedures, a State may choose to include ways to provide information to the public regarding IDEA's protections for disciplinary purposes when a parent has expressed in writing to school personnel concerns regarding the child's need for special education and related services. Examples of ways to provide such information include making the information available on the State's Web site, the LEA's Web site, or in the State's Procedural Safeguards Notice or the school's student handbook.

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**Question A-5:** Under 34 CFR §300.534(b), a public agency is deemed to have knowledge that a child is a child with a disability if a parent expressed in writing a concern that his or her child needs special education and related services. What happens if a parent is unable to express this concern in writing?

**Answer:** The requirement that a parent express his or her concern in writing is taken directly from the IDEA. However, there is nothing in the IDEA or the regulations that would prevent a parent from requesting assistance to communicate his or her concerns in writing. The Department funds Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) to assist parents of students with disabilities. Information about the PTIs and CPRCs is found at <http://www.taalliance.org/>.

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**Question A-6:** If a removal is for 10 consecutive school days or less and occurs after a student has been removed for 10 school days in that same school year, and the public agency determines, under 34 CFR §300.530(d)(4), that the removal **does not constitute a change of placement**, must the agency provide written notice to the parent?

**Answer:** No. Under Part B, a public agency's determination that a short-term removal **does not constitute a change of placement** is not a proposal or refusal to initiate a change of placement for purposes of determining services under 34 CFR §300.530(d)(4). Therefore, the agency is not required to provide written notice to the parent.

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**Question A-7:** If a teacher or other school personnel has specific concerns that a child may need special education and related services due to a child's pattern of behavior, must such concerns be submitted in writing to school officials in order for the public agency to be deemed to have knowledge that the child is a child with a disability?

**Answer:** No. Under 34 CFR §300.534(b)(3), teachers or other local educational agency (LEA) personnel are not required to submit **a written statement** expressing specific concerns about a pattern of behavior demonstrated by the child in order for the public agency to be deemed to have knowledge that the child is a child with a disability. Although a written statement is not necessary, the teacher of the child or other LEA personnel must express their specific concerns directly to the special education director or other supervisory personnel within the agency. In addition, State child find policies and procedures may provide guidelines regarding how teachers and other LEA personnel should communicate their specific concerns regarding a child's pattern of behavior. If the State's or LEA's child find or referral procedures do not specify how such communication should occur, the State or LEA is encouraged to change its guidelines to provide a method for communicating direct expressions of specific concerns regarding a child's pattern of behavior. 71 Federal Register 46727.

## **B. Definitions**

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**Question B-1:** What options are available for school personnel when a student with a disability commits a serious crime, such as rape, at school or at a school function?

**Answer:** Under most State and local laws, school personnel must report certain crimes that occur on school grounds to the appropriate authorities. The IDEA regulations, under 34 CFR §300.535(a), do not prohibit the school or public agency from reporting crimes committed by students with disabilities. In addition, where such crimes constitute a violation of the school's code of student conduct, school authorities may use the relevant discipline provisions related to short-term and long-term removals, including seeking a hearing to remove the student to an interim alternative educational placement if maintaining the current placement is substantially likely to result in injury to the child or others. To the extent that such criminal acts also result in an injury that meets the definition of "serious bodily injury," the removal provisions of 34 CFR §300.530(g) would apply. The definition referenced in 34 CFR §300.530(i)(3) currently reads:

As defined at 18 U.S.C. 1365(h)(3), the term serious bodily injury means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Certain Federal cases have held that rape met this definition of serious bodily injury because the victim suffered protracted impairment of mental faculties.

The current definition of the term "serious bodily injury" in 18 U.S.C. 1365(h)(3) can be found on the U.S. House of Representatives Web site at <http://uscode.house.gov/download/pls/18C65.txt>.

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**Question B-2:** What is the definition of "unique circumstances" as used in 34 CFR §300.530(a), which states that "school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct?"

