

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES

4.00 REFERRAL

Rev. July 2010

4.01 REFERRAL GENERALLY

4.01.1 If a child is suspected of having a disability which adversely affects educational performance and who by reason thereof, needs special education and related services, a referral may be made at any time to the local educational agency by -

4.01.1.1 The child's teacher;

4.01.1.2 Other educational personnel;

4.01.1.3 The child's parent(s);

4.01.1.4 The child; or

4.01.1.5 Other individuals with relevant knowledge of the child.

4.01.2 A referral is to be made in writing through the completion of the required Referral Form and provided to the principal or designee of the school in which the child is enrolled. Where the referral originates from a parent, an individual not associated with the school, or other agency personnel, an employee of the local educational agency where the child is enrolled must complete the Referral Form and forward it to the principal or designee of the school.

4.01.3 Informal data collection conducted pursuant to § 4.02 of this part must be completed prior to any referral conference.

4.01.4 Where appropriate, a child's parent(s) must be informed of the referral and shall be offered an explanation of its purpose.

4.02 CONTENT OF REFERRAL

Along with the information provided in the Referral Form, any information which may assist in determining whether or not a child is a child with a disability should be submitted, including, but not limited to -

4.02.1 The results of hearing and vision screening;

- 4.02.2 Home or classroom behavior checklists;
 - 4.02.3 Existing medical, social, or educational data;
 - 4.02.4 Examples of the child’s academic work; and
 - 4.02.5 Screening inventories.
- 4.03 NOTICE OF REFERRAL CONFERENCE
- 4.03.1 Within seven (7) calendar days of the date the local educational agency receives the written referral, the local educational agency must schedule a referral conference at a time and place agreed upon by the parent(s) and provide the parent(s) with written notification of the referral and referral conference consistent with the notice requirements established in §9.04 of these regulations.
 - 4.03.2 In addition to meeting the requirements of §9.04 of these regulations, notice of a referral conference must be provided to the parent(s) early enough to ensure that they will have an opportunity to attend and must include the time and location of the conference and who will be in attendance.
 - 4.03.3 The agency may provide initial notice to the parent(s) through the use of -
 - 4.03.3.1 Registered mail;
 - 4.03.3.2 Certified mail; or
 - 4.03.3.3 First class mail.
 - 4.03.4 If the parents do not respond to the initial written notice within seven (7) calendar days of its dissemination, a subsequent notice must be issued to the parents by any communication means necessary, specifying that the referral conference will be held seven (7) calendar days from the date of dissemination of the subsequent notice, but in no case more than 21 calendar days from receipt of the written referral.
 - 4.03.4.1 If the parents do not respond to the subsequent notice, the referral conference may be conducted without the parent in attendance.
 - 4.03.4.2 If no parent can be identified or located after reasonable efforts by the agency or if the child is a

ward of the State or an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434 a(6)), then a surrogate parent must be assigned to the child pursuant to §15.00 of these regulations.

4.03.5 The public agency shall maintain written documentation of its efforts to ensure that the requirements of §4.00 have been met.

4.04 REFERRAL CONFERENCE

4.04.1 If a child is referred to the local educational agency pursuant to §4.01, a referral conference must be held for the purpose of reviewing all existing information related to the child and to determine the actions to be taken.

4.04.2 The referral conference must be attended by at least three (3) persons, including the principal or a designee and one teacher directly involved in the education of the child. The conference may also be attended by the child, if appropriate, and by other individuals at the discretion of the parents or agency.

4.04.3 Decisions made at the referral conference must be recorded on the required Referral Conference Decision Form and signed by the principal or a designee. The Referral Conference Decision Form shall also include the names of the participants of the conference.

4.04.4 Options for referral conference outcomes include -

4.04.4.1 A decision to conduct a comprehensive evaluation of the child consistent with the eligibility criteria set out in §6.00 of these regulations;

4.04.4.2 A decision to conduct a specialized evaluation of the child consistent with the eligibility criteria set out in §6.00 of these regulations; or

4.04.4.3 A decision not to conduct an evaluation of the child.

4.04.5 Subsequent to the conclusion of the referral conference, the local educational agency must provide the parent written notice of the decision reached at the referral conference, consistent with § 9.04 of these regulations. If the parent was not present at the referral conference, notice must be given to the parent within seven (7) calendar days after the referral conference by -

4.04.5.1 Registered mail;

4.04.5.2 Certified mail; or

4.04.5.3 First class mail.

4.04.6 If the local educational agency has reason to believe that the parent may require assistance in understanding the decision reached at the referral conference, a representative of the local educational agency must contact the parent by telephone or initiate a home visit to explain the decision.

4.05 TEMPORARY PLACEMENT DURING EVALUATION

4.05.1 If a referral conference results in a decision to evaluate a child, and existing data and educational observations establish the need for immediate intervention or differential diagnostic data gathering, the local educational agency, with the parent's written consent, may initiate a temporary placement for the child to provide special education and related services.

4.05.2 The temporary placement of a child is limited to sixty (60) calendar days, during which time the evaluation must be completed.

4.05.3 If a determination is made to initiate a temporary placement for a child, the reason(s) for such placement must be stated on the Referral Conference Decision Form, and an interim Individualized Educational Program must be developed and implemented for the period of time the student is in the temporary placement, not to exceed sixty (60) calendar days.

4.06 CONSENT TO EVALUATE

4.06.1 The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR 300.8 must, after providing notice consistent with 34 CFR 300.503 and 300.504, obtain informed consent, consistent with 34 CFR 300.1 from the parent of the child before conducting the evaluation.

4.06.1.1 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

4.06.1.2 The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

4.06.2 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if -

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

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

4.06.2.3 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.

4.06.3 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 4.06.1 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 34 CFR 300.506 or the due process procedures under 34 CFR 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

4.06.3.1 The public agency does not violate its obligation under 34 CFR 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation.

4.06.4 Public agency personnel must also provide the parent with a copy of "Information for Parents Regarding Consent," and must ensure that the parent understands the information it contains.

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
8.00 INDIVIDUALIZED EDUCATION PROGRAM (IEP)
Rev. July 2010

8.01 RESPONSIBILITY OF PUBLIC AGENCIES FOR IEPs

8.01.1 Each public agency shall ensure that -

8.01.1.1 Except as provided in 34 CFR 300.320 - 300.324 and this part of these regulations, an IEP is developed and implemented for each child with a disability served by that agency; and

8.01.1.2 An IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

8.02 DEFINITIONS RELATED TO IEPs

8.02.1 Individualized Education Program. 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 34 CFR 300.320-300.324.

8.02.2 Participating Agency. As used in 34 CFR 300.324(c)(1) and §8.09 of these regulations, participating agency means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

8.03 WHEN IEPs MUST BE IN EFFECT

8.03.1 General.

8.03.1.1 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 34 CFR 300.320.

8.03.2 Implementation of IEPs. Each public agency shall ensure that -

8.03.2.1 An IEP -

A. Is in effect before special education and related services are provided to an eligible

child under this part; and

- B. 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.

Exceptions to this would be when the meetings occur during the summer or other vacation period, or when there are circumstances which require a short delay, such as working out transportation arrangements. However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible, but not later than thirty (30) calendar days following the IEP meeting.

8.03.2.2 The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

8.03.2.3 Each teacher and provider described in § 8.03.2.2 of this part is informed of -

- A. His or her specific responsibilities related to implementing the child's IEP; and
- B. The specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP.

8.03.3 IEPs for children who transfer public agencies in the same State.

8.03.3.1 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 -

- A. Adopts the child's IEP from the previous public agency; or
- B. Develops, adopts and implements a new IEP that meets the applicable requirements in 34 CFR 300.320 through 300.324.

8.03.4 IEPs for children who transfer from another State.

8.03.4.1 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 -

- A. Conducts an evaluation pursuant to 34 CFR 300.304 through 300.306 (if determined to be necessary by the new public agency); and
- B. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR 300.320 through 300.324.

8.03.5 Transmittal of records. To facilitate the transition for a child described in paragraph 8.03.3 and 8.03.4 of this section -

8.03.5.1 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

8.03.5.2 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.

8.04 IEP MEETINGS

8.04.1 General.

8.04.1.1 Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

8.04.2 Initial IEPs; provision for services .

8.04.2.1 Each public agency must ensure that -

- A. As set forth in §6.03.1.1 of these regulations, procedures for initial evaluation of a child must be completed within sixty (60) calendar days of the written parental consent to evaluate.
- B. Within thirty (30) calendar days of completing the administration of tests and other evaluation materials, an Evaluation/ Programming Conference must be conducted by a group of qualified professionals and the parent of the child, as set out in §6.05.1.2 of these regulations and 34 CFR 300.321 for the purpose of determining the student's eligibility for special education and related services and the educational needs of the child and, if appropriate, develop an IEP for the child.

8.04.3 Review and revision of IEPs. Each public agency must ensure that the IEP team -

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

8.04.3.2 Revises the IEP as appropriate to address -

- A. Any lack of expected progress toward the annual goals described in 34 CFR 300.320(a)(2) and §8.08.1 of these

regulations, and in the general education curriculum, if appropriate;

- B. The results of any reevaluation conducted under 34 CFR 300.303 and §7.01, of these regulations;
- C. Information about the child provided to, or by, the parents, as described in 34 CFR 300.503(a)(2) and §6.05.1.1, of these regulations;
- D. The child's anticipated needs; or
- E. Other matters.

8.05 IEP TEAM

8.05.1 General.

8.05.1.1 The public agency must ensure that the IEP team for each child with a disability includes -

- A. The parents of the child;
- B. Not less than a regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- C. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- D. A representative of the public agency who -
 - 1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - 2. Is knowledgeable about the general education curriculum; and

3. Is knowledgeable about the availability of resources of the public agency.

E. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in §§8.05.1.1B through 8.05.1.1F of this part;

F. 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

G. Whenever appropriate, the child with a disability.

8.05.2 Transition services participants.

8.05.2.1 Under § 8.05.1.1G of this part, 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 34 CFR 300.320(b).

8.05.2.2 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.

8.05.2.3 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 34 CFR 300.3-321(b)(1) and § 8.08.2.2 of this part, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

8.05.2.4 If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 CFR 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.

8.05.3 Determination of knowledge and special expertise.

8.05.3.1 The determination of the knowledge or special expertise of any individual described in § 8.05.1.1F of this part must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

8.05.4 Designating a public agency representative.

8.05.4.1 A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in §8.05.1.1D of this part are satisfied.

8.05.5 IEP Team attendance.

8.05.5.1 A member of the IEP Team described in 8.05.1.1B through 8.05.1.1E 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.

8.05.5.2 A member of the IEP Team described in 8.05.5.1 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 -

A. The parent, in writing, and the public agency consent to the excusal; and

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

8.06 PARENT PARTICIPATION

8.06.1 Public agency responsibility.

8.06.1.1 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 meeting or are afforded the opportunity to participate, including -

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

8.06.2 Information provided to parents.

8.06.2.1 The notice required under §8.06.1.1A of this part must -

- A. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- B. Inform the parents of the provisions in 34 CFR 300.321(a)(6) and (c) and §§8.05.1.1F and 8.05.3 of this part relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

8.06.2.2 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 -

- A. Indicate that a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child in accordance with 34 CFR 300.320(b) and §8.08.2.1 of this part;
- B. Indicate that the agency will invite the student; and
- C. Identify any other agency that will be invited to send a representative.

8.06.3 Other methods to ensure parent participation.

8.06.3.1 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 34 CFR 300.328 (related to alternative means of meeting participation).

8.06.4 Conducting an IEP Team meeting without a parent in attendance.

8.06.4.1 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 the attempts to arrange a mutually agreed on time and place, such as -

- A. Detailed records of telephone calls made or attempted and the results of those calls;
- B. Copies of correspondence sent to the parents and any responses received; and
- C. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

8.06.5 Use of interpreters or other action, as appropriate.

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

8.06.6 Parent copy of child's IEP.

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

8.07 DEVELOPMENT, REVIEW, AND REVISION OF IEP

8.07.1 Development of IEP.

- 8.07.1.1 General. In developing each child's IEP, the IEP Team must consider -
- A. The strengths of the child and the concerns of the parents for enhancing the education of their child;
 - B. The results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.
 - C. As appropriate, the results of the child's performance on any general State or district-wide assessment programs.

- 8.07.1.2 Consideration of special factors. The IEP Team must -
- A. In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Such consideration may include the need to conduct a functional behavioral assessment (FBA) of the child and/or develop a behavior intervention plan (BIP) to address identified behavioral needs of the child. (See §11.00 of these regulations).
 - B. 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;
 - C. 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;

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

8.07.1.3 Additional FAPE considerations. The IEP Team must -

- A. Consider whether the child has available to him the variety of educational programs and services available to nondisabled children, including art, music, industrial arts, consumer and homemaking education, vocational education. This list of program options is not exhaustive and could include any program or activity in which nondisabled children participate.
- B. Consider whether the child is being afforded an equal opportunity for participation in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency and assistance in making outside employment available.

8.07.1.4 Agreement.

- A. 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.

- B. If changes are made to the child's IEP in accordance with paragraph A of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

8.07.1.5 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.

8.07.1.6 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 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.

8.07.2 Review and revision of IEP.

8.07.2.1 In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP Team shall consider the factors described in §8.07.1 of this part.

8.07.3 Requirement with respect to regular education teacher.

8.07.3.1 The 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, review, and revision of the IEP of the child, including assisting in the determination of -

- A. Appropriate positive behavioral interventions and supports and other strategies for the child; and
- B. Supplementary aids and services, program

modifications, and support for school personnel consistent with 34 CFR 300.320(a)(4) and §8.08.1.3 of these regulations.

8.07.4 Construction.

8.07.4.1 Nothing in this part shall be construed to require 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; or

8.07.4.2 That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act.

8.08 CONTENT OF IEP

8.08.1 General. The IEP for each child with a disability must include -

8.08.1.1 A statement of the child's present levels of academic achievement and functional performance, including -

- A. 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 meet each of the child's other educational needs that result from the child's disability;
- B. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

8.08.1.2 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;

8.08.1.3 For children with disabilities who take alternate

assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

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

- A. To advance appropriately toward attaining the annual goals;
- B. To be involved and make progress in the general curriculum in accordance with §8.08.1.1 of this part and to participate in extracurricular and other nonacademic activities; and
- C. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this part;

8.08.1.5 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 §8.08.1.4 of this part;

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

8.08.1.7 If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district-wide 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
- 8.08.1.8 The projected date for the beginning of the services and modifications described in § 8.08.1.3 of this part, and the anticipated frequency, location, and duration of those services and modifications; and
- 8.08.1.9 A description of -
 - A. How the child’s progress toward meeting the annual goals described in §8.08.1.2 of this part will be measured; and
 - B. 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.
- 8.08.2 Transition services. The IEP must include –
 - 8.08.2.1 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 -
 - A. Appropriate measurable post secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
 - B. The transition services (including courses of study) needed to assist the child in reaching those goals.
- 8.08.3 Transfer of rights at age of majority.
 - 8.08.3.1 In Arkansas, beginning not later than one year before the child reaches the age of majority under State law [age eighteen (18)], the child’s IEP must include a statement that the child has been informed of his or her rights under Part B of the IDEA and §9.00 of these regulations, if any, that will transfer

to the child on reaching the age of majority, consistent with 34 CFR 300.520 and §9.07 of these regulations.

8.08.3.2 The LEA must use the procedures established by the State 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 reached the age of majority, but has not been determined not to be incompetent, can be determined to have the ability to provide informed consent with respect to the child's educational program.

A. In Arkansas, state statute at Arkansas Code Annotated §28-65-101 et seq. and §28-65-202 et seq. provides a mechanism whereby any individual may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person. It is appropriate for the LEA to inform the parent of a student who may be determined to not have the ability to provide informed consent with respect to his/her education program to seek to obtain such legal guardianship from an appropriate circuit or juvenile court, dependent upon the age and status of the youth or young adult in question.

8.08.4 Students with disabilities convicted as adults and incarcerated in adult prisons.

8.08.4.1 Special rules concerning the content of IEPs for children with disabilities convicted as adults and incarcerated in adult prisons include requirements that do not apply to these populations, as follows -

A. The requirements contained in section 612(a)(16) of the Act and 34 CFR 300.320(a)(6) and §§8.08.1.5 and 8.08.1.6 of these regulations, relating to the participation of children with disabilities in

general assessments; and

- B. The requirements in 34 CFR 300.320(b) and §8.08.2 of these regulations relating to transition planning and transition services, with respect to children whose eligibility under Part B of the 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.

8.08.4.2 Modifications of IEP or placement.

- A. Subject to §8.08.4.2B of this part, 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.
- B. The requirements of 34 CFR 300.320 and §§8.02.1 and 8.08.1 of these regulations, relating to IEPs, and 34 CFR 300.112 and §13.01.1 of these regulations relating to LRE, do not apply with respect to the modifications described in § 8.08.4.2A.

8.09 AGENCY RESPONSIBILITIES FOR TRANSITION SERVICES

- 8.09.1 If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 CFR 300.320(b) and §8.08.2.1 of these regulations, 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.
- 8.09.2 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.

8.10 PRIVATE SCHOOL PLACEMENTS BY PUBLIC AGENCIES

8.10.1 Developing IEPs.

8.10.1.1 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 34 CFR 300.320 and 300.324 and §§8.07 and 8.08 of these regulations.

8.10.1.2 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.

8.10.2 Reviewing and revising IEPs.

8.10.2.1 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.

8.10.2.2 If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative-

A. Are involved in any decisions about the child's IEP; and

B. Agree to any proposed changes in the IEP before those changes are implemented.

8.10.3 Responsibility.

8.10.3.1 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.

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
9.00 DUE PROCESS
Rev. July 2010

9.01 GENERAL RESPONSIBILITY OF PUBLIC AGENCIES

It shall be the responsibility of each public agency providing special education and related services to establish, maintain, and implement procedural safeguards that meet the requirements of this part and 34 CFR 300.500 - 300.536.

9.02 OPPORTUNITY TO EXAMINE RECORDS; PARENT PARTICIPATION IN MEETINGS

9.02.1 Opportunity to Examine Records.

9.02.1.1 The parents of a child with a disability must be afforded, in accordance with the procedures of §§16.01 - 16.09 of these regulations and 34 CFR 300.613 - 300.621, an opportunity to -

9.02.1.2 Inspect and review all education records with respect to -

- A. The identification, evaluation, and educational placement of the child; and
- B. The provision of FAPE to the child; and

9.02.2 Parent participation in meetings.

9.02.2.1 The parents of a child with a disability must have an opportunity to participate in meetings with respect to -

- A. The identification, evaluation, and educational placement of the child; and
- B. The provision of FAPE to the child.

9.02.2.2 Each public agency must provide notice consistent with § 8.06.1.1A and 8.06.2.1 of these regulations and 34 CFR 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in §9.02.2.1 of this part.

9.02.2.3 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.

9.02.3 Parent involvement in placement decisions.

9.02.3.1 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.

9.02.3.2 In implementing the requirements of § 9.02.3.1 of this part, the public agency must use procedures consistent with the procedures described in §8.06.1.1 and 8.06.2.1 of these regulations and 34 CFR 300.322(a) through (b)(1).

9.02.3.3 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.

9.02.3.4 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.

9.03 INDEPENDENT EDUCATIONAL EVALUATION

9.03.1 General.

- 9.03.1.1 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 §§9.03.2 - 9.03.5 of this part.
- 9.03.1.2 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 § 9.03.5 of this part.
- 9.03.1.3 For the purposes of this part -
 - A. 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
 - B. 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 §5.02 of these regulations and 34 CFR 300.103.

9.03.2 Parent right to evaluation at public expense.

- 9.03.2.1 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 paragraph 9.03.2.2 - 9.03.2.4 of this section.
- 9.03.2.2 If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either -
 - A. File a due process complaint to request a hearing to show that its evaluation is appropriate; or

B. Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §10.00 of these regulations and 34 CFR 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

9.03.2.3 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.

9.03.2.4 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 explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

9.03.2.5 A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

9.03.3 Parent-Initiated Evaluations.

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation -

9.03.3.1 Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

9.03.3.2 May be presented by any party as evidence at a hearing on a due process complaint under these regulations regarding that child.

9.03.4 Requests for evaluations by hearing officers.

If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

9.03.5 Agency Criteria.

9.03.5.1 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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

9.03.5.2 Except for the criteria described in § 9.03.5.1 of this part, a public agency may not impose conditions or time lines related to obtaining an independent educational evaluation at public expense.

9.04 PRIOR NOTICE BY PUBLIC AGENCY; CONTENT OF NOTICE

9.04.1 Notice.

9.04.1.1 Written notice that meets the requirements of §9.04.2 of this part must be given to the parents of a child with a disability a reasonable time before the public agency -

- A. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- B. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

9.04.2 Content of Notice.

The notice required under § 9.04.1 of this part must include -

9.04.2.1 A description of the action proposed or refused by the agency;

- 9.04.2.2 An explanation of why the agency proposes or refuses to take the action;
 - 9.04.2.3 A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - 9.04.2.4 A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - 9.04.2.5 A description of other factors that are relevant to the agency's proposal or refusal;
 - 9.04.2.6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this part 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; and
 - 9.04.2.7 Sources for parents to contact to obtain assistance in understanding the provisions of this part.
- 9.04.3 Notice in understandable language.
- 9.04.3.1 The notice required under § 9.04.1 of this part must be -
 - A. Written in language understandable to the general public; and
 - B. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - 9.04.3.2 If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure -
 - A. That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

- B. That the parent understands the content of the notice; and
- C. That there is written evidence that the requirements in §9.04.3.2A and B of this part have been met.

9.05 PROCEDURAL SAFEGUARDS NOTICE

9.05.1 General.

9.05.1.1 A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy also must be given to the parents, at a minimum -

- A. Upon initial referral or parent request for evaluation;
- B. Upon receipt of the first State complaint under 34 CFR 300.151 - 300.153 and upon receipt of the first due process complaint under 34 CFR 300.507 in a school year;
- C. In accordance with the discipline procedures in 34CFR 300.530(h); and
- D. Upon request by a parent.

9.05.2 Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

9.05.3 Contents.

9.05.3.1 The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§9.00, 13.00, and 16.00 of these regulations and 34 CFR 300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.520,

300.530 through 300.536 and 300.610 through 300.625 relating to -

- A. Independent educational evaluation;
- B. Prior written notice;
- C. Parental consent;
- D. Access to educational records;
- E. Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including -
 - 1. The time period in which to file a complaint;
 - 2. The opportunity for the agency to resolve the complaint; and
 - 3. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
- F. The child's placement during the pendency of any due process proceedings;
- G. Procedures for students who are subject to placement in an interim alternative educational setting;
- H. Requirements for unilateral placement by parents of children in private schools at public expense;
- I. The availability of mediation under 34 CFR 300.506 and §10.00 of these regulations;

- J. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- K. Civil actions, including the time period in which to file those actions; and
- L. Attorneys' fees.

9.05.4 Notice in understandable language.

The notice required under § 9.05.1 of this part must meet the requirements of § 9.04.3 of these regulations and 34 CFR 300.503(c).

9.05.5 Electronic mail.

A parent of a child with a disability may elect to receive notices required by 34 CFR 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

9.06 PARENTAL CONSENT

9.06.1 Parental consent for initial evaluation.

9.06.1.1 The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR 300.8 must, after providing notice consistent with 34 CFR 300.503 and 300.504, obtain informed consent, consistent with 34 CFR 300.9, from the parent of the child before conducting the evaluation.

9.06.1.2 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

9.06.1.3 The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

9.06.1.4 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to

determine whether the child is a child with a disability if -

- A. Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- B. The rights of the parents of the child have been terminated in accordance with State law; or
- C. 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.

9.06.2 If the parents of a child with a disability enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation 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 using the due process procedures under §10.00 of these regulations and 34 CFR 300.507-300.516, or the mediation procedures under §10.00 and 34 CFR 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent. The public agency does not violate its obligation under 34 CFR 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation.

9.06.3 Parental Consent for Services.

9.06.3.1 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.

9.06.3.2 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.

9.06.3.3 If the parent of a child fails to respond or refuses to consent to services under this section, the public

agency may not use mediation procedures under 34 CFR 300.506 or 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.

9.06.3.4 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 -

A. 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

B. Is not required to convene an IEP Team meeting or develop an IEP under 34 CFR 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

9.06.4 Failure to respond to request for reevaluation.

9.06.4.1 Each public agency must obtain informed parental consent, in accordance with 34 CFR 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

9.06.4.2 If the parent refuses to consent to the reevaluation, the public agency may, but it is not required to, pursue the reevaluation by using the consent override procedures described in 34 CFR 300.300(a)(3).

9.06.4.3 The public agency does not violate its obligations under 34 CFR 300.311 and 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

9.06.4.4 Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it made reasonable efforts to obtain such consent, and the child's parent has failed to respond.

9.06.4.5 To meet the reasonable efforts requirement in §9.06.3.2 of this part, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR 300.322(d).

9.06.5 Other Consent Requirements.

9.06.5.1 Parental consent is not required before -

- A. Reviewing existing data as part of an evaluation or a reevaluation; or
- B. 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.

9.06.5.2 Limitation.

A public agency may not use a parent's refusal to consent to one service or activity under § 9.06.1 to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

9.06.5.3 Parent of a child who is home schooled or placed in a private school by the parents.

- A. 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 this section; and
- B. The public agency is not required to consider the child as eligible for services under 34 CFR 300.132 through 300.144.

9.07 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

9.07.1 General.

9.07.1.1 When a child with a disability reaches the age of majority under State law that applies to all students (age 18 in Arkansas), except for a student with a disability who has been determined to be incompetent or incapacitated under State law -

- A. The public agency must provide any notice required by Part B of the IDEA and these regulations to both the child and the parents; and
- B. All other rights accorded to parents under Part B of the IDEA and these regulations transfer to the child; and
- C. All rights accorded to parents under Part B of the IDEA and these regulations transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution.
- D. Whenever a State provides for the transfer of rights under this part pursuant to §9.07.1 A and B of this part, the agency must notify the child and the parent of the transfer of rights. (See form: Letter of Notification of Transfer of Rights.)

9.07.1.2 The LEA must use the procedures established by the State 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 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.

9.07.2 Legal Guardianship

9.07.2.1 In accordance with Arkansas Code Annotated §28-65-101 et seq. and §28-65-201 et seq. any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person.

9.07.2.2 Arkansas Code Annotated §28-65-101(5)(A) defines an “incapacitated person” to mean a person who is impaired by reason of a disability such as mental illness, mental deficiency, physical illness, chronic use of drugs or chronic intoxication to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate.

9.07.2.3 Arkansas Code Annotated §28-65-101(3) defines a “Guardian” as one appointed by a court to have the care and custody of the person or of the estate, or of both, of an incapacitated person.

9.07.2.4 Jurisdiction of Courts

- A. The jurisdiction of the circuit courts over all matters of guardianship, other than guardianships ad litem in other courts, shall be exclusive, subject to the right of appeal. (Arkansas Code Annotated §28-65-107(a))
- B. If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, §9-27-301 et seq., the guardianship petition shall be filed in that case if the juvenile resides in Arkansas.

9.07.2.5 Rights of Incapacitated Persons

- A. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted by order to the guardian by the court.

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
18.00 REGULATIONS GOVERNING RESIDENTIAL PLACEMENT
Rev. July 2010

18.01 REGULATORY AUTHORITY

18.01.1 These regulations shall be known as Arkansas Department of Education regulations allocating public school funds for the education of residentially placed students and defining educational services in such placements.

18.01.2 These regulations are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. 6-11-105, 6-41-202, 6-18-202, 6-20-104, and 6-20-107.

18.02 PURPOSE

18.02.1 It is the purpose of these regulations to allocate public school funds for the education of residentially placed students.

18.02.2 It is further the purpose of these regulations to define the educational services in such placements.

18.03 DEFINITIONS

18.03.1 ADE - Arkansas Department of Education

18.03.2 DHS – Department of Human Services

18.03.3 Juvenile - As used in this section, "juvenile" means a person who is eighteen (18) years old or less.

18.03.4 Juvenile Detention Facility (JDF) - Any facility operated by a political subdivision of the State for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent, and awaiting disposition, who require secure custody in a physically restricting facility. Under Ark. Code Ann. 9-27-330(a)(11), such facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

- 18.03.5 Student without disabilities - For purposes of these regulations, a student who has NOT been identified as disabled in accordance with the IDEA, and Ark. Code Ann. 6-41-202, et seq., shall be considered nondisabled.
- 18.03.6 Student with disabilities - For the purposes of these regulations, a student with a disability means a student identified pursuant to the IDEA and Ark. Code Ann. 6-41-202, et seq., as needing special education and related services (inclusive of those presently receiving services).
- 18.03.7 Residential placement in state - For the purposes of these regulations, such residential placement in state means -
- 18.03.7.1 One of the following licensed facilities -
- A. Inpatient psychiatric treatment facilities licensed by the Arkansas Department of Human Services (DHS);
 - B. Alcohol and drug treatment facilities licensed by the Arkansas Department of Human Services;
 - C. Easter Seals of Arkansas in Little Rock;
 - D. Arkansas Pediatrics Facility in Pulaski County;
 - E. Millcreek ICF-MR in Fordyce;
 - F. Brownwood ICF-MR in Fort Smith.
- 18.03.7.2 The facility has an approved special education component; as granted by the ADE, Special Education Unit on an annual basis. Such placement does not include the Arkansas School for the Blind, the Arkansas School for the Deaf or the Arkansas School for Mathematics and Sciences.
- 18.03.8 Residential Placement Out-of-State - For the purposes of these regulations, when a student with disabilities is placed in a residential treatment facility outside the State of Arkansas, the special education component of such a facility must be approved

by the ADE, Special Education Unit and must be operating under the appropriate licensure of the state in which it is located.

18.03.9 Residency - Ark. Code Ann. 6-18-202 establishes residency requirements for students attending public schools in the State of Arkansas. Students affected by this statute include both those with and without disabilities.

18.04 RESIDENTIAL PLACEMENT IN STATE - STUDENTS WITHOUT DISABILITIES

18.04.1 Assignment of responsibility.

18.04.1.1 When a nondisabled student is placed for non-educational reasons in a residential treatment facility for treatment, the district where the residential treatment facility is located is the student's resident district. This district is responsible for educating the student.

18.04.1.2 When a nondisabled student who is a ward of the State is placed in a residential treatment facility, the district where the facility is located is responsible for educating the student.

18.04.1.3 When a nondisabled student is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent or agent remains responsible for the education of the student.

18.04.2 Procedures for educational management.

18.04.2.1 Each school district must designate an individual who will be responsible for ensuring compliance with these regulations. This may be the district superintendent or a designee.

18.04.2.2 When a nondisabled student is placed in a residential facility, the facility must notify the responsible school district (superintendent or designee) within seven (7) calendar days of the student's admission. The district's superintendent or designee should also be informed.

Failure of the facility to notify the responsible district in a timely fashion may result in loss of ADE approval of the residential treatment facility's special education program.

- 18.04.2.3 The district superintendent or designee shall convene a conference by a review team within seven (7) calendar days of notice by the residential treatment facility that the student is in a residential program. This conference may be conducted face-to-face or via a telephone call.
- 18.04.2.4 The review team shall be composed of, at a minimum, a representative from the district, a representative from the residential treatment facility, and a DHS representative if the student is receiving services from one or more DHS Divisions.
- 18.04.2.5 The review team shall review information available on the student and determine whether a referral for consideration of eligibility for special education and related services is warranted.
- 18.04.2.6 When the review team determines the student should be referred for consideration of eligibility for special education, a referral form must be completed and a referral conference conducted following the process in §4.00 of State Special Education regulations.
- 18.04.2.7 When the review team determines that the student should not be referred for consideration for special education and related services, it must identify the general educational and non-educational needs of the student.
- 18.04.2.8 Based on the identified needs of the nondisabled student, the review team will determine and document where the educational program of the student will be implemented. The inter-linkage of the treatment program needs and educational programming must be discussed in reaching a decision on an appropriate educational setting.

- 18.04.2.9 Should the local review team be unable to agree upon where the educational program of the student will be implemented, a determination must be requested from the state level review panel. Requests for a determination from the state level review panel shall be submitted in writing to the Administrator, Dispute Resolution, ADE, Special Education Unit.
- 18.04.2.10 From the time of the request for a state level review until a determination is made, the student will remain in his/her present educational setting.
- 18.04.2.11 The state level review panel will be composed of three (3) persons: one (1) from the ADE, one (1) from DHS and the third will be the Coordinator of the Behavior Intervention Consultant Network or other appropriate ADE staff.
- 18.04.2.12 Within 30 calendar days of receipt of the written request, the state level review panel shall convene, review all information and render a final decision as to where the education program of the student will be implemented. The panel may extend the process by an additional 15 days should circumstances warrant.
- 18.04.2.13 The state level review panel's decision will be considered final, will be rendered in writing and will be sent to the local review team for implementation.
- 18.04.3 Assignment of costs.
 - 18.04.3.1 For nondisabled students, "educational costs" are limited to only those costs incurred for direct educational instruction of the student.
 - 18.04.3.2 All other services provided for the student are considered non-educational and are not reimbursable under these regulations. Such other costs will be borne by DHS, Medicaid, private insurance, the parent or by any combination thereof.
 - 18.04.3.3 Residential treatment facilities must submit a bill to

the school district for educational costs only. The invoice must be itemized to reflect the specific services provided. Invoices must be submitted to the school district in a timely manner in order for the district to seek reimbursement from the ADE, Special Education Unit.

18.04.4 Funding.

18.04.4.1 A local school district may access funds through the ADE, Special Education Unit for reimbursement for educational costs on nondisabled students placed in residential treatment facilities.

18.04.4.2 The maximum amount a district may be reimbursed on a per student basis for actual educational costs will be the Formula Foundation Aid times 2.00.

18.04.4.3 The local school district shall not be responsible for educational costs exceeding its maximum reimbursement rate for those nondisabled students receiving educational services in a residential treatment facility.

18.04.4.4 When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

18.04.5 Extended School Year Services (ESY).

18.04.5.1 There is no provision for extended school year (educational) services to nondisabled students when schools are not in session. This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school. Therefore, there is no need for a district to convene a review team during the summer months when school is not in session.

18.04.5.2 Residential treatment facilities cannot bill school districts for educational services provided to nondisabled students during the summer months.

18.05 RESIDENTIAL PLACEMENT IN STATE - STUDENTS WITH DISABILITIES

18.05.1 Assignment of responsibility.

- 18.05.1.1 For students with disabilities in state-operated facilities (such as the Human Development Centers) the facility is responsible for procedural safeguards and the provision of FAPE.
 - 18.05.1.2 When a student with a disability is placed for non-educational reasons in a residential treatment facility for treatment, the district where the facility is located is the student's resident district. The district shall be responsible for procedural safeguards and the provision of FAPE.
 - 18.05.1.3 When a student with a disability who is a ward of the state is placed in a residential treatment facility, the district where the residential treatment facility is located is responsible for educating the student.
 - 18.05.1.4 When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing district remains responsible for procedural safeguards and the provision of FAPE.
 - 18.05.1.5 When a student with a disability is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent may petition the district where the student permanently resides (home district, usually that of the student's parent or guardian) for provision of procedural safeguards and FAPE.
- 18.05.2 Procedural safeguards.
- 18.05.2.1 The procedural safeguards specified in §9.00 of these regulations shall be followed.
- 18.05.3 Assignment of costs.
- 18.05.3.1 The State Department of Education, a public school district, or an open-enrollment charter school shall not be liable for any education costs associated with the placement of a juvenile in an in-state residential or inpatient facility for any care and treatment,

including psychiatric treatment, unless:

- A. The Department authorized public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Department has approved the facility's education program; and
- B. Each program authorization precedes the placement.
- C. If the program is not authorized prior to the placement, the Department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

18.05.3.2 The liability of the Department, a public school district, or an open-enrollment charter school for the educational costs or other related costs shall be limited to -

- A. The reimbursement rate established by the Department for a juvenile placed in a residential or inpatient facility.

18.05.3.3 For identified students with disabilities, those costs defined as being educational in accordance with the IDEA will be borne by the district responsible for provision of procedural safeguards and FAPE. For students in state-operated facilities, the facility assumes those costs.

18.05.3.4 All other costs will be borne by either DHS, Medicaid, private insurance, the parent or by any combination thereof.

18.05.4 Funding.

18.05.4.1 School districts may be reimbursed for the educational costs of students with disabilities, including those in school districts not qualifying for any State Equalization Aid, who have been

placed in approved residential treatment facilities, as defined by the ADE, Special Education Unit.

18.05.4.2 The maximum amount to be reimbursed to a district on a per student basis is the amount equal to the product of the Formula Foundation Aid times 2.10, regardless of the setting in which the education is provided. (For example, there may be instances where the student resides in a residential treatment facility but attends the public school for educational purposes.)

18.05.4.3 When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

18.05.5 Extended School Year Services (ESY).

18.05.5.1 Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.

18.05.5.2 Determination of student eligibility for ESY services is made by the school district based on the regulations governing ESY in §19.00 of these regulations.

18.05.6 This section shall not apply to a juvenile placed in an Arkansas juvenile detention facility as defined in Ark. Code Ann. 6-20-104.

18.06 RESIDENTIAL PLACEMENT OUT-OF-STATE - CHILDREN WITH DISABILITIES

18.06.1 Assignment of responsibility.

18.06.1.1 When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing school district remains responsible for procedural safeguards and the provision of FAPE.

18.06.1.2 When a student with a disability is unilaterally placed in a residential facility for educational purposes by a parent or agent other than the school

district, the parent may petition the school district where the student permanently resides (home school district, usually that of the student's parent or guardian) for consideration of the provision of procedural safeguards and FAPE.

18.06.1.3 In accordance with the Interagency Agreement between the ADE and DHS, when a child with a disability is a ward of the state and is placed in a residential treatment facility outside the boundaries of the State of Arkansas, the ADE is responsible for procedural safeguards and FAPE.

18.06.2 Procedural safeguards.

18.06.2.1 The procedural safeguards specified in §9.00 of these regulations shall be followed.

18.06.3 Assignment of costs.

18.06.3.1 The Department of Education, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

- A. At the time of placement:
 - 1. The juvenile qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; and
 - 2. Payment is required under the Individuals with Disabilities Education Act;
- B. The Department authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Department has approved the facility's education program; and

- C. Each program authorization precedes the placement.
 - 1. If the program is not authorized prior to placement, the department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

18.06.3.2 Nothing in this section shall be construed to require payment by the Department, a public school district, or an open-enrollment charter school for education costs and other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care or treatment, including psychiatric treatment, prior to April 7, 2005.

18.06.3.3 For identified students with disabilities, those costs defined as being educational in accordance with the IDEA will be borne by the district/agency responsible for provision of procedural safeguards and FAPE.

18.06.3.4 All other costs will be borne by either DHS, Medicaid, private insurance, the parent or by any combination thereof.

18.06.3.5 The liability of the Department, a public school district, or an open-enrollment charter school for the educational costs or other IDEA related costs shall be limited to the lesser of -

- A. The reimbursement rate established by the Department for a juvenile placed in a residential or inpatient facility; or,
- B. The normal and customary educational cost reimbursement rate of the state in which a juvenile is placed in an out-of-state residential or inpatient facility as determined by the Department.

- 18.06.4 Funding.
 - 18.06.4.1 School districts may request reimbursement for the educational costs of a student with disabilities placed in an approved residential treatment facility located outside the boundaries of Arkansas. Reimbursement may be used to fund the cost of such placement incurred by a school district.
 - 18.06.4.2 Reimbursement for this cost to the district will be calculated on the basis of Ark. Code Ann. 6-20-107(d)(2).
 - 18.06.4.3 When requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.
- 18.06.5 Extended School Year Services (ESY).
 - 18.06.5.1 Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.
 - 18.06.5.2 Determination of student eligibility for ESY services is made by the school district/agency based on the regulations governing ESY in §19.00 of these regulations.

18.07 JUVENILE DETENTION FACILITIES

- 18.07.1 General.
 - 18.07.1.1 For the purposes of these regulations, juvenile detention facilities are designated as approved residential treatment facilities.
 - 18.07.1.2 The juvenile detention facility and the district where the juvenile detention facility is located are designated as responsible for educating the student consistent with federal and state laws for any period of time the student is being detained in the facility.
 - 18.07.1.3 The resident district of a student who is being detained in a juvenile detention facility is designated as responsible for the timely transfer of a student's educational records to the district where

the juvenile detention facility is located upon notification by the court or district where the facility is located of the student's placement in a juvenile detention facility.

18.07.2 Educational services for nondisabled students.

- 18.07.2.1 In order to be eligible for public school funds, each juvenile detention facility must provide the following educational services for nondisabled students -
- A. The teachers employed by the juvenile detention facility must hold a valid teaching license from the Arkansas Department of Education.
 - B. The maximum teacher/student caseload must be 1 to 15 without a paraprofessional and 1 to 24 with a full time paraprofessional.
 - C. The juvenile detention facility must provide instruction that addresses the State's Curriculum Standards and educational skills needed by students and appropriately address the age ranges and the abilities of the students in the facility.
 - D. The juvenile detention facility must provide appropriate instructional and supplemental materials and media as are needed to enhance student instruction. Such materials include, but are not limited to, reference materials, dictionaries, maps, reading materials, and computer enhanced instructional software and/or internet access.

- E. The juvenile detention facility must provide planned instructional time in each school day averaging not less than six (6) hours per day or thirty (30) hours per week.

18.07.2.2 A school district which receives a student after attendance at a juvenile detention facility shall not use absences incurred as a result of detention as a basis for denial of credit.

18.07.3 Educational services for disabled students.

18.07.3.1 In order to be eligible for public school funds, each jurisdictional school district and juvenile detention facility must provide the following educational services for disabled students -

- A. FAPE consistent with the student's IEP.
- B. The teacher, employed by the JDF or local school district, who is implementing the IEP of a student with a disability must either -
 - 1. Hold a valid teaching license as a special education teacher, or
 - 2. Meet the qualifications in §18.07.2.1A above and implement the IEP in collaborative consultation with licensed special education personnel.
- C. The procedural safeguards specified in these regulations shall be followed for those students identified as disabled and for those suspected of being disabled.

18.07.4 Funding for students in juvenile detention facilities.

18.07.4.1 The juvenile detention facility may receive reimbursement from the local school district in which the facility is located for the costs of providing educational services to students in the facility, based upon the following -

- A. For nondisabled students, educational costs

are costs incurred for direct educational instruction and include salaries and benefits of teachers and paraprofessionals, staff development costs and substitute pay.

- B. For students with disabilities under the IDEA, educational costs include all costs incurred in the provision of FAPE.
- C. For students suspected of having disabilities as defined by the IDEA, educational costs shall include costs incurred in the evaluation process.

18.07.4.2 The juvenile detention facility and the local school district in which the juvenile detention facility is located must jointly determine the education costs incurred by the facility.

18.07.4.3 The local school district in which the juvenile detention facility is located must reimburse the juvenile detention facility for educational costs incurred up to an amount not to exceed the Formula Foundation Aid, times the number of students in the facility.

18.07.4.4 If the juvenile detention facility and the local school district cannot agree on an amount for reimbursement, either entity may appeal to the ADE for a final decision.

18.07.4.5 The ADE must reimburse local school districts which have juvenile detention facilities on a quarterly basis based upon the district requesting such reimbursements.

- A. The quarterly reimbursement amount will be determined by dividing the amount identified in §18.07.4.3 by four (4).
- B. Should costs decrease, the local school district in which the facility is located must notify the ADE, Special Education Unit within thirty (30) days of revised costs.
- C. Any adjustments to reimbursements based

on cost decreases will be made in the fourth (4th) quarter.

18.07.4.6 The jurisdictional local school district may request reimbursement for the costs of educational services provided to students in juvenile detention facilities and incurred by the local school district.

18.07.4.7 The juvenile detention facility must provide the jurisdictional local school district a quarterly attendance record for each student in the facility, regardless of length of stay.

18.08 JUVENILE TREATMENT CENTERS (FORMERLY KNOWN AS SERIOUS OFFENDER PROGRAMS)

18.08.1 It shall be the responsibility of each juvenile treatment center to report the attendance of its students in the education program by providing quarterly attendance reports to the Department of Human Services, Division of Youth Services (DYS). DYS will provide the quarterly attendance information to the Arkansas Department of Education. Funding will be disbursed to DYS in support of education services within DYS juvenile treatment centers based upon a legislative appropriation for this purpose.

**Arkansas Department of Education Guidelines for Registration, Training,
Scope of Responsibilities, Supervision and Review of Speech-language
Assistants and Aides
(Rev. July 2010)**

I. DEFINITIONS

- A. SPEECH-LANGUAGE PATHOLOGY ASSISTANT** – A speech-language pathology assistant (SLP-Assistant) is an individual who, following academic and on-the-job training, performs tasks as prescribed, directed, and supervised by master’s level speech-language pathologists certificated/licensed by the Arkansas Department of Education (ADE) or licensed by the Arkansas Board of Examiners in Speech-Language Pathology and Audiology (ABESPA).
- B. SPEECH-LANGUAGE PATHOLOGY AIDE** – A speech-language pathology aide (SLP-Aide) is an individual with a high school diploma/equivalent (GED) and on-the-job training who performs tasks as prescribed, directed, and supervised by master’s level speech-language pathologists certificated/licensed by the ADE or licensed by ABESPA.
- C. SUPERVISING SPEECH-LANGUAGE PATHOLOGIST** – A speech-language pathologist who holds a current ABESPA license or a valid certificate/license initially issued by the ADE prior to August 1, 1997 and has two (2) years of full-time professional speech-language pathology experience, after completion of the paid professional experience (CF)* Thereafter, individuals who are issues initial speech-language pathology certification/licensure by the ADE after August 1, 1997, shall be required to hold ABESPA licensure.
- *In geographic areas of the State where there is a documented shortage of speech-language pathologists, school districts must submit a proposal and receive approval to allow a speech-language pathologist who holds the required credentials but does not meet the requirement for professional speech-language pathology experience to supervise speech-language pathology assistants and aides (see requirements for supervising speech-language pathologist).
- D. DIRECT SUPERVISION** – Direct supervision means on-site, in-view observation and guidance by a speech-language pathologist while an assigned clinical activity is performed by a speech-language assistant or speech-language pathology aide.
- E. INDIRECT SUPERVISION** – Indirect supervision means those activities other than direct observation and guidance conducted by a speech-language pathologist that may include demonstration, record review, review and evaluation of audio- or video-tapes sessions, and/or interactive television.
- F. SCREENING** - A pass-fail procedure to identify people who may require further assessment.

II. REQUIREMENT FOR A SPEECH-LANGUAGE PATHOLOGY ASSISTANT/AIDE

A. A speech-language pathology assistant must:

- 1.** Complete a bachelor's degree in speech-language pathology; OR
- 2.** Complete a speech-language pathology assistant training program culminating in an Associates Degree from an institution accredited by the Arkansas Department of Higher Education. Programs must meet the specified curriculum content and fieldwork experience listed below. Applicants from out of state will be reviewed on a case-by-case basis to ensure equivalency.

a. Curriculum Content

The curriculum must be consistent with the ASHA-approved Criteria for the Registration of Speech-Language Pathology Assistants (Section III-A)

The curriculum content must include 60 semester credit hours with the following content:

- 20-40 semester credit hours in general education
- 20-40 semester credit hours in technical content areas
- a minimum of 100 clock hours fieldwork experience*

b. General education (20-40 semester credit hours)

The general education sequence should include, but is not limited to, the following:

- oral and written communication
- mathematics
- computer applications
- social and natural sciences

c. Technical knowledge (20-40 semester credit hours)

Course content must provide students with knowledge and skills to assume the job responsibilities and core technical skills for speech-language pathology assistants, and must include the following:

- overview of normal processes of communication
- overview of communication disorders
- instruction in assistant-level service delivery practices
- instruction in workplace behaviors
- cultural and linguistic factors in communication
- observation
- fieldwork experiences

d. The program describes how course content provides instruction in the following workplace behaviors of the speech-language pathology assistant:

- relating to clients/patients in a supportive manner
- following supervisor's instructions

- maintaining confidentiality and other appropriate workplace behaviors
- communicating in oral and written forms
- following health and safety precautions

*** Fieldwork Experience**

The minimum of 100 hours of field work experience must provide the student with opportunities for carrying out speech-language pathology assistant responsibilities. This training must be supervised by a speech-language pathologist who holds a current and valid license from ABESPA or the ASHA Certificate of Clinical Competence (CCC) in Speech-Language Pathology. These experiences are not intended to develop independent practice.

3. meet continuing education requirements of ten (10) clock hours annually pertaining to the designated duties of the SLP-Assistant

B. A speech-language pathology aide must:

1. hold a high school diploma or equivalent (GED)
2. demonstrate competency in oral and written communication skills
3. complete a minimum of forty (40) clock hours of inservice training during the initial year of employment pertaining to the duties of the SLP-Aide
4. during subsequent years of employment, complete continuing education requirements of ten (10) clock hours annually pertaining to the designated duties of the SLP-Aide.

III. REQUIREMENTS FOR A SUPERVISING SPEECH-LANGUAGE PATHOLOGIST

A. A supervising speech-language pathologist:

1. must hold a Master's Degree in Speech-Language Pathology; have two (2) years of full-time professional speech-language pathology experience, after completion of the paid professional experience (CF)*; and hold a current ABESPA license or a valid certificate/license initially issued by the ADE prior to August 1, 1997. Thereafter, individuals who are issued initial speech-language pathology certification/licensure by the ADE after August, 1997, shall be required to hold ABESPA licensure in order to supervise speech-language pathology assistants and aides.
2. may not supervise more than two (2) full-time or three (3) part-time assistants/aides. Three (3) part-time assistants/aides may not exceed the number of work hours for two (2) full-time assistants/aides or 80 hours.

3. must institute a training program for each assistant/aide encompassing all the procedures to be performed. Documentation of such training in format substance acceptable to the ADE shall be retained in the assistant's or aide's file.
4. must inform the parent or legal guardian about the use of an assistant/aide and document informed consent.
5. must provide and document appropriate supervision of the assistant/aide.
6. is required to maintain original documents related to supervision and training for three (3) years and submit document(s) upon request by the ADE within thirty (30) days of the request.

*In geographic areas of the State where there is a documented shortage of speech-language pathologists, school districts must submit a proposal and receive approval to allow a speech-language pathologist who holds the required credentials but does not meet the requirement for professional speech-language pathology experience to supervise speech-language pathology assistants and aides. The local education agency must document that a good faith effort has been made to recruit and hire appropriately and adequately trained speech-language pathologists. Subsequent to approval by the Arkansas Department of Education, the state consultant for speech-language pathology or a speech-language pathologist who provides training for supervisors and support personnel will monitor and provide additional training for the supervising speech-language pathologist. Monitoring activities will include at least 4 on-site visits and monthly review of supervision documentation:

1. After initial group training for supervisors, the supervising speech-language pathologist will be provided individualized on-site training sessions which address the use of a speech-language pathology assistant/aide.
 2. The supervising speech-language pathologist must provide the following for review monthly:
 - a. direct supervision record
 - b. indirect supervision log
 - c. treatment plans/reliability checks
 - d. summary of training activities for the speech-language pathology assistant/aide
- B.** Although the speech-language pathologist may delegate specific tasks to the speech-language pathology assistant or speech-language pathology aide, the legal (i.e., professional liability) and ethical responsibility to the patient/client for all services provided or omitted cannot be delegated; it must remain the full responsibility of the supervising speech-language pathologist.

IV. SUPERVISION GUIDELINES FOR A SPEECH-LANGUAGE PATHTOLOGY ASSISTANT

- A.** A total of at least 30% direct and indirect supervision is required and must be documented for the first ninety (90) workdays. (For a 40-hour work week, this would be 12 hours for both direct and indirect supervision.) Documented direct supervision shall be required no less than 20% of the actual student contact time weekly for each speech-language pathology assistant. During each week, data on every student seen by the speech-language pathology assistant must be reviewed by the supervisor. In addition, the 20% direct supervision must be scheduled so that all students seen by the assistant are directly supervised in a timely manner. Supervision days and time of day (morning/afternoon) must be alternated to ensure that all students receive direct contact with the speech-language pathologist at least once every two (2) weeks. Information obtained during direct supervision must include data relative to (a) agreement (reliability) between the assistant and the supervisor on correct/incorrect recording of target behavior, (b) accuracy in implementation of screening and treatment procedures, (c) accuracy in recording data, and (d) ability to interact effectively with the student.
- B.** Indirect supervision is required no less than 10% of the actual student contact time and may include demonstration, record review, review and evaluation of audio- or video-taped sessions, interactive television, and/or supervisory conferences that may be conducted by telephone. Treatment data must be reviewed at least weekly or every five (5) sessions for each student. The speech-language pathologist will review each session plan as needed for timely implementation modifications.
- C.** After the initial ninety (90) day work period, the amount of supervision may be adjusted depending on the competency of the assistant, the needs of the students served, and the nature of the assigned tasks. The minimum is 20% documented supervision, with no less than 10% being direct supervision. (For a 40-hour work week, this is 8 hours of supervision, at least 4 of which is direct supervision.) Supervision days and time of day (morning/afternoon) must be alternated to ensure that all students receive direct contact with the speech-language pathologist at lease once every two (2) weeks.
- D.** A supervising speech-language pathologist must be able to be reached by personal contact, phone, pager, or other immediate means at all times when direct student care is being rendered. If, for any reason (i.e., extended leave, illness, change of jobs), the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not perform direct student care until a speech-language pathologist has been designated as the speech-language pathology assistant's supervisor and the ADE has been notified.
- E.** Whenever the SLP-Assistant's performance is judged by the supervising speech-language pathologist to be unsatisfactory over two (2) consecutive observations, the SLP-Assistant shall be retrained in the necessary skills and direct observations shall be increased to 50% of all clinical sessions until the SLP-Assistant's performance is judged to be satisfactory over two (2) consecutive observations.

V. SCOPE OF RESPONSIBILITIES OF THE SPEECH-LANGUAGE PATHOLOGY ASSISTANT

- A.** Provided that the training, supervision, documentation and planning are appropriate (i.e., consistent with these guidelines), the following tasks may be designated to a speech-language pathology assistant:
- 1.** Conduct speech-language screenings (without interpretation) following specified screening protocols developed by the supervising speech-language pathologist.
 - 2.** Provide routine maintenance/generalization tasks as prescribed by the supervising speech-language pathologist. The SLP shall be solely responsible for performing all tasks associated with the assessment and diagnosis of communication and swallowing disorders, for design of all intervention plans, and for directly implementing such plans through the acquisition stage of intervention.
 - 3.** Follow documented treatment plans or protocols developed by the supervising speech-language pathologist, not to exceed the activities delineated in #2 above.
 - 4.** Perform pure-tone hearing screenings (without interpretation).
 - 5.** Document student progress toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist.
 - 6.** Assist the speech-language during assessment of students, such as those judges to be difficult to test.
 - 7.** Assist with informal documentation (e.g., tallying notes for the speech-language pathologist to use), prepare materials, and assist with other clerical duties as directed by the speech-language pathologist.
 - 8.** Perform checks and maintenance of equipment.
 - 9.** Participate with the speech-language pathologist in research project, in-service training, and public relations programs.
- B.** There is a potential for possible misuse of the speech-language pathology assistant, particularly when responsibilities are delegated by administrative staff or nonclinical staff without the knowledge and approval of the supervising speech-language pathologist. Therefore, the speech-language pathology assistant should not perform any task without the express knowledge and approval of the supervising speech-language pathologist.

An individual's communication or related disorder or other factors may preclude the use of services from anyone other than the licensed/certificated speech-language pathologist.

The SLP-Assistant may not:

1. Perform standardized or non-standardized diagnostic tests, formal or informal evaluation, or interpret test results;
2. Perform intervention tasks associated with skill acquisition;
3. Participate in parent conferences, case conferences, or in any interdisciplinary team without the presence of the supervising speech-language pathologist or other ASHA-certified speech-language pathologist designated by the supervising speech-language pathologist;
4. Provide student or family counseling;
5. Write, develop, or modify a student's individualized education program (IEP) in any way;
6. Assist with students without following the IEP as prepared by the speech-language pathologist or without access to supervision (See Supervision Guidelines);
7. Sign any formal documents (e.g., treatment plans, reimbursement forms, or reports). (The assistant may sign treatment notes for review and co-signature by the supervising professional.);
8. Select students for services;
9. Discharge a student from services;
10. Disclose clinical or confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;
11. Make referrals for additional services;
12. Communicate with the student, family or others regarding any aspect of the student status regarding diagnosis, prognosis, treatment, and progress;
13. Represent himself or herself as a speech-language pathologist.

VI. SUPERVISION GUIDELINES FOR A SPEECH-LANGUAGE PATHOLOGY AIDE

- A. 100% direct on-site, in-view supervision is required for the first ten (10) hours of direct student contact.
- B. A total of at least 50% direct and indirect supervision is required and must be documented for the next ninety (90) workdays. (For a 40 hour work week, this would be

20 hours for both direct and indirect supervision.) Documented direct supervision shall be required no less than 30% of the actual student contact time weekly for each speech-language pathology aide. During each week, data on every student seen by the speech-language pathology aide must be reviewed by the supervisor. In addition, the 30% direct supervision must be scheduled so that all students seen by the aide are directly supervised in a timely manner. Supervision days and time of day (morning/ afternoon) must be alternated to ensure that all students receive direct contact with the speech-language pathologist at least once every two (2) weeks. Information obtained during direct supervision must include data relative to (a) agreement (reliability) between the aide and the supervisor on correct/incorrect recording of target behavior, (b) accuracy in implementation of screening and treatment procedures, (c) accuracy in recording data, and (d) ability to interact effectively with the student.

- C.** Indirect supervision is required no less than 20% of the actual student contact time and may include demonstration, record review, review and evaluation of audio-or video-taped sessions, interactive television, and/or supervisory conferences that may be conducted by telephone. Treatment data must be reviewed at least weekly for each case. The speech-language pathologist will review each session plan as needed for timely implementation of modifications.
- D.** After the initial ninety (90) day work period, the amount of supervision may be adjusted depending on the competency of the aide, the needs of the students served, and the nature of the assigned tasks. The minimum is 40% documented supervision, with no less than 30% being direct supervision. (For 40-hour work week, this is 16 hours of supervision, at least 12 of which is direct supervision.) Supervision days and time of day (morning/afternoon) must be alternated to ensure that all students receive direct with the speech-language pathologist at least once every two (2) weeks.
- E.** A supervising speech-language pathologist must be able to be reached by personal contact, phone, pager, or other immediate means at all time when direct student care is being rendered. If, for any reason (i.e., extended leave, illness, change of jobs), the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology aide may not perform direct student care until a speech-language pathologists has been designated as the speech-language pathology aide's supervisor and the ADE has been notified.
- F.** Whenever the SLP-Aide's performance is judged by the supervising speech-language pathologist to be unsatisfactory over two (2) consecutive observations, the SLP-Aide shall be retrained in the necessary skills and direct observations shall be increased to 50% of all clinical sessions until the SLP-Aide's performance is judged to be satisfactory over two (2) consecutive observations.

VIII. SCOPE OF RESPONSIBILITIES OF THE SPEECH-LANGUAGE PATHOLOGY AIDE

- A.** Provided that the training, supervision, documentation and planning are appropriate (i.e., consistent with these guidelines), the following tasks may be designated to a speech-language pathology aide:
- 1.** Conduct speech-language screenings (without interpretation) following specified screening protocols developed by the supervising speech-language pathologist.
 - 2.** Conduct routine activities for the purpose of reinforcement of previously learned material/skills, carried out under a plan of treatment developed and monitored by the supervising speech-language pathologist. The SLP shall be solely responsible for performing all tasks associated with the assessment and diagnosis of communication and swallowing disorders, for design of all intervention plans, and for directly implementing such plans through the acquisition stage of intervention.
 - 3.** Follow documented treatment plans or protocols developed by the supervising speech-language pathologist, not to exceed the activities delineated in #2 above.
 - 4.** Perform pure-tone hearing screenings (without interpretation).
 - 5.** Document student progress toward meeting established objectives as stated in the individualized education program (IEP), and report this information to the supervising speech-language pathologist.
 - 6.** Assist the speech-language pathologist during assessment of students, such as those judged to be difficult to test.
 - 7.** Assist with formal documentation (e.g., tallying notes for the speech-language pathologist to use), prepare materials, and assist with other clerical duties as directed by the speech-language pathologist.
 - 8.** Perform checks and maintenance of equipment.
 - 9.** Participate with the speech-language pathologist in research projects, in-service training, and public relations programs.
- B.** There is a potential for possible misuse of the speech-language pathology aide, particularly when responsibilities are delegated by administrative staff or nonclinical staff without the knowledge and approval of the supervising speech-language pathologist. Therefore, the speech-language pathology aide should not perform any task without the express knowledge and approval of the supervising speech-language pathologist.

An individual's communication or related disorder or other factors may preclude the use of services from anyone other than a licensed speech-language pathologist.

C. The SLP-Aide may not:

1. Perform standardized or non-standardized diagnostic tests, formal or informal evaluation, or interpret test results;
2. Perform intervention tasks associated with skill acquisition;
3. Participate in parent conferences, case conferences, or in any interdisciplinary team without the presence of the supervising speech-language pathologist or other ASHA-certified speech-language pathologist designated by the supervising speech-language pathologist;
4. Provide student or family counseling;
5. Write, develop, or modify a student's IEP in any way;
6. Assist with students without following the IEP prepared by the speech-language pathologist or without access to supervision (See Supervision Guidelines);
7. Sign any formal document (e.g., treatment plans, reimbursement forms, or reports). (The aide may sign treatment notes for review and co-signature by the supervising professional.);
8. Select students for services;
9. Discharge a student from services;
10. Disclose clinical or confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;
11. Make referrals for additional services;
12. Communicate with the student, family or others regarding any aspect of the student status regarding diagnosis, prognosis, treatment, and progress.
13. Represent himself or herself as a speech-language pathologist.

VIII. EXCLUSIVE RESPONSIBILITIES OF THE SPEECH-LANGUAGE PATHOLOGIST

- A. Complete initial supervision training prior to accepting an assistant/aide for supervision and upgrade supervision training on a regular basis.
- B. Participate significantly in hiring the assistant/aide.

- C.** Document preservice training and credentials of the assistant/aide.
- D.** Inform students and families about the level (professional vs. support personnel), frequency, and duration of services, as well as supervision.
- E.** Represent the speech-language pathology team in all collaborative, interprofessional, interagency meetings, correspondence, and reports. This would not preclude the assistant/aide from attending meetings along with the speech-language pathologist as a team member or drafting correspondence and report for editing, approval, and signature by the speech-language pathologist.
- F.** Make all clinical decisions, including determining a student selection for inclusion/exclusion in the case load, and dismissing students from treatment.
- G.** Communicate with students, parents, and family members about diagnosis, prognosis, treatment, and progress.
- H.** Conduct diagnostic evaluation, assessments, or appraisals, and interpret obtained data in reports.
- I.** Review each treatment plan with the assistant at least weekly or every five (5) sessions. Review each treatment plan with the aide at least weekly.
- J.** Delegate specific tasks to the assistant/aide while retaining legal and ethical responsibility for all student services provided or omitted.
- K.** Prepare an individualized treatment plan and make modifications prior to or during implementation.
- L.** Discuss the case with or refer the students to other professionals.
- M.** Sign all formal documents (e.g., treatment plans, reimbursement forms, reports). The supervisor should indicate on documents that the assistant/aide performed certain activities.
- N.** Review and sign all informal progress notes prepared by the assistant/aide.
- O.** Provide ongoing training to the assistant/aide on the job.
- P.** Provide and document appropriate supervision of the assistant/aide.
- Q.** Ensure that the assistant/aide only perform tasks that are within the scope of responsibility of the speech-language pathology assistant/aide.
- R.** Participate in the performance appraisal of the speech-language pathology assistant/aide.

IX. REGISTRATION OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS, AIDES AND SUPERVISING SPEECH-LANGUAGE PATHOLOGIST(S)

- A.** Individuals desiring to register as a speech-language pathology assistant, speech-language pathology aide or supervising speech-language pathologist under these ADE guidelines must submit a completed registration application to the ADE (See Guideline's Attachment), including all required attachments.
- B.** This registration application must be approved in writing by the ADE before any personnel employed for the purposes established in these ADE guidelines may be engaged in activities associated with a program of speech-language pathology services delivery.
- C.** Notification of approval/disapproval of the registration application will be forwarded in writing by the ADE to the chief operating officer of the public agency, as well as to the individual designated on the registration application as the local contact person. In programs where this individual is not the supervising speech-language pathologist, notification of approval/ disapproval of the registration application will also be forwarded to the supervising speech-language pathologist.

X. INSERVICE TRAINING AND CONTINUING EDUCATION OPPORTUNITIES PROVIDED BY OR THROUGH THE ARKANSAS DEPARTMENT OF EDUCATION

- A.** The ADE will ensure that all individuals participating in approved programs for the use of speech-language pathology assistant/aides operating in conjunction with these guidelines shall participate in appropriately designed training prior to the use of support personnel in the delivery of speech-language pathology services. It shall be the responsibility of the public agency to ensure the participation of such personnel in all required training activities. Documentation of each individual's participation must be maintained for review by the ADE.
- B.** The ADE will provide for, or cause to be provided, appropriate training opportunities for individuals employed as speech-language pathology assistants/aides and supervising speech-language pathologists.

XI. OVERSIGHT MONITORING BY THE ADE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS/AIDES AND SUPERVISING SPEECH-LANGUAGE PATHOLOGISTS

- A.** The ADE shall review and approve all requests by public agencies providing special education services to children and youth to initiate and/or continue to use appropriately supervised SLP Assistant and/or Aides.
- B.** The ADE shall, as a part of its regular schedule of monitoring public agencies' compliance with special education program standards, regulations and guidelines, review

the compliance status of speech-language pathology services (i.e., the use of appropriately supervised SLP-Assistants and/or Aides).

- C. The ADE shall aggressively investigate reports of violations of these guidelines, and shall take appropriate action, consistent with its scope of authority under federal and state statute and regulation, in the event that any individual employed for the purposes of working under these ADE guidelines is found to be acting in a manner which violates these guidelines. Furthermore, if an individual who holds ABESPA licensure as a speech-language is found by the ADE to be in violation of these guidelines, the ADE will notify ABESPA of the complaint and findings for consideration under its investigative process.

INFORMATION FOR PARENTS REGARDING CONSENT

Consent means:

- A. 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.
- B. 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**
- C. 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 school district 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.

Confidentiality of Information

- A. This public agency is required to obtain written **consent** before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph A.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.
 1. Except as provided in paragraph A.2 and A.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 34 CFR 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.

- B. You have the rights described in the "Confidentiality of Information" section of "Your Rights Under the IDEA" regarding storage, disclosure to third parties, retention and destruction of personally identifiable information.
- C. 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. the public agency must provide any notice required by this section to the child and the parents;
 - 2. the public agency must provide notice that all other right accorded to parents under this part transfer to the child;
 - 3. the public agency must notify the child and the parents of the transfer of rights; and
 - 4. the public agency must provide notice that all the rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile State, or local correctional institution.

Consent for Initial Evaluation

- A. The public agency cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent.
- B. The public agency must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.
- C. Your consent for initial evaluation does not mean that you have also given your consent for the public agency to start providing special education and related services to your child.
- D. Your school district 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 school district to do so.
- E. If your child is enrolled in public school or you are seeking to enroll your child in public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing

procedures. The public agency 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.

Parental Consent for Services

- A. The public agency must obtain your informed consent before providing special education and related services to your child for the first time.
- B. The public agency must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.
- C. 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, the public agency 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.
- D. 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 public agency does not provide your child with the special education and related services for which it sought your consent, the public agency:
 - 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.
- E. If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the public agency may not continue to provide such services, but must provide you with prior written notice before discontinuing those services.

Parental Consent for Reevaluations

- A. The public agency must obtain your informed consent before it reevaluates your child, unless it can demonstrate that:
 - 1. It took reasonable steps to obtain your consent for your child's reevaluation; and

2. You did not respond.
- B. If you refuse to consent to your child's reevaluation, the public agency 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 public agency does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.
 - C. Your written consent is required before conducting a reevaluation before determining that the child is no longer a child with a disability. However, reevaluation is not required before the termination of a child's eligibility under the IDEA due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

Documentation of Reasonable Efforts to Obtain Parental Consent

- A. The public agency must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the public agency'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

- A. Parental consent is not required before -
 1. Reviewing existing data as part of your child's evaluation or a reevaluation; or
 2. Administering to your child 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.
- B. 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.

- C. A public agency may not use your refusal to consent to one of these services or activities under this section as a basis to deny any other service, benefit, or activity of the public agency unless another IDEA Part B requirement requires the public agency to do so.
- D. 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 its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and the public agency is not required to consider the child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).
- E. To meet the reasonable efforts requirement of this section, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR 300.322(d).

INFORMATION FOR PARENTS REGARDING CONSENT

Consent means:

- A. 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.
- B. 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**
- C. 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 school district 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.

Confidentiality of Information

- A. This public agency is required to obtain written **consent** before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph A.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.
 - 1. Except as provided in paragraph A.2 and A.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 34 CFR 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.

- B. You have the rights described in the "Confidentiality of Information" section of "Your Rights Under the IDEA" regarding storage, disclosure to third parties, retention and destruction of personally identifiable information.
- C. 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. the public agency must provide any notice required by this section to the child and the parents;
 - 2. the public agency must provide notice that all other right accorded to parents under this part transfer to the child;
 - 3. the public agency must notify the child and the parents of the transfer of rights; and
 - 4. the public agency must provide notice that all the rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile State, or local correctional institution.

Evaluation/Placement Consent

- ~~A. The public agency is required to obtain your written informed consent before:~~
 - ~~1. conducting an initial evaluation of the child; and~~
 - ~~2. initial provision of special education and related services to the child.~~
 - ~~a. 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.~~
 - ~~b. If the parent of a child fails to respond or refuses to consent to services under this section, the public agency may not use the due process hearing procedures (including the mediation procedures under 34 CFR 300.506 or the due process procedures under 34 CFR 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.~~
 - ~~c. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency~~

- ~~1) 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~~
- ~~2) Is not required to convene an IEP Team meeting or develop an IEP under 34 CFR 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.~~
- ~~3. conducting any reevaluation of a child with a disability, except that such informed consent need not be obtained if the public agency can demonstrate that it has made reasonable efforts to obtain such consent and the child's parent has failed to respond; and~~

Consent for Initial Evaluation

- A. The public agency cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent.
- B. The public agency must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.
- C. Your consent for initial evaluation does not mean that you have also given your consent for the public agency to start providing special education and related services to your child.
- D. Your school district 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 school district to do so.
- E. If your child is enrolled in public school or you are seeking to enroll your child in public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The public agency 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.

Parental Consent for Services

- A. The public agency must obtain your informed consent before providing special education and related services to your child for the first time.
- B. The public agency must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.
- C. 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, the public agency 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.
- D. 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 public agency does not provide your child with the special education and related services for which it sought your consent, the public agency:
 - 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.
- E. If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the public agency may not continue to provide such services, but must provide you with prior written notice before discontinuing those services.

Parental Consent for Reevaluations

- A. The public agency must obtain your informed consent before it reevaluates your child, unless it can demonstrate that:
 - 1. It took reasonable steps to obtain your consent for your child's reevaluation; and
 - 2. You did not respond.
- B. If you refuse to consent to your child's reevaluation, the public agency 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 public agency does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

- C. Your written consent is required before 4. conducting a reevaluation before determining that the child is no longer a child with a disability. However, reevaluation is not required before the termination of a child's eligibility under the IDEA due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

Documentation of Reasonable Efforts to Obtain Parental Consent

- A. The public agency must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the public agency'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

- A. Parental consent is not required before -
1. Reviewing existing data as part of ~~an~~ your child's evaluation or a reevaluation; or
 2. Administering to your child 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.
- B. 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.

- C. A public agency may not use ~~a parent's~~ your refusal to consent to one of these services or activities under this section as a basis to deny ~~the parent or child~~ any other service, benefit, or activity of the public agency, ~~except as required by this part.~~ unless another IDEA Part B requirement requires the public agency to do so.
- D. 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 to override its~~ dispute resolution procedures; (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and the public agency is not required to consider the child as eligible ~~for services under 34 CFR 300.132 through 300.144~~ to receive equitable services (services made available to parentally-placed private school children with disabilities).
- E. To meet the reasonable efforts requirement of this section, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR 300.322(d).

**NOTIFICATION TO PARENT(S) OF TRANSFER OF RIGHTS UNDER THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

Date: _____

Dear: _____

In accordance with requirements set forth in the *Individuals with Disabilities Education Act (IDEA)*, Part B, this is to notify you that, since your child with a disability has reached the age of majority under State law (age 18) all rights and protections given to you as the parent of a child with disabilities as contained in "Your Rights Under the IDEA" now transfer to _____.

(Name of Child)

However, the IDEA provides that you will retain the right along with your child to receive any notices required under Part B.

Furthermore, such transfer of rights and protections also includes children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

The IDEA provides that an exception to this requirement may be made when a child with a disability has been determined to be incapacitated or incompetent under State law. In Arkansas, the determination of an individual's incapacitation or incompetence and appointment of a legal guardian for that individual must be done by the appropriate court of law.

Principal/Designee

**NOTIFICATION TO YOUTH OF TRANSFER OF PARENTAL RIGHTS UNDER THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

Date: _____

Dear: _____

In accordance with requirements set forth in the *Individuals with Disabilities Education Act (IDEA)*, Part B, this is to notify you that, since you have reached the age of majority under State law (age 18) all rights and protections previously given to your parent(s) as contained in "Your Rights Under the IDEA" now transfer to you. However, the IDEA provides that your parent(s) will retain the right along with you to receive any notices required under Part B of the IDEA.

For your information, the IDEA provides that such a transfer of rights and protections also includes children and youth who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

The IDEA provides that an exception to this requirement may be made when a child or youth with a disability has been determined to be incapacitated or incompetent under State law. In Arkansas, the determination of an individual's incapacitation or incompetence and appointment of a legal guardian for that individual must be done by the appropriate court of law.

Principal/Designee

LOCAL AGENCY RESOURCE LIST

Below is a list of some of the more common agencies and a brief description of the services within your community. These agencies and their services may vary throughout the state. If you know of a service provided by an agency in your community that is not listed below, please indicate in the "other" section of the consent form. If you need more information regarding services before deciding to provide consent, please contact your child's special education teacher.

<p><u>Arkansas Rehabilitation Services</u> (may provide support for attainment of competitive employment and/or specialized instruction or training)</p>
<p><u>Disability Support Services Representative from college/university/trade school</u> (may provide accommodations for learning)</p>
<p><u>Developmental Disabilities Services</u> (may provide services through independent case management, community providers, integrated day care, Medicaid waiver, and Human Development Centers)</p>
<p><u>Community Health Center</u> (may provide for personal therapy, employment support and other mental health needs)</p>
<p><u>Social Security Administration</u> (may provide for Supplemental Security Income and Medicaid medical coverage)</p>
<p><u>Project Arkansas Work Incentives</u> (provides information on how work will affect SSI and Medicare/Medicaid benefits; may provide self-supporting plan development and linkages to other agencies for vocational training and job placement)</p>
<p><u>Department of Workforce Services</u> (may provide employment related services)</p>
<p><u>Arkansas Work Force Centers</u> (provide locally developed and operated services such as work experience, summer work program and educational opportunities, linking employers and job seekers through a state-wide delivery system.)</p>
<p><u>Local Independent Living Center</u> (may help student develop and independent living plan and provide supports to realize the plan)</p>
<p><u>Division of Volunteerism</u> (provides supportive volunteer activities statewide and promotes volunteerism as a means of community problem-solving)</p>
<p><u>Division of Children and Family Services</u> (may provide services for children who are at risk of being abused, neglected, exploited, and who have serious emotional problems)</p>
<p><u>Division of Services for the Blind</u> (may provide transition services and other vocational rehabilitation services to those persons who are blind or severely visually impaired)</p>
<p><u>Adult Education/Literacy</u> (These free services provide adults with individualized instruction from certified teachers to improve their basic educational skills)</p>
<p><u>Local Guardianship Representative</u> (may be a court employee, Guardianship Alliance representative, or Lawyer familiar with guardianship issues/procedures)</p>
<p><u>Division of County Operations</u> (Responsible for administering many economic programs including ARKids First, Food Stamps and emergency assistance)</p>
<p><u>The Child and Adolescent Service System Program (CASSP)</u> (service teams available throughout the state may provide development of multi-agency plans of care for children with serious emotional disturbance when the current system is not meeting their needs)</p>
<p><u>Other (please identify and describe)</u></p>
<p><u>Other (please identify and describe)</u></p>
<p><u>Other (please identify and describe)</u></p>

REFERRAL FORM

Child: _____ Sex: _____ ID# _____

Race (Check all that apply): Hispanic American Indian/Alaskan Native Asian Black Hawaiian/ Pacific Islander White

Date of Birth: _____ Age: _____ Grade: _____ Public Agency: _____

Name of person(s) referring child: _____ Date: _____

Name and address of parent/guardian: _____ Phone: (Home) _____ (Work) _____

_____ Native Language/Mode of Communication of Parent:

_____ English Other (Specify) _____

_____ Interpreter Needed? Yes No

_____ Native Language/Mode of Communication of Child:

_____ English Other (Specify) _____

Description of academic/developmental, and/or behavioral performance which prompted referral:

Current program: _____

Please summarize and/or attach any additional information which would assist in determining the nature of the child's developmental/learning problems (pre-referral data/early intervening services including, but not limited to response to intervention by scientifically research based evidence; screening inventories; services; programs; home or classroom behavior checklists; existing medical, social, developmental/educational data; and/or samples of the child's work).

Has student repeated a grade? Yes No, Which grade? _____ Attendance: _____ days absent this school year (K-12)

What strategies/methods have been used to improve academic/developmental, and/or behavioral performance?

What are the child's strengths? _____

Hearing Screening: Date: _____ Results: _____ Prior Special Education Referral? Yes No

Vision Screening: Date: _____ Results: _____ When? _____

Public Agency Official/Designee Receiving Referral

(Date)

REVOCATION OF PARENTAL CONSENT FOR PLACEMENT

I, _____, revoke my consent for _____
(Parent or Guardian) (Student's Name)

to receive special education and related services from _____.
(Public Agency)

Parent/Guardian's Signature

Date

CONFIRMATION

Based on your written notice dated _____ to revoke your consent for
_____ to receive special education and related services,
(Student's Name)

the _____ will not continue to provide such
(Public Agency)

services after providing you with prior written notice, as required by the IDEA, before
discontinuing those services.

Public Agency Authorized Representative

Date

GENERAL INFORMATION

PRIOR WRITTEN NOTICE

34 CFR §300.503

Notice

Your school district must give you written notice (provide you certain information in writing), whenever 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 your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district 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 the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district 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 the IDEA;
7. Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why your school district 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, your school district must ensure that:

1. The notice is translated for you orally 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 1 and 2 have been met.

NATIVE LANGUAGE

34 CFR §300.29

Native language, when used with 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

34 CFR §300.505

If your school district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; and
3. Notices related to a due process complaint.

PARENTAL CONSENT - DEFINITION

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 you may withdraw your consent at anytime.

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 school district 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

34 CFR §300.300

Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the 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 heading ***Parental Consent***.

Your school district 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 school district to start providing special education and related services to your child.

Your school district 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 school district 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, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district 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 the State and is not living with his/her parent —

The school district 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 school district 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 the IDEA, means a child who, as determined by the State 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.

Ward of the State does not include a foster child who has a foster parent.

Parental consent for services

Your school district must obtain your informed consent before providing special education and related services to your child for the first time.

The school district 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, your school district 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 school district does not provide your child with the special education and related services for which it sought your consent, your school district:

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, the school district 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

Your school district must obtain your informed consent before it reevaluates your child, unless your school district 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 school district 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, your school district does not violate its obligations under Part B of the 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 parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district'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 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.

Other consent requirements

Your consent is not required before your school district 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 all parents of all children.

Your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity unless another Part B requirement requires the school district to do so.

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 school district 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 parentally-placed private school children with disabilities).

INDEPENDENT EDUCATIONAL EVALUATIONS

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 your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district'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 school district responsible for the education of your child.

Public expense means that the school district 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 the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of Part B of the Act.

Parent 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 your school district, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district 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 school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district'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 school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district 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 school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district 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 school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district'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 your school district 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 school district 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, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Confidentiality of Information

DEFINITIONS

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)).
- *Participating agency* 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 the IDEA.

PERSONALLY IDENTIFIABLE

34 CFR §300.32

Personally identifiable means information that has:

- (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

34 CFR §300.612

The State Educational Agency 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 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 the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (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 the State of the activity to locate, identify, and evaluate children in need of special education and related services.

ACCESS RIGHTS

34 CFR §300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of the IDEA. The participating agency 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 participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency 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 participating agency 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 State law governing such matters as guardianship, or separation and divorce.

RECORD OF ACCESS

34 CFR §300.614

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (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.

RECORDS ON MORE THAN ONE CHILD

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

34 CFR §300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

FEES

34 CFR §300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of the IDEA.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency 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 participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading *Opportunity For a Hearing*.

OPPORTUNITY FOR A HEARING

34 CFR §300.619

The participating agency 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

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

34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency 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 participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; and
2. If the participating agency discloses the records of your child or the challenged portion 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 participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or 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.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

SAFEGUARDS

34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency 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 your State's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

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.

DESTRUCTION OF INFORMATION

34 CFR §300.624

Your school district must inform you when personally identifiable information collected, maintained, or used 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

DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

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 a school district, the State Educational Agency, or any other public agency. Only you or

a school district 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 State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process 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 school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR §300.151

General

Each State Educational Agency 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 State Educational Agency;
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 State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152

Time limit; minimum procedures

Each State Educational Agency 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 State Educational Agency 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 school district 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 school district or other public agency is violating a requirement of Part B of the 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 State Educational Agency's final decision.

Time extension; final decision; implementation

The State Educational Agency'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) the parent and the school district 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 the State.
2. Include procedures for effective implementation of the State Educational Agency'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 below 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 State must set aside the State complaint, or 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 (you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

FILING A COMPLAINT

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 a school district or other public agency has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; 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***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

Due Process Complaint Procedures

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

General

You or the school district 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 school district 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 school district specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The school district withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents

The school district 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 school district file a due process complaint.

DUE PROCESS COMPLAINT

34 CFR §300.508

General

In order to request a hearing, you or the school district (or your attorney or the school district'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.

You or the school district, whichever one filed the complaint, must also provide the State Educational Agency 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 you or the school district at the time.

Notice required before a hearing on a due process complaint

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district'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 school district) 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 the receiving party (you or the school district) 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 school district in writing immediately.

Complaint amendment

You or the school district 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 below; 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 school district) 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.

Local educational agency (LEA) or school district response to a due process complaint

If the school district 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 school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district 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 school district used as the basis for the proposed or refused action; and

4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district 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, ***Local educational agency (LEA) or school district 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

34 CFR §300.509

The State Educational Agency must develop model forms to help you file a due process complaint and a State complaint. However, your State or the school district may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

MEDIATION

34 CFR §300.506

General

The school district must make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the 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 school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district 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 and encourage the use of the mediation process to you.

The State must have 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 State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost 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 school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

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; and
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

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 a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the school district 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 a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

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 State or school district 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 the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the school district 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 the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

RESOLUTION PROCESS

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 school district 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 school district who has decision-making authority on behalf of the school district; and
2. May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district 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 school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; or
2. You and the school district agree to use the mediation process, as described under the heading ***Mediation***.

Resolution period

If the school district 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 decision 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 school district 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 you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district 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 school district'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 school district 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 order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-calendar-day resolution period

If you and the school district 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 school district 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 school district agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school district

withdraws from the mediation process, 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 school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; 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 State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the school district 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.

The State Educational Agency is responsible for convening due process hearings, and an appeal from a due process hearing decision is directly to a court.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency 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 the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the 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.

Each school district 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 school district) 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 school district must request an impartial hearing on a due process complaint within two years of the date you or the school district 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 school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The school district withheld information from you that it was required to provide to you under Part B of the IDEA.

HEARING RIGHTS

34 CFR §300.512

The Following Applies to One-tier States:

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and require 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 your option, electronic, word-for-word record of the hearing; and
5. 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 school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district 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;
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

34 CFR §300.513

Decision of hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

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 a deprivation of an educational benefit.

Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the 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 the 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 to advisory panel and general public

The State Educational Agency or the school district, (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

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 school district) may appeal the decision by bringing a civil action, as described below.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

34 CFR §300.515

The State Educational Agency 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.

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

34 CFR §300.516

General

Any party (you or the school district) 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.

The party (you or the school district) 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 school district's request; and
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

Rule of construction

Nothing in Part B of the 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 the 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 the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

Attorneys' Fees

34 CFR §300.517

General

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, 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 the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, 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.

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 hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement 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.

Fees also may not be awarded for a mediation as described under the heading Mediation

A resolution meeting, as described under the heading Resolution meeting, 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 the 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 school district 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 State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

AUTHORITY OF SCHOOL PERSONNEL

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 (which must be determined by the child's individualized education program (IEP) Team), 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 ***Change of Placement Because of Disciplinary Removals*** for the definition, below).

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 school district 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 *Manifestation determination*, below) 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 services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

A school district is only required to provide services 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 has been similarly removed.

A child with a disability who is removed from the child's current placement for **more than 10 school days** must:

1. Continue to receive educational services, 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
2. 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 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 definition below), 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, 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 school district, the parent, and relevant members of the IEP Team (as determined by the

parent and the school district) 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:

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 school district's failure to implement the child's IEP.

If the school district, the parent, and 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 school district, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the school district, the parent, and 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 school district 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 school district must return the child to the placement from which the child was removed, unless the parent 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 the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the 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 State Educational Agency 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 State Educational Agency 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 State Educational Agency 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 the child because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 CFR §300.536

A removal of a child with a disability from the 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. The 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. The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals;
 - c. 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; and

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

DETERMINATION OF SETTING

34 CFR § 300.531

The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings **Additional authority** and **Special circumstances**, above.

APPEAL

34 CFR § 300.532

General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination described above.

The school district may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision. The hearing officer may:

1. 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 the requirements described under the heading **Authority of School Personnel**, or that the child's behavior was a manifestation of the child's disability; or
2. 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.

These hearing procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school district 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 State Educational Agency or school district 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 the parents and the school district 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. A State 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.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see ***Appeals***, above).

PLACEMENT DURING APPEALS

34 CFR §300.533

When, as described above, the parent or school district has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the State Educational Agency or school district 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

34 CFR §300.534

General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; or
3. The child's teacher, or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district.

Exception

A school district would not be deemed to have such knowledge if:

1. The child's parent has not allowed an evaluation of the child or refused special education services; or
2. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a school district does not have knowledge that a child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, 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.

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.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parents, the school district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent 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.

Transmittal of records

If a school district reports a crime committed by a child with a disability, the school district:

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

GENERAL

34 CFR §300.148

Part B of the IDEA does not require a school district 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 school district 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 school district 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 a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school

district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency 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 State Educational Agency and school districts.

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 school district 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 school district of that information;
2. If, prior to your removal of your child from the public school, the school district 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 the parents' failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

TRAUMATIC BRAIN INJURY EARLY CHILDHOOD SPECIAL EDUCATION

I. DEFINITION

“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 developmental/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.

II. SCREENING INFORMATION

A. Required

1. Hearing
2. Vision
3. Formal measures of -
 - a. Development (May include the areas of cognition, motor, social/emotional, self-help)
 - b. Speech/language

B. Recommended

1. Informal measures, such as -
 - a. Observation;
 - b. Medical history;
 - c. Anecdotal records; and/or
 - d. Interviews (Parents, teachers, family members).

III. REQUIRED EVALUATION DATA

- C. **Social History** (Emphasis on developmental, family and health/medical history)
- D. **Assessment**
 - 1. Medical (Required)
 - a. Physical examination
 - b. Specialized (Neurological, and others as indicated)
 - 2. Cognitive/Intellectual Abilities (One required)
 - 3. Social/Emotional (One adaptive behavior assessment required)
 - 4. Self-help (May be included in the adaptive behavior, cognitive/intellectual and/or the programming assessments)
 - 5. Communicative Abilities (Both receptive and expressive required)
 - 6. Motor (If indicated)
 - 7. Neuropsychological assessment **or** appropriate medical statement from a licensed physician confirming presence of a traumatic brain injury (Required)
 - 8. Programming (One criterion or curriculum-based measure required)

IV. EVALUATION DATA ANALYSIS

Formal assessment of the child with traumatic brain injury should include a baseline evaluation. Because of the dynamic nature of TBI, it is recommended that the testing format include informal assessment and diagnostic teaching to complement formal testing. It is important to consider the child's pre-injury learning styles and knowledge base. Previous history may serve as a baseline to compare pre-injury skills with postinjury performance. Once baseline levels are obtained, periodic and frequent review/evaluation should occur to document progress and changes in the child's needs.

It is important to note that symptoms following the traumatic brain injury are dependent upon the state of brain function in relation to the environmental

demands upon the child. Therefore, while standardized tests are important, one cannot necessarily rely upon their interpretation to guide teachers toward effective teaching, particularly if that interpretation is used as a predictor of developmental achievement. The scores derived on evaluations administered to children with TBI must be interpreted differently from scores of other children, in that these test results reflect only that the child could perform the task demanded by the specific test items. However, these results do not predict future performance. For example, it is not uncommon for a child to score average or above on a standardized test of cognitive ability in a clinical setting. The child's overt appearances may indicate everything is intact, but upon return to preschool, or shortly thereafter, the child exhibits a variety of problems. This may include changes in social/conduct behaviors; the ability to initiate, sustain and complete mental operations; or to work and learn at the rate that material is presented. The problems are not necessarily in learning pre-academic skills, but pertain to social-emotional changes in addition to the learning and communication processes involved. The more informative assessments will measure social and conduct behaviors and communication skills, as well the child's ability to learn, and to execute or remember a variety of tasks under imposed time limits. Observational and anecdotal data may provide additional information for programming.

- A.** To be eligible for early childhood special education and related services as a child with traumatic brain injury, the following must be present -
 - 1.** A written statement from a physician, to include -
 - a.** Diagnosis of traumatic brain injury consistent with federal definition;
 - b.** Physical and preschool limitations;
 - c.** Medication need;
 - d.** Seizure management (If applicable)
 - 2.** Justification of the adverse affect on developmental/ educational performance which is attributed to the traumatic brain injury resulting in the corresponding need for early childhood special education and related services.

TRAUMATIC BRAIN INJURY

I. DEFINITION

"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.

II. POSSIBLE REFERRAL CHARACTERISTICS

The effects of a traumatic brain injury (TBI) can be catastrophic or may lead to only slight damage. Characteristics of individuals with traumatic brain injury may be present to varying degrees, range in severity, and may be influenced by environmental changes, changes in task demands and/or the recovery process. These characteristics may include, but are not limited to, the following:

A. Cognitive Behaviors

1. Difficulty in initiating, organizing and completing tasks
2. Inconsistency in recall of information
3. Difficulty in using appropriate judgment
4. Difficulty with long-term memory
5. Difficulty with short-term memory
6. Difficulty in maintaining attention and concentration
7. Difficulty with flexibility in thinking, reasoning and problem-solving
8. Difficulty with orientation to person, places and/or time
9. Difficulty with speed of processing information
10. Exhibits gaps in task analysis

B. Communicative Behaviors (May range from nonspeaking to subtle difficulty in communication)

1. Difficulty in initiating, maintaining, restructuring and terminating conversation
2. Difficulty in maintaining the topic of conversation
3. Difficulty in discriminating relevant from irrelevant information
4. Difficulty in producing relevant speech
5. Difficulty responding to verbal communication in a timely, accurate, and efficient manner
6. Difficulty in understanding verbal information
7. Difficulty with word retrieval
8. Difficulty with articulation (which may include apraxia and/or dysarthria)
9. Difficulty with voice production (such as intensity, pitch and/or quality)
10. Difficulty in producing fluent speech
11. Difficulty in formulating and sequencing ideas
12. Difficulty with abstract and figurative language
13. Difficulty with perseverated speech (repetition of words, phrases, and topics)
14. Difficulty using appropriate syntax
15. Difficulty using language appropriately (such as requesting information, predicting, debating, and using humor)
16. Difficulty in understanding and producing written communication
17. Difficulty with noise overload

18. Difficulty in interpreting subtle verbal and nonverbal cues during conversation

C. Social-Emotional Behaviors

1. Difficulty in perceiving, evaluating and using social cues and context appropriately
2. Difficulty in initiating and sustaining appropriate peer and family relationships
3. Difficulty in demonstrating age-appropriate behavior
4. Difficulty in coping with over-stimulating environments
5. Denial of deficits affecting performance
6. Difficulty in establishing and maintaining self-esteem
7. Difficulty with using self-control (verbal and physical aggression)
8. Difficulty with speaking and acting impulsively
9. Difficulty in initiating activities
10. Difficulty in adjusting to change
11. Difficulty in compliance with requests
12. Difficulty with hyperactivity
13. Intensification of pre-existent maladaptive behaviors and/or disabilities

D. Physical Impairments

1. Exhibits short-term or long-term physical disabilities
2. Displays seizure activity
3. Difficulty in spatial orientation (visual motor/ perceptual)
4. Difficulty with mobility and independence (to include problems in balance, strength, muscle tone, equilibrium and gross motor skills)

5. Difficulty with vision (which may include tracking, blind spots and/or double vision)
6. Difficulty with dizziness (vertigo)
7. Difficulty with auditory skills (which may include hearing loss and/or processing problems)
8. Difficulty with fine motor skills (dexterity)
9. Difficulty in speed of processing and motor response time
10. Difficulty with skills that affect eating and speaking (voluntary and involuntary)
11. Difficulty with bowel and/or bladder control
12. Displays premature puberty
13. Loss of stamina and/or sense of fatigue
14. Difficulty in administering self-care (such as independent feeding, grooming and toileting)

III. SCREENING INFORMATION

A. Required

1. Hearing
2. Vision

B. Recommended

1. Formal (Not applicable)
2. Informal
 - a. Observation
 - b. Medical history
 - c. Anecdotal records
 - d. School records

- e. Interviews (parents, teachers, peers)

IV. REQUIRED EVALUATION DATA

- A. Social History**
- B. Individual Intelligence (One required)**
- C. Individual Achievement (One required)**
- D. Adaptive Behavior (One required)**
- E. Communicative Abilities (Both receptive and expressive required)**
- F. Other**
 - 1. Neuropsychological assessment **or** appropriate medical statement from a licensed physician confirming presence of a traumatic brain injury (Required)
 - 2. Specific subject areas (Required--each suspected area of deficit must assessed)
 - 3. Medical (Required)
 - a. Physical examination
 - b. Specialized (Neurological, and others as indicated)

V. OPTIONAL EVALUATION DATA

(Suggested for acquiring additional baseline functioning and programming information)

- A. Memory (Long- and short-term)**
 - 1. Auditory
 - 2. Visual
- B. Learning Processes**
 - 1. Visual perception
 - 2. Auditory perception

3. Perceptual-motor development
- C. **Behavior Assessment (Including observation across a variety of settings)**
 - D. **Vocational Assessment**

Traumatic brain injury often results in diverse impairments that may be either temporary or permanent, contributing to partial or total disability. Unfortunately, the injury often intensifies pre-existent maladaptive behaviors or disabilities. To complicate the situation further, the student with traumatic brain injury may experience erratic changes in behaviors, especially during the first five years after the injury occurred. Since symptoms may change, even disappear, periodic reevaluations are necessary to monitor the progress of the brain-injured student.

An individual should be designated as responsible for the coordination of periodic reviews of progress and reevaluation of functional levels and status of needs.

VI. EVALUATION DATA ANALYSIS

Formal assessment of the student with traumatic brain injury should include a baseline evaluation. Because of the dynamic nature of TBI, it is recommended that the testing format include informal assessment and diagnostic teaching to complement formal testing. It is important to consider the student's pre-injury learning styles and knowledge base. Previous history may serve as a baseline to compare pre-injury skills with post-injury performance. Once baseline levels are obtained, periodic and frequent review/ evaluation should occur to document progress and changes in the student's needs.

It is important to note that symptoms following the traumatic brain injury are dependent upon the state of brain function in relation to the environmental demands upon the student. Therefore, while standardized tests are important, one cannot necessarily rely upon their interpretation to guide teachers toward effective teaching, particularly if that interpretation is used as a predictor of classroom abilities.

The scores derived on psychological and academic evaluations administered to students with TBI must be interpreted differently from scores of other students, in that these test results reflect only that the students could perform the task demanded by the specific test items. However, these results do not predict future performance. For example, it is not uncommon for a student to score average or above on standardized tests of intelligence in a clinical setting. The student's overt appearances may indicate everything is intact, but upon return to school or shortly

thereafter, the student exhibits a variety of problems. This may include changes in social/conduct behaviors and the ability to work independently; to initiate, sustain and complete mental operations; or to work and learn at the rate that material is presented. The problems are not necessarily in learning academic content, but pertain to social-emotional changes in addition to the learning and communication processes involved.

The more informative assessments will measure social and conduct behaviors and communication skills, as well as the student's ability to learn and to execute or remember a variety of tasks under imposed time limits. Observational and anecdotal data may provide additional information for programming.

A. To be eligible for special education and related services as a student with traumatic brain injury, the following must be present:

- 1.** A written statement from a physician to include:
 - a.** Diagnosis of traumatic brain injury consistent with the federal definition;
 - b.** Physical and school limitations;
 - c.** Medication needs;
 - d.** Seizure management (if applicable)
- 2.** Justification of the adverse affect on educational performance which is attributed to the traumatic brain injury resulting in the corresponding need for special education and related services.

VII. PROGRAMMING CONSIDERATIONS

It is critical to consider each student's needs and environment carefully in order to provide effective services and to develop programming tailored to the student. The nature of TBI is one of change and unpredictability. No two students with traumatic brain injury function alike, because each has a unique profile depending on the location and extent of brain damage and environmental factors. For example, a student with an injury that affects his/her vision will have a very different set of problems and needs than one with an injury that primarily affects the speech areas of the brain. The effects of a brain injury may lead to only slight damage in one or a few areas or it can be catastrophic in nature.

Depending on the effects of the brain injury, students with TBI may require monitoring or direct care for immediate and long-term medical and physical

needs. Physical care and support may be the most crucial consideration for some students with brain injuries.

When there are physical needs, careful planning and coordination are essential. Oversight management of the medical/health care needs of the student remains with the student's primary physician. However, other health care providers, including those at the school, most likely will be part of the team involved in developing and implementing a health care plan which addresses both crisis situations and long-term interventions.

Programming considerations will vary among students with TBI due to the effects of the brain injury. They may change for any one student due to fluctuations in recovery rate, and students may perform various academic skills with different levels of proficiency. TBI may cause problems with all, some or none of the academic skills that the student possessed before the injury. The student may need to continue to develop skills that are intact and to relearn those which are affected.

Students with TBI have specific, sometimes intense, additional needs and often require more time and intensive instruction in order to learn. Thus, modifications in the existing school environment, curriculum, instruction and schedule may be necessary for the student who has sustained a traumatic brain injury to be successful in school. An expanded curriculum may be necessary for effective instruction, including strands such as differentiated academics, life skills and developmental/compensatory skills. In addition, personnel working with this population should be aware that some adjustments in typical outcomes, expectations and instructional activities may be necessary.