

**UTAH STATE BOARD OF EDUCATION  
SPECIAL EDUCATION RULES**

**I. GENERAL PROVISIONS.**

**I.A. PURPOSES. (§300.1)**

The primary purposes of these Rules, consistent with Utah Code Annotated (UCA), Sections 53A-15-301 through 53A-15-305, and the Individuals with Disabilities Education Improvement Act (IDEA), Public Law 108-446, as amended, are:

1. To ensure that all students with disabilities, ages 3 through 21, in Utah, including students with disabilities who have been suspended or expelled from school (§300.101(a)) and students who have not graduated from high school with a regular high school diploma (§300.302(a)(3)(iii)), have available to them a free appropriate public education that emphasizes special education and related services, as specified on an Individualized Education Program (IEP), designed to meet their unique needs and prepare them for further education, employment, and independent living;
2. To ensure that the rights of students with disabilities and their parents are protected;
3. To ensure that State standards are established for the provision of a free appropriate public education to students with disabilities, as defined in these Utah State Board of Education Special Education Rules;
4. To assess and ensure the effectiveness of efforts to educate students with disabilities; and
5. To provide a system for state reimbursement for disabilities program costs authorized under the Utah school finance law.

**I.B. AUTHORITY.**

These Rules, as authorized under UCA 53A-15-301, Part B of the Individuals with Disabilities Education Act (20 USC 1401 et. seq.) as amended, and its implementing regulations, 34 CFR 300 and 303, have been adopted by the Utah State Board of Education.

**I.C. APPLICABILITY. (§300.2)**

1. These Rules are applicable to all public agencies within the State of Utah that are involved in the education of students with disabilities, including:

- a. Local education agencies (LEAs) that are school districts;
  - b. LEAs that are public charter schools that are not a school of an LEA;
  - c. Other State agencies, such as the Department of Human Services;
  - d. Other State schools, such as schools for students with deafness or students with blindness (the Utah Schools for the Deaf and the Blind); and
  - e. State and local juvenile and adult correctional facilities.
2. These Rules are binding on each public agency in Utah that provides special education and related services for students with disabilities, regardless of whether that agency is receiving funds under Part B. This includes private agencies serving students with disabilities using public funds.
  3. Each public agency in the State shall ensure that a free appropriate public education (FAPE) is available to any individual student with a disability, ages 3 through 21, who needs special education and related services, including students with disabilities who have been suspended or expelled from school and students who are advancing from grade to grade (§300.101(c)).
  4. Each public agency in the State is responsible for ensuring that the rights and protections under these Rules are given to students with disabilities referred to or placed in private schools and facilities by that public agency, or placed in private schools by their parents, when FAPE is at issue.

#### **I.D. AMENDMENTS.**

Any proposed changes in these Rules shall be in accordance with the provisions of the Utah Administrative Rulemaking Act.

#### **I.E. DEFINITIONS. (§300.4-300.45)**

The terms defined below are found throughout these Rules.

1. **Adaptive behavior.** The effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of students of comparable age and cultural group.
2. **Assistive technology device.** Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or

customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such a device.

3. **Assistive technology service.** Any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - a. Evaluating the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
  - b. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities.
  - c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
  - d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
  - e. Training or technical assistance for a student with a disability or, if appropriate, that student's family.
  - f. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.
4. **Behavioral Intervention Plan (BIP)** A written plan for changing a student's behavior, including target behavior, strategies for teaching replacement behavior, reinforcers, and a schedule for review of intervention effectiveness data.
5. **Career and Technical Education (CTE).** (Formerly applied technology education.) Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring certification or licensure other than a baccalaureate or advanced degree.
6. **Charter school** (Elementary and Secondary Education Act of 1965 Section 5210(1)). A public school that functions as an LEA, unless it is a school of an LEA, that:

## I. General Provisions

- a. Is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
- b. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- c. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency; provides a program of elementary or secondary education; or both;
- d. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- e. Does not charge tuition;
- f. Complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act;
- g. Is a school to which parents choose to send their students, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
- h. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
- i. Meets all applicable Federal, State, and local health and safety requirements;
- j. Operates in accordance with State law; and
- k. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

7. **Consent.** Consent means that:
  - a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication.
  - b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
  - c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
  - d. **If the parent revokes consent in writing for the student's receipt of special education and related services, the public agency is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.**
8. **Core academic subjects.** Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.
9. **Day; business day; school day.**
  - a. **Day** means calendar day unless otherwise indicated as business day or school day.
  - b. **Business day** means Monday through Friday, except for Federal and State holidays.
  - c. **School day** means any day, including a partial day, that students are in attendance at school for instructional purposes. The term school day has the same meaning for all students in school, including students with and without disabilities.
10. **Elementary school.** A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.
11. **Equipment.** Machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities or equipment;

and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory and other technological aids and devices; and books, periodicals, documents, and other related materials.

12. **Evaluation.** Procedures used in accordance with these Rules to determine whether a student has a disability under the IDEA, and the nature and extent of the special education and related services that the student needs.
13. **Extended school year services.** Special education and related services that:
  - a. Are provided to a student with a disability:
    - (1) Beyond the normal school year of the LEA;
    - 2) In accordance with the student's IEP;
    - (3) At no cost to the parents of the student, and
  - b. Meet the standards of the Utah State Office of Education (USOE).
14. **Federal administrative responsibilities.** Any administrative responsibility or obligation established or imposed under Part B of the Individuals with Disabilities Education Act (20 USC 1401 et. seq.) and its implementing regulations (34 CFR 300) or under the General Education Provisions Act or its implementing regulations (34 CFR 76).
15. **Free appropriate public education (FAPE).** Special education and related services that:
  - a. Are provided at public expense, under public supervision and direction, and without charge;
  - b. Meet the standards of the USOE and Part B of the IDEA;
  - c. Include preschool, elementary school, and secondary school education in Utah; and
  - d. Are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of Part B of the IDEA and these Rules.