**Answer:** The Department believes that “unique circumstances” are best determined at the local level by school personnel who know the individual child and are familiar with the facts and circumstances regarding a child’s behavior. “Factors such as a child’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided ... prior to the violation of a school code [of student conduct] could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability.” 71 Federal Register 46714.

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**Question B-3:** May a public agency apply its own definition of “serious bodily injury?”

**Answer:** No. As specifically set out in the IDEA, the term “serious bodily injury” is defined at 18 U.S.C. 1365(h)(3) and cannot be altered by States or local school boards. The definition and a link to the current U.S. Code is included in the answer to question B-1, and also in the *Analysis of Comments and Changes* that accompanied the regulations published on August 14, 2006, and became effective on October 13, 2006. 71 Federal Register 46723.

## C. Interim Alternative Educational Setting (IAES)

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**Question C-1:** What constitutes an appropriate IAES?

**Answer:** What constitutes an appropriate IAES will depend on the circumstances of each individual case. An IAES must be selected so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. 71 Federal Register 46722.

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**Question C-2:** May a public agency offer "home instruction" as the sole IAES option?

**Answer:** No. For removals under 34 CFR §300.530(c), (d)(5), and (g), the child's IEP Team determines the appropriate IAES (34 CFR §300.531). Section 615(k)(1)(D) of the IDEA and 34 CFR §300.530(d) are clear that an appropriate IAES must be selected "so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." Therefore, it would be inappropriate for a public agency to limit an IEP Team to only one option when determining the appropriate IAES. As noted in the *Analysis of Comments and Changes* accompanying the regulations published on August 14, 2006, and became effective on October 13, 2006, at 71 Federal Register 46722:

Whether a child's home would be an appropriate interim alternative educational setting under §300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals. In general, though, because removals under §§300.530(g) and 300.532 will be for periods of time up to 45 days, care must be taken to ensure that if home instruction is provided for a child removed under §300.530, the services that are provided will satisfy the requirements for services for a removal under §300.530(d) and section 615(k)(1)(D) of the Act.

Where the removal is for a longer period, such as a 45-day removal under 34 CFR §300.530(g), special care should be taken to ensure that the services required under 34 CFR §300.530(d) can be properly provided if the IEP Team determines that a child's home is the appropriate IAES.



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**Question C-3:** Do all services in the child's IEP need to be provided in the IAES for a removal under 34 CFR §300.530(c) or (g)?

**Answer:** It depends on the needs of the child. The LEA is not required to provide all services in the child's IEP when a child has been removed to an IAES. In general, the child's IEP Team will make an individualized decision for each child with a disability regarding the type and intensity of services to be provided in the IAES. 34 CFR §300.530(d)(1) clarifies that a child with a disability who is removed from his or her current placement for disciplinary reasons under 34 CFR §300.530(c) or (g) must continue to receive educational services as provided in 34 CFR §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting his or her IEP goals. For removals that constitute a change of placement, the child's IEP Team determines the appropriate services under 34 CFR §300.530(d)(1). See 34 CFR §300.530(d)(5). If a student whose placement has been changed under 34 CFR §300.530(c) or (g) is not progressing toward meeting the IEP goals, then it would be appropriate for the IEP Team to review and revise the determination of services and/or the IAES.

## D. Hearings

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**Question D-1:** Must a hearing officer make a sufficiency determination under 34 CFR §300.508(d) for an expedited due process complaint? In other words, does the hearing officer need to determine if the complaint meets the content standards listed in section 615(b)(7)(A) of the IDEA and 34 CFR §300.508(b)?

**Answer:** No. The sufficiency provision does not apply to expedited due process complaints. See 34 CFR §300.532(a). As noted in the *Analysis of Comments and Changes* accompanying the regulations published on August 14, 2006, and became effective on October 13, 2006 at 71 Federal Register 46725:

In light of the shortened timelines for conducting an expedited due process hearing under §300.532(c), it is not practical to apply to the expedited due process hearing the sufficiency provision in §300.508(d), which requires that the due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not include all the necessary content of a complaint as required in §300.508(b).

## **E. Functional Behavior Assessments (FBAs) and Behavioral Intervention Plans (BIPs)**

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**Question E-1:** Was the requirement for a “positive behavioral intervention plan” removed from the discipline regulations?

**Answer:** No. Under 34 CFR §300.324(a)(2)(i), the use of positive behavioral interventions and supports must be considered in the case of a child whose behavior impedes his or her learning or that of others. The requirement in 34 CFR §300.530(f) that a child with a disability receive, as appropriate, an FBA and a BIP and modifications designed to address the child’s behavior now only applies to students whose behavior is a manifestation of their disability as determined by the LEA, the parent, and the relevant members of the child’s IEP Team under 34 CFR §300.530(e). However, FBAs and BIPs must also be used proactively, if the IEP Team determines that they would be appropriate for the child. The regulations in 34 CFR §300.530(d) require that school districts provide FBAs and behavior intervention services (and modifications) “as appropriate” to students when the student’s disciplinary change in placement would exceed 10 consecutive school days and the student’s behavior was not a manifestation of his or her disability. See 34 CFR §300.530(c) and (d). Please see question E-2 in this section for more information about the use and development of FBAs and BIPs.

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**Question E-2:** Under what circumstances must an IEP Team use FBAs and BIPs?

**Answer:** As noted above, pursuant to 34 CFR §300.530(f), FBAs and BIPs are required when the LEA, the parent, and the relevant members of the child’s IEP Team determine that a student’s conduct was a manifestation of his or her disability under 34 CFR §300.530(e). If a child’s misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP Team will need to conduct an FBA of the child, unless one has already been conducted. Similarly, the IEP Team must write a BIP for this child, unless one already exists. If a BIP already exists, then the IEP Team will need to review the plan and modify it, as necessary, to address the behavior.

An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.

For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child.

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**Question E-3:** How can an IEP address behavior?

**Answer:** When a child's behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324(a)(2)(i)). Additionally, the Team may address the behavior through annual goals in the IEP (34 CFR §300.320(a)(2)(i)). The child's IEP may include modifications in his or her program, support for his or her teachers, and any related services necessary to achieve those behavioral goals (34 CFR §300.320(a)(4)). If the child needs a BIP to improve learning and socialization, the BIP can be included in the IEP and aligned with the goals in the IEP.

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**Question E-4:** Is consent required to do an FBA for a child?

**Answer:** Yes. An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. As with other individualized evaluation procedures, and consistent with 34 CFR §300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation.

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**Question E-5:** If a parent disagrees with the results of an FBA, may the parent obtain an independent educational evaluation (IEE) at public expense?

**Answer:** Yes. The parent of a child with a disability has the right to request an IEE of the child, under 34 CFR §300.502, if the parent disagrees with an evaluation obtained by the public agency. However, the parent's right to an IEE at public expense is subject to certain conditions, including the LEA's option to request a due process hearing to show that its evaluation is appropriate. See 34 CFR §300.502(b)(2) through (b)(5). The

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Department has clarified previously that an FBA that was not identified as an initial evaluation, was not included as part of the required triennial reevaluation, or was not done in response to a disciplinary removal, would nonetheless be considered a reevaluation or part of a reevaluation under Part B because it was an individualized evaluation conducted in order to develop an appropriate IEP for the child. Therefore, a parent who disagrees with an FBA that is conducted in order to develop an appropriate IEP also is entitled to request an IEE. Subject to the conditions in 34 CFR §300.502(b)(2) through (b)(5), the IEE of the child will be at public expense.

## **F. Manifestation Determinations**

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**Question F-1:** What occurs if there is no agreement on whether a child's behavior was or was not a manifestation of his or her disability?

**Answer:** If the parents of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the public agency must make the determination and provide the parent with prior written notice pursuant to 34 CFR §300.503. The parent of the child with a disability has the right to exercise his or her procedural safeguards by requesting mediation and/or a due process hearing to resolve a disagreement about the manifestation determination. 34 CFR §300.506 and §300.532(a). A parent also has the right to file a State complaint alleging a violation of Part B related to the manifestation determination. See 34 CFR §300.153.

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**Question F-2:** What recourse does a parent have if he or she disagrees with the determination that his or her child's behavior was not a manifestation of the child's disability?

**Answer:** The regulations, in 34 CFR §300.532(a), provide that the parent of a child with a disability who disagrees with the manifestation determination under 34 CFR §300.530(e) may appeal the decision by requesting a hearing. A parent also has the right to file a State complaint alleging a denial of a free appropriate public education and to request voluntary mediation under 34 CFR §300.506.

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**Question F-3:** Is the IEP Team required to hold a manifestation determination each time that a student is removed for more than 10 consecutive school days or each time that the public agency determines that a series of removals constitutes a change of placement?

**Answer:** Yes. 34 CFR §300.530(e) requires that "within 10 school days of **any** decision to change the placement of a child with a disability because of a violation of a code of student conduct" the LEA, the parent, and relevant members of the child's IEP Team must conduct a manifestation determination (emphasis added). Under 34 CFR §300.536, a change of placement occurs if the removal is for more than 10 consecutive school days, or if the public agency determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because the series

of removals total more than 10 school days in a school year; the child's behavior is substantially similar to the behavior that resulted in the previous removals; and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

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**Question F-4:** Does a school need to conduct a manifestation determination when there is a violation under 34 CFR §300.530(g), which refers to a removal for weapons, drugs, or serious bodily injury?

**Answer:** Yes. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team conduct the manifestation determination. 34 CFR §300.530(e). However, when the removal is for weapons, drugs, or serious bodily injury under §300.530(g), the child may remain in an IAES, as determined by the child's IEP Team, for not more than 45 school days, regardless of whether the violation was a manifestation of his or her disability. This type of removal can occur if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the State educational agency (SEA) or LEA; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA.

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**Question F-5:** What disciplinary procedures would apply in the case of a child who has been referred for a special education evaluation and is removed for a disciplinary infraction prior to determination of eligibility?

**Answer:** If a child engages in behavior that violates the code of student conduct prior to a determination of his or her eligibility for special education and related services and the public agency is deemed to have knowledge of the child's disability, the child is entitled to all of the IDEA protections afforded to a child with a disability, unless a specific exception applies. In general, once the student is properly referred for an evaluation under Part B of the IDEA, the public agency would be deemed to have knowledge that the child is a child with a disability for purposes of the IDEA's disciplinary provisions. However, under 34 CFR §300.534(c), the LEA is considered not to have knowledge that a child is a child with a disability if the parent has not allowed the evaluation of the child under Part B of the IDEA, the parent has refused services, or if the child is evaluated and

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determined not to be a child with a disability under Part B of the IDEA. In these instances, the child would be subject to the same disciplinary measures applicable to children without disabilities.

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**Question F-6:** Is there a conflict between 34 CFR §300.530(c), allowing school personnel, under certain circumstances, to apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as would be applied to children without disabilities, and the provision, in 34 CFR §300.532(b)(2), that the hearing officer may order a change in placement for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others?

**Answer:** No, there is no conflict between the two provisions. In addition to the specific authority set out in 34 CFR §300.532, a hearing officer also has the authority to uphold a disciplinary change of placement made by school personnel under 34 CFR §300.530(c). Where the parent brings a due process hearing to challenge a disciplinary change of placement made by school personnel under 34 CFR §300.530(c) and the hearing officer concludes that the disciplinary requirements of Part B have been met, the hearing officer would properly uphold the disciplinary change of placement. If the hearing officer concludes that the child's behavior was a manifestation of the child's disability, but also determines that returning the child to the prior placement is substantially likely to result in injury to the child or to others, then the hearing officer, under 34 CFR §300.532(b)(2), may change the placement to an appropriate IAES for not more than 45 school days.



# Forms

# Resources