16. **Functional behavioral assessment (FUBA).** A systematic process of identifying problem behaviors and the events that (a) reliably predict occurrence and nonoccurrence of those behaviors, and (b) maintain the behaviors across time. FUBA should produce three main results:
  - a. Hypothesis statements that have:
    - (1) Operational definitions of the problem behavior,
    - (2) Descriptions of the antecedent events that reliably predict occurrence and non-occurrence, and
    - (3) Descriptions of the consequent events that maintain the behavior;
  - b. Direct observation data supporting these hypotheses; and
  - c. A behavioral support and intervention plan.
17. **General curriculum.** The same curriculum as that provided for nondisabled students (the Utah Core Curriculum).
18. **Highly qualified special education teachers.** Teachers who meet the highly qualified standards as described in the Utah State Board of Education NCLB (ESEA) approved plan. (See Utah State Board of Education Administrative Rules.)
19. **Homeless student.** (Section 725 of the McKinney-Vento Act). The term homeless children and youth means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:
  - a. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  - b. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
  - c. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;

- d. Migratory children who qualify as homeless because they are living in circumstances described above; and
  - e. Unaccompanied youth—that is, a youth not in the physical custody of a parent or guardian.
20. **IDEA.** The Individuals with Disabilities Education Improvement Act (20 USC 1401 et. seq.) as amended, and its implementing regulations 34 CFR 300 and 303. Part B of the IDEA applies to students ages 3 through 21; Part C (early intervention) applies to children ages 0 to 3.
21. **IEP (Individualized Education Program).** A written statement for a student with a disability that is developed, reviewed, and revised in accordance with these Rules and Part B of the IDEA. Part B of the IDEA applies to students ages 3 through 21; Part C (early intervention) applies to children ages 0 to 3.
22. **IEP team.** A group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. The required team members are the parent of the student, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, who may be a member of the team listed above (§300.321).
23. **IFSP (Individualized Family Services Plan).** The individualized plan of services for eligible children and their families under Part C of the IDEA.
24. **Include.** The term “include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
25. **Least restrictive environment (LRE).** To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
26. **Limited English proficient (LEP).** A student who has limited skills in speaking, reading, and/or writing English, as measured by the State mandated LEP assessment.
27. **Local education agency (LEA).** The Utah school districts, the Utah Schools for the Deaf and the Blind, and all Utah public charter schools that are established under State law that are not schools of an LEA.

28. **Native language.**

- a. Used with respect to an individual with limited English proficiency, the language normally used by that individual; or, in the case of a student, the language normally used by the parents of the student.
- b. In all direct contact with a student, including evaluation of the student, the language normally used by the student in the home or learning environment.
- c. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

29. **Parent.** A biological or adoptive parent; a guardian, but not the State if the student is a ward of the State; a person acting in the place of a parent of a student (such as a grandparent, stepparent, or other relative) with whom the student lives; or a person who is legally responsible for the student's welfare); or a surrogate parent who has been appointed in accordance with these Rules.

Consistent with State law, a foster parent may act as a parent under Part B of the IDEA if the following four conditions are met:

- a. The biological or adoptive parents' authority to make educational decisions on the student's behalf has been extinguished under State law.
- b. The foster parent has an ongoing, long-term parental relationship with the student.
- c. The foster parent is willing to make the educational decisions required of parents under these Rules.
- d. The foster parent has no interest that would conflict with the interests of the student.

The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless said parent does not have legal authority to make educational decisions for the student. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a student or to make educational decisions on behalf of a student, then such

person or persons shall be determined to be the parent for purposes of these Rules.

30. **Personally identifiable.** This information includes:
  - a. The name of the student, the student's parent, or other family member.
  - b. The address of the student.
  - c. A personal identifier, such as the student's social security number or student number.
  - d. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.
31. **Physical education.** The development of:
  - a. Physical and motor fitness.
  - b. Fundamental motor skills and patterns.
  - c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
  - d. Physical education includes special physical education, adapted physical education, movement education, and motor development.
32. **Qualified personnel.** Personnel who have met USOE-approved or USOE-recognized certification, licensing, registration, paraprofessional qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.
33. **Reinforcer.** A consequent stimulus that increases or maintains the future rate and probability of occurrence of a behavior.
34. **Related services.** Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and include speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in students; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also

include school health services and school nurse services, social work services in schools, and parent counseling and training.

Exception: services that apply to students with surgically implanted devices, including cochlear implants.

- a. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- b. Nothing in this section:
  - (1) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in I.E.34.a) that are determined by the IEP team to be necessary for the student to receive a FAPE.
  - (2) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or
  - (3) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.
- c. The related services are defined as follows:
  - (1) **Audiology** includes:
    - (a) Identification of students with hearing loss;
    - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
    - (c) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
    - (d) Creation and administration of programs for prevention of hearing loss;

- (e) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
  - (f) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) **Early identification and assessment of disabilities** in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- (4) **Interpreting services** includes, with respect to students who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for students who are deaf-blind.
- (5) **Medical services** means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.
- (6) **Occupational therapy** means services provided by a qualified occupational therapist, and includes:
- (a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
  - (b) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
  - (c) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) **Orientation and mobility services** means services provided to students with blindness or visual impairment by qualified personnel to enable those students to attain systematic orientation to and safe movement within their

environments in school, home, and community, and includes teaching students the following, as appropriate:

- (a) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
  - (b) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
  - (c) To understand and use remaining vision and distance low vision aids; and
  - (d) Other concepts, techniques, and tools.
- (8) **Parent counseling and training** means assisting parents in understanding the special needs of their student, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their student's IEP.
- (9) **Physical therapy** means services provided by a qualified physical therapist.
- (10) **Psychological services** include:
- (a) Administering psychological and educational tests, and other assessment procedures;
  - (b) Interpreting assessment results;
  - (c) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;
  - (d) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

- (e) Planning and managing a program of psychological services, including psychological counseling for students and parents; and
  - (f) Assisting in developing positive behavioral intervention strategies.
- (11) **Recreation** includes:
- (a) Assessment of leisure function;
  - (b) Therapeutic recreation services;
  - (c) Recreation programs in schools and community agencies; and
  - (d) Leisure education.
- (12) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).
- (13) **School health services and school nurse services** means health services that are designed to enable a student with a disability to receive a FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) **Social work services in schools** include:
- (a) Preparing a social or developmental history on a student with a disability;
  - (b) Group and individual counseling with the student and family;
  - (c) Working in partnership with parents and others on those problems in a student's living situation (home,

school, and community) that affect the student's adjustment in school;

- (d) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and
- (e) Assisting in developing positive behavioral intervention strategies.

(15) **Speech-language pathology services** include:

- (a) Identification of students with speech or language impairments;
- (b) Diagnosis and appraisal of specific speech or language impairments;
- (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (e) Counseling and guidance of parents, students, and teachers regarding speech and language impairments.

(16) **Transportation** includes:

- (a) Travel to and from school and between schools;
- (b) Travel in and around school buildings; and
- (c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

35. **Scientifically based research.** (ESEA 9101(37)) Scientifically based research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:

- a. Employs systematic, empirical methods that draw on observation or experiment;
  - b. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
  - c. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
  - d. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
  - e. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
  - f. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
36. **Secondary school.** A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.
37. **State educational agency (SEA).** The Utah State Office of Education (USOE).
38. **Special education.** Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech/language pathology services and may include other related services, travel training, and applied technology education, if they meet the definition of special education.

“At no cost” means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program.

39. **Specially designed instruction.** Adapting, as appropriate to the needs of an eligible student under these Rules, the content, methodology, or delivery of instruction in order to:
- a. Address the unique needs of the student that result from the student's disability.
  - b. Ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all students.

40. **Student with a disability.** A student, ages 3 through 21, evaluated in accordance with these Rules as having autism, a speech or language impairment, deafblindness, an emotional disturbance, a hearing impairment including deafness, an intellectual disability, multiple disabilities, an orthopedic impairment, an other health impairment, a specific learning disability, a traumatic brain injury, a visual impairment including blindness, or a student ages 3 through 7 experiencing developmental delays whose disability affects their educational performance and who, by reason thereof, needs special education and related services.

If it is determined, through an appropriate evaluation under these Rules, that a student has one of the disabilities identified above, but the student only needs related services and not special education (defined as specially designed instruction), the student is not an eligible student with a disability under these Rules.

If, consistent with the definition of special education under Rule I.E.38, the related service required by the student is considered special education rather than a related service under these Rules, the student would be determined to be a student with a disability.

41. **Supplementary aids and services.** Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with these Rules, including the LRE requirements (Rule III.P-S).
42. **Transition services** means a coordinated set of activities for a student with a disability that:
- a. Is designed to be within a results-oriented process, is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to

post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

- b. Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
  - c. May be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.
43. **Travel training.** Instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:
- a. Develop an awareness of the environment in which they live.
  - b. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
44. **Ward of the State.** A child who, as determined by the state where the child resides, is a foster child, a ward of the State, or in the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in I.E.29 above.

**II. IDENTIFICATION, LOCATION, AND EVALUATION.**

**II. A. CHILD FIND SYSTEM. (§300.109 and §300.111)**

1. Consistent with the requirements of Part B of the IDEA and with these Rules, each LEA shall develop policies and procedures to ensure that all students with disabilities residing within the jurisdiction of the LEA, including students with disabilities birth through 21 years of age, and those attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. This shall include a practical method for determining which students are currently receiving needed special education and related services.
2. The requirements of this section apply to:
  - a. Highly mobile students with disabilities (such as students who are migrant and homeless (§300.311(c)(2))).
  - b. Students who have been suspended or expelled from school (§300.101(a)).
  - c. Students who have not graduated from high school with a regular high school diploma (§300.102(a)(3)(iii)).
  - d. Students who are suspected of being a student with a disability under these Rules and who are in need of special education and related services, even though they are advancing from grade to grade (§300.111(c)(1)). The determination that a student is a “student with a disability” under these Rules must be made on an individual basis, by a team made up of the parent and school personnel determined by the student’s LEA.
  - e. Home school students within the LEA’s boundaries.
3. Public charter schools are responsible for Child Find for students enrolled in their own school, and have no responsibility for Child Find for private school students.
4. Major components of the Child Find system include:
  - a. LEA implementation and coordination of Child Find activities, including private schools within the LEA’s jurisdiction (§300.131).

- b. USOE provision of ongoing technical assistance to LEAs (including public charter schools), private schools, and other State agencies in implementing the Child Find system.
- c. Implementation of the statewide data collection system for reporting student information, including Federal student count (§300.640-641).
- d. Collaboration and coordination with State and Local Department of Health, which has responsibility for providing early intervention services for infants and toddlers with disabilities, ages birth through two, under Part C of the IDEA (Interagency Agreement).

The collection and use of data to meet the requirements of this section are subject to the confidentiality of information provisions under these Rules.

## **II. B. REFERRAL.**

Either a parent or an LEA may initiate a request for an initial evaluation to determine if a student is a student with a disability under Part B of the IDEA and these Rules.

## **II.C. PARENTAL CONSENT FOR EVALUATION. (§300.300)**

- 1. The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability under these Rules must, after providing written prior notice to the parent, obtain informed consent from the parent of student before conducting the evaluation.
- 2. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- 3. The LEA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability.
- 4. For initial evaluations only, if the student is a ward of the State and is not residing with the student's parent, the LEA is not required to obtain informed consent from the parent if:
  - a. Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the student;
  - b. The rights of the parents of the student have been terminated in accordance with State law; or

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- 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 student.
5. If the parent of a student 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 LEA may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards or the due process procedures in these Rules. The LEA does not violate its obligation under the Child Find provisions of these Rules if it declines to pursue the evaluation by utilizing the procedural safeguards or the due process procedures.
6. 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 students unless, before administration of that test or evaluation, consent is required of parents of all students.
7. If a parent of a student 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 LEA may not use the procedural safeguards including mediation and due process procedures, and the LEA is not required to consider the student as eligible for special education and related services.

### **II. D. INITIAL EVALUATION. (§300.301)**

1. Each LEA must conduct a full and individual initial evaluation to determine if a student is a “student with a disability” under Part B of the IDEA and these Rules, and to determine the educational needs of the student.
2. The initial evaluation:
  - a. Must be conducted within forty-five (45) school days of receiving parental consent for the evaluation; and
  - b. Must consist of procedures to determine:
    - (1) If the student is a student with a disability; and

- (2) The educational needs of the student.
3. The timeframe shall not apply to an LEA if:
    - a. The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or
    - b. A student enrolls in a school served by the LEA after the relevant timeframe has begun, and prior to a determination by the student's previous LEA as to whether the student is a student with a disability.
    - c. The exception in II.D.3.b applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed.

**II.E. SCREENING FOR INSTRUCTIONAL PURPOSES. (§300.302)**

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

**II. F. EVALUATION PROCEDURES. (§300.304)**

Each LEA shall establish and implement procedures that meet the evaluation requirements of Part B of the IDEA and these Rules as follows:

1. In conducting the evaluation, the LEA must:
  - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:
    - (1) Whether the student is a student with a disability; and
    - (2) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschool student, to participate in appropriate activities);
  - b. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and

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- c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- d. Each LEA must ensure that assessments and other evaluation materials used to assess a student:
  - (1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (2) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
  - (3) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (4) Are administered by trained and knowledgeable personnel; and
  - (5) Are administered in accordance with any instructions provided by the producer of the assessments.
- e. The LEA must ensure that:
  - (1) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (2) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (3) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

- (4) Assessments of students with disabilities who transfer from one LEA to another LEA in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- (5) In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
- (6) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided.

## **II. G. REEVALUATION PROCEDURES. (§300.303)**

1. An LEA must ensure that a reevaluation of each student with a disability is conducted:
  - a. If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or
  - b. If the student's parent or teacher requests a reevaluation.
2. A reevaluation:
  - a. May occur not more than once a year, unless the parent and the LEA agree otherwise; and
  - b. Must occur at least once every three (3) years, unless the parent and the LEA agree that a reevaluation is unnecessary.
3. Parental consent for reevaluations. (§300.300)
  - a. Each LEA must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.
  - b. If the parent refuses to consent to the reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures provided in the procedural safeguards, and including mediation or due process procedures.

- c. The LEA does not violate its obligation under Child Find if it declines to pursue the reevaluation.
- d. The informed parental consent need not be obtained if the LEA can demonstrate that:
  - (1) It made reasonable efforts to obtain such consent; and
  - (2) The student's parent has failed to respond.

**II. H. ADDITIONAL REQUIREMENTS FOR INITIAL EVALUATIONS AND REEVALUATION PROCEDURES. (§300.305)**

- 1. As part of any initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:
  - a. Review existing evaluation data on the student, including:
    - (1) Evaluations and information provided by the parents of the student;
    - (2) Current classroom-based, local or State assessments, and classroom-based observations; and
    - (3) Observations by teachers and related services providers; and
  - b. On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
    - (1) Whether the student is a student with a disability and the educational needs of the student; or, in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;
    - (2) The present levels of academic achievement and related developmental needs of the student;
    - (3) Whether the student needs special education and related services; or, in the case of a reevaluation of a student, whether the student continues to need special education and related services; and

- (4) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.
2. The IEP team and other qualified professionals, as appropriate, may conduct its review of existing data without a meeting.
3. The LEA must administer such assessments and other evaluation measures as may be needed to produce the data needed to determine continuing eligibility.
4. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the LEA must notify the student's parents of:
  - a. That determination and the reasons for the determination; and
  - b. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.
5. The LEA is not required to conduct the assessment for reevaluation described in II.H.4 unless requested to do so by the student's parents.
6. Evaluations before change in eligibility.
  - a. An LEA must evaluate a student with a disability before determining that the student is no longer a student with a disability.
  - b. The evaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
  - c. For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law, an LEA must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

7. Parental consent is not required before: (§300.300)
  - 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 students unless, before administration of that test or evaluation, consent is required of parents of all students.
8. If a parent of a student 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:
  - a. The LEA may not use the consent override procedures; and
  - b. The LEA is not required to consider the student as eligible for services.
9. To meet the reasonable efforts requirement of this section, the LEA must document its attempts to obtain parental consent.

**II. I. DETERMINATION OF ELIGIBILITY. (§300.306)**

1. Upon completion of the administration of assessments and other evaluation measures, group of qualified professionals and the parent of the student determine eligibility under Part B of the IDEA and these Rules, including:
  - a. Whether that student is a student with a disability, and
  - b. The educational needs of the student.
2. The LEA shall provide the parent with a copy of the evaluation report and the documentation of determination of eligibility.
3. A student must not be determined to be a student with a disability:
  - a. If the determinant factor for that determination is:
    - (1) Lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, alphabetic principle, vocabulary, comprehension, and fluency);
    - (2) Lack of appropriate instruction in math; or

- (3) Limited English proficiency; and
  - b. If the student does not otherwise meet the eligibility criteria.
- 4. Procedures for determining eligibility and educational need.
  - a. In interpreting evaluation data for the purpose of determining if a student is a student with a disability, and the educational needs of the student, each LEA must:
    - (1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
    - (2) Ensure that information obtained from all of these sources is documented and carefully considered.
  - b. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student within thirty (30) calendar days.

**II. J. CATEGORICAL DEFINITIONS, CRITERIA, AND ASSESSMENTS. (§300.8)**

This section specifies the criteria and evaluation procedures, by category, for determining eligibility for a student with disabilities under Part B of the IDEA and these Rules.

**1. AUTISM.**

**a. DEFINITION.**

Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

- (1) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance or an intellectual disability, as defined in these Rules.

- (2) A student who manifests the characteristics of autism after age 3 could be identified as having autism if the team determines that the student meets the definition of autism under these Rules.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The autism must adversely affect the student's educational performance.
- (2) The student with autism must require special education and related services.
- (3) The team must determine that autism is the student's primary disability, although the student may exhibit characteristics of other disability conditions such as an emotional disturbance or intellectual disability. Autism may include other conditions included in the autism spectrum, such as high functioning autism, Asperger syndrome, and pervasive developmental disorder not otherwise specified.
- (4) To be eligible under this category, the student must exhibit significant impairments in verbal and/or nonverbal communication and social interaction. The student may also exhibit engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, difficulty with emotional regulation, and unusual responses to sensory experiences.
  - (a) Significant impairment in social interaction includes, but is not limited to:
    - (i) Failure to use appropriate nonverbal behaviors such as eye contact, facial expression, body postures, and other social gestures.
    - (ii) Failure to develop peer relationships appropriate to developmental level.
    - (iii) A lack of spontaneous initiation to share interests, enjoyment, or achievements with other people.

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- (b) Significant impairment in communication includes, but is not limited to:
  - (i) Delay in or lack of spoken language with no attempt to communicate through alternate modes such as gesture or mime.
  - (ii) In individuals with adequate speech:
    - (A) An inability to initiate or sustain a conversation with others.
    - (B) An inability to use conventions of social communication or pragmatics.
  - (iii) Stereotyped and repetitive use of language or peculiar language.
  - (iv) Lack of varied, spontaneous make-believe play, or social imitative play, appropriate to development level.
- (c) Significant restricted, repetitive, and stereotyped patterns of behavior, interests, and activities includes, but is not limited to:
  - (i) Restricted patterns that are atypical either in intensity or focus.
  - (ii) Rigid adherence to specific, nonfunctional routines or rituals.
  - (iii) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movement).
  - (iv) Persistent preoccupation with people, events, or objects.
- (d) Unusual resistance to environmental change or change in daily routines includes, but is not limited to, resistance to:
  - (i) New adults or students in the classroom setting, such as substitute teachers.

- (ii) Changes in the arrangement of furniture.
- (iii) Changes in the daily schedule of activities.
- (e) Unusual responses to sensory experiences include, but are not limited to, unusual or extreme responses to:
  - (i) Sudden loud noises or high-pitched sounds.
  - (ii) Rough or highly textured surfaces or clothes touching the skin.
  - (iii) Bright light or significant intermittent changes in lighting.
  - (iv) Strong or unfamiliar tastes or smells.
- (5) The requirements of Rule II.I must be met.

**c. EVALUATION.**

- (1) Multiple measures (formal and informal), including an autism checklist/rating scale, must be used to assess intellectual, academic, communicative, social, and adaptive functioning.
- (2) The student's prior medical and developmental history from a qualified health professional must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's education program.
- (3) The requirements of Rules II.D-H must be met.

**2. DEAFBLINDNESS.**

**a. DEFINITION.**

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

**b. ELIGIBILITY CRITERIA.**

While there must be prior documentation by qualified professionals that a student has concomitant hearing and visual impairments the combination of which meet the definition above, only a team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The deafblindness must adversely affect the student's educational performance.
- (2) The student with deafblindness must require special education and related services.
- (3) The team must determine that the student is a student with deafblindness, but the student may have other disabling conditions in addition to the vision and hearing losses.
- (4) A combination of the following must exist:
  - (a) Vision loss including one or both of the following:
    - (i) Visual impairment that, with or without correction, adversely affects a student's ability to access visual information and to develop visual skills for educational performance. This may include partial/low vision or blindness.
    - (ii) Functional blindness, where the physical structures of the eye may be functioning, but the student does not attend to, examine, utilize, or accurately process visual information. This may include cortical visual impairment or central visual impairment.
  - (b) Hearing loss that must include one or both of the following:
    - (i) Hearing impairment that, with or without amplification, adversely affects a student's ability to access auditory information and the development of language and communication for educational performance. This may include hard of hearing or deafness.

- (ii) Functional hearing loss (abnormal auditory perception), where parts of the auditory system may be functioning, but the student does not attend to, respond, localize, utilize, or accurately process auditory information. This may include cortical hearing impairment, auditory processing disorders, or auditory neuropathy/dys-synchrony.

(5) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) must be used to assess vision and hearing and all areas of suspected deficits. The evaluation must include and take into consideration the impact of the combined vision and hearing losses. Evaluation must be both clinical and functional assessment.

(1) Areas of evaluation must include:

(a) Audiological evaluation.

(i) Clinical—Audiological testing may include:

(A) Audiological testing yielding threshold results; aided threshold evaluations yielding aided threshold results; speech audiometric tests yielding speech discrimination scores and speech reception thresholds; and proper functioning, fitting, and follow-up of hearing aids.

(B) Otoacoustic Emission Testing (OAE).

(C) Auditory Brainstem Response (ABR) testing.

(ii) Functional assessment of auditory abilities.

(b) Vision evaluation.

(i) Ophthalmological testing.

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- (A) Clinical assessment of visual acuity, visual field, fixation and movement, refractive errors, and health of the eye structure.
  - (B) Additional diagnostic tests such as Visual Evoked Response (VER), Magnetic Resonance Imaging (MRI), and Electroretinogram (ERG).
- (ii) Functional assessment of visual abilities.

### d. **EDUCATIONAL EVALUATION.**

- (1) The team must consider and evaluate, if appropriate:
  - (a) Language and communication needs.
  - (b) Current and future needs for instruction in Braille or the use of Braille.
  - (c) Orientation and Mobility (O&M) needs.
  - (d) Accommodations and modifications necessary for the student to be able to access the general curriculum and other activities.
  - (e) Assistive technology needs.
- (2) The requirements of Rules II.D-H must be met.

## 3. **DEVELOPMENTAL DELAY.**

### a. **DEFINITION.**

In a student ages 3 through 7, a significant delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. The delay must adversely affect a student's educational performance.

LEAs that choose to use the classification of developmental delay must conform to the State's definition of developmental delay, including the age range adopted by the State.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The team must determine that the student's primary disability is developmental delay, and not one of the other disability categories. The team should also consider whether adequate evaluation data are available to show that the student meets one of the other specific disability categories. When adequate evaluation data are available, the student must be classified in one of the other specific disability categories.
- (2) The developmental delay must adversely affect the student's educational performance.
- (3) The student with a developmental delay must require special education and related services.
- (4) Students who are eligible for services include students who have been determined to have a significant delay or deficit in one or more of the following areas:
  - (a) Cognitive development.
  - (b) Physical/motor development.
  - (c) Language/speech development.
  - (d) Social/emotional development.
  - (e) Self-help skills/adaptive behavior.
- (5) Significant delays are defined as:
  - (a) 1.5 standard deviations below the mean, or at or below the 7<sup>th</sup> percentile in three areas of development.
  - (b) 2.0 standard deviations below the mean, or at or below the 2<sup>nd</sup> percentile in two areas of development.
  - (c) 2.5 standard deviations below the mean, or at or below the 1<sup>st</sup> percentile in one area of development.

- (6) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) must be used to assess the area(s) of suspected delay.

- (1) Assessments selected must be appropriate for students ages 3 through 7 and based upon a student's sensory, motor, and communication limits.
- (2) The requirements of Rules II.D-H must be met.

**4. EMOTIONAL DISTURBANCE.**

**a. DEFINITION.**

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

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behavior or feelings under normal circumstances.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

"Emotional disturbance" is a term that covers the following two types of behavioral difficulties, which are not mutually exclusive and which may adversely affect a student's educational performance.

- (1) Externalizing refers to behavior problems that are directed outwardly by the student toward the social environment, and usually involve behavioral excesses.
- (2) Internalizing refers to a class of behavior problems that are directed inwardly, and often involve behavioral deficits.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The emotional disturbance must adversely affect the student's educational performance.
- (2) The student with the emotional disturbance must require special education and related services.
- (3) The team must determine that an emotional disturbance is the primary disability.
- (4) Before classifying a student as having an emotional disturbance, the team must determine that the inappropriate behaviors are not due to an intellectual disability, vision or hearing impairments, or other medical conditions; or to inappropriate classroom management.
- (5) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) must be used to assess behavioral, social, and academic areas and must include the following:

- (1) Documentation which demonstrates that the behavior that adversely affects the student's educational performance has been exhibited over a long period of time and to a marked degree.
- (2) Educational observations of the student which include at least three fifteen-minute observations on referring behavior pinpoints. A comparison student who is not a student with a disability and who is not being referred must be selected and observed in the same setting on the same behavior pinpoints as the referred student. An assigned member of the

evaluation team other than the student's regular classroom teacher will make the educational observations. (These observations are required only for initial evaluation for classification, not for reevaluation, unless determined to be needed by the IEP team.)

- (3) Complete documentation in the student's records in each of the following areas:
  - (a) Academic performance as evidenced by achievement tests, classroom academic screenings and tests, report cards, cumulative records, statewide assessments, and other data.
  - (b) Social/behavioral/adaptive checklists or rating scales which provide information regarding the student's past and present patterns of interaction with peers, family, teachers, adults, and others.
  - (c) Behaviors for which the student is referred.
- (4) The requirements of Rules II.D-H must be met.

## **5. HEARING IMPAIRMENT/DEAFNESS.**

### **a. DEFINITION.**

- (1) DEAFNESS is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.
- (2) HEARING IMPAIRMENT is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

### **b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The hearing impairment must adversely affect the student's educational performance.

- (2) The student with the hearing impairment must require special education and related services.
- (3) The team must determine that the hearing impairment is the primary disability.
- (4) Measurements in terms of decibels or percentages, discrimination scores, type of hearing loss, site of lesion, etc., serve only as guidelines in the eligibility process.
- (5) Before classifying a student as having deafness or a hearing impairment, the team must:
  - (a) Determine whether learning needs exist, other than those directly related to the loss of hearing;
  - (b) Take into account whether the type of deafness or hearing loss is conductive, sensorineural, or mixed; and
  - (c) Consider whether a central nervous system impairment, a functional hearing loss, cortical hearing impairment, or auditory processing disorder (where parts of the auditory system may be functioning, but the student does not attend to, respond, localize, or accurately process information) is causing the student to appear as a student with a hearing impairment or deafness.
- (6) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having a hearing impairment.

- (1) Areas of evaluation must include:
  - (a) Audiological evaluation, which may include:
    - (i) Audiological testing yielding threshold results; aided threshold evaluations yielding aided threshold results; speech audiometric tests, yielding speech discrimination scores and speech reception thresholds; and proper

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functioning, fitting, and follow-up of hearing aids.

- (ii) Otoacoustic Emission Testing (OAE).
  - (iii) Auditory Brainstem Response (ABR) testing.
  - (iv) Functional assessment of auditory abilities.
- (b) Language growth and development (signed, spoken, or written) must be evaluated by qualified personnel using assessment instruments and procedures that are appropriate for the diagnosis and appraisal of the suspected hearing impairment.
- (c) Speech and language evaluation.
- (i) Speech intelligibility may be evaluated by: phonetic evaluation, suprasegmental features (vocalization, vocal duration, vocal intensity, vocal pitch), and articulation of segmental features (vowels, diphthongs, consonants, blends).
  - (ii) Linguistic evaluation (vocalizations as specified in (c)(i) above, within linguistic structure).
  - (iii) Language and communication mode.
- (d) Academic achievement.
- (2) Other areas of evaluation to consider, as appropriate, include:
- (a) Intellectual ability. When intellectual ability is assessed, results must be interpreted by qualified personnel.
  - (b) Adaptive behavior, as gathered from parents and school staff.
- (3) The requirements of Rules II.D-H must be met.

**6. INTELLECTUAL DISABILITY.**

**a. DEFINITION.**

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

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The intellectual disability must adversely affect the student's educational performance.
- (2) The student with the intellectual disability must require special education and related services.
- (3) The team must determine that an intellectual disability is the primary disability.
- (4) Intellectual, academic, and adaptive assessment results demonstrate consistently low profiles across measures.
- (5) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having an intellectual disability, and must include:

- (1) Intellectual evaluation.
  - (a) An individual major test of intelligence must be administered by a qualified examiner. Documentation must be provided which indicates significant subaverage intellectual functioning (generally two standard deviations) on the full-scale score.
  - (b) If verbal or performance scores are significantly discrepant from each other, further evaluation must be conducted to determine the reason for the discrepancy and to ensure that the student is actually manifesting an intellectual disability.

- (2) Documentation of academic achievement as measured by achievement tests, classroom academic screenings and tests, report cards, cumulative records, etc.
- (3) Documentation of significant deficits in adaptive behavior as measured by standardized and/or curriculum-based assessments must be gathered from parents and school staff.
- (4) The requirements of Rules II.D-H must be met.

**7. MULTIPLE DISABILITIES.**

**a. DEFINITION.**

Concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), that affect a student's educational performance. The combination of disabilities must cause such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The multiple disabilities category does not include deafblindness.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above. The team must identify the disabilities and ensure that the student meets the criteria for each of the multiple disabilities. Intellectual disabilities need not be one of the multiple disabilities identified.

- (1) The multiple disabilities must adversely affect the student's educational performance.
- (2) The student with multiple disabilities must require special education and related services.
- (3) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) must be used to assess all areas of concern. Areas to be considered include cognitive ability, academic skills, adaptive skills, language and communication,

social functioning (such as self-help and independent living skills), vocational skills, and sensory/motor skills.

The evaluation process is determined by the evaluation team and must include a combination of tests, interviews with those familiar with the student, and observations conducted in settings familiar to the student.

- (1) Cognitive ability must be assessed by a qualified examiner. Traditional approaches to assessing cognitive ability may be of limited value for some students who are suspected of having multiple disabilities.
- (2) The use of assisted and augmentative communication and motor systems must be considered during the evaluation and documented.
- (3) The student's prior medical history, from a qualified health professional, must be on record if specific syndromes, special health problems (e.g., tracheotomy), medication, and long-term medical prognosis are a concern for the individual.
- (4) The following sensory/motor areas must be considered for evaluation:
  - (a) Abnormal tactile or joint sensation,
  - (b) Abnormal muscle tone and movement,
  - (c) Lack of integration of primitive reflexes,
  - (d) Lack of balance or coordination,
  - (e) Organization of sequential motor movement,
  - (f) Motor skills, **or**
  - (g) A combination of any of the above.
- (5) Where deficits in adaptive behavior are suspected, they must be measured and documented on standardized and/or curriculum-based assessments with input from parents and school staff.
- (6) Vision and hearing must be assessed.

- (7) The requirements of Rules II.D-H must be met.

**8. ORTHOPEDIC IMPAIRMENT.**

**a. DEFINITION.**

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

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The orthopedic impairment must adversely affect the student's educational performance.
- (2) The student with the orthopedic impairment must require special education and related services.
- (3) The team must determine that the orthopedic impairment is the student's primary disability.
- (4) The requirements of Rule II.I must be met.

**c. EVALUATION.**

- (1) The student's prior medical history, from a qualified health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's educational program.
- (2) Multiple measures (formal and informal) must be used to assess all areas of the suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) The requirements of Rules II.D-H must be met.

**9. OTHER HEALTH IMPAIRMENT.**

**a. DEFINITION.**

Having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and HIV/AIDS, or an acquired brain injury which may result from health problems such as an hypoxic event, encephalitis, meningitis, brain tumor, or stroke, and that adversely affects a student's educational performance.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determines eligibility as defined above.

- (1) The health impairment must adversely affect the student's educational performance.
- (2) The student with the health impairment must require special education and related services.
- (3) The team must determine that the other health impairment is the student's primary disability.
- (4) The requirements of Rule II.I must be met.

**c. EVALUATION.**

- (1) The student's prior medical history, from a qualified health or mental health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's educational program.
- (2) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) The requirements of Rules II.D-H must be met.

**10. SPECIFIC LEARNING DISABILITIES.**

**a. DEFINITION. (§300.8(c)(10))**

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that affects a student's educational performance.

"Specific learning disability" does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

**b. PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES. (§300.307)**

(1) An LEA may use one of the following methods for determining a student's eligibility under the specific learning disability category:

- (a) A process based on the student's response to scientific, research-based intervention.
- (b) Identification of a severe discrepancy between intellectual ability and achievement.
- (c) A combination of (a) and (b).

(2) **Team members. (§300.308)** The determination of whether a student suspected of having a specific learning disability is a student with a disability must be made by the student's parents and a team of qualified professionals, including:

- (a) The student's regular teacher; or
- (b) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or

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- (c) For a student of less than school age; an individual qualified by the USOE to teach a student of his or her age; and
  - (d) At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech/language pathologist, reading teacher or reading specialist, or special education teacher.
- (3) **Determining the existence of a specific learning disability. (§300.309)** The team described may determine that a student has a specific learning disability if:
- (a) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:
    - (i) Oral expression;
    - (ii) Listening comprehension;
    - (iii) Written expression;
    - (iv) Basic reading skills;
    - (v) Reading fluency skills;
    - (vi) Reading comprehension;
    - (vii) Mathematics calculation;
    - (viii) Mathematics problem solving; and
  - (b) **Response to Intervention (RtI) Method.** The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in 11.b.(3)(a) when using a process based on the student's response to scientific, research-based intervention (the team must refer to the *USOE Specific Learning Disability Eligibility Guidelines* when using this method); or

- (c) **Discrepancy Method.** The student's scores demonstrate that a severe discrepancy exists between the student's achievement and intellectual ability in one or more of the areas of specific learning disability listed under (3)(a) in this section; or
- (d) The student exhibits a combination of (b) and (c); and
- (e) The group determines that its findings are not primarily the result of:
  - (i) A visual, hearing, or motor disability;
  - (ii) Intellectual disability;
  - (iii) Emotional disturbance;
  - (iv) Cultural factors;
  - (v) Environmental or economic disadvantage; or
  - (vi) Limited English proficiency.
- (4) The learning disability must adversely affect the student's educational performance.
- (5) The student with the learning disability must need special education and related services (§300.8(a)).

**c. EVALUATION. (§300.309(b-c))**

- (1) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:
  - (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during

instruction, which was provided to the student's parents.

- (2) The LEA must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the forty-five (45) school day evaluation timeframe, unless extended by mutual written agreement of the student's parents and a group of qualified professionals:
  - (a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time as determined by the LEA when provided appropriate instruction, and
  - (b) Whenever a student is referred for an evaluation.
- (3) **Observation (§300.310(a-c)).** The LEA must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty.
  - (a) The team must decide to:
    - (i) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
    - (i) Have at least one member of the team conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent is obtained.
  - (b) If the student is a home-schooled student, the LEA may determine how to conduct the observation and who will conduct it.
  - (c) In the case of a student of less than school age or out of school, a group member must observe the student in an environment appropriate for a student of that age.

- (4) **Specific documentation for the eligibility determination (§300.311).** The team’s documentation of the determination of eligibility with a specific learning disability must contain a statement of:
- (a) Whether the student has a specific learning disability;
  - (b) The basis for making the determination;
  - (c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student’s academic functioning;
  - (d) The educationally relevant medical findings, if any;
  - (e) Whether the student:
    - (i) Does not achieve adequately for the student’s age or to meet State-approved grade-level standards; and
    - (ii) Does not make sufficient progress to meet age or State-approved grade-level standards (Rtl); or
      - (A) Obtains scores that demonstrate that a severe discrepancy exists between the student’s achievement and intellectual ability in one or more of the areas of specific learning disability (Discrepancy); or
      - (B) Exhibits a combination of (A) and (B) above.
  - (f) The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student’s achievement level; and
  - (g) **Response to Intervention (Rtl) Method. (§300.311(a)(7))** If the student has participated in a process that assesses the student’s response to scientific, research-based intervention as part of

determining if the student has a specific learning disability:

- (i) The instructional strategies used and the student-centered data collected; and
- (ii) The documentation that the student's parents were notified about:
  - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided (the team must refer to the *USOE Specific Learning Disability Eligibility Guidelines* when using this method);
  - (B) Strategies for increasing the student's rate of learning; and
  - (C) The parents' right to request an evaluation; or
- (h) **Discrepancy Method.** If the team is using a severe discrepancy between the student's achievement and intellectual ability as part of its process to determine if the student has a specific learning disability, the team must document:
  - (i) The student's performance on a standardized, norm-referenced, individually administered achievement measure in the area of the suspected disability, and
  - (ii) That the student scored above the intellectual disability range on a standardized, norm-referenced, individually administered measure of intellectual ability, and
  - (iii) The comparison of the standard scores on the tests of achievement and intellectual ability:
    - (A) Must produce a report that states that the team can be 93 percent confident there is a severe discrepancy between

the student's expected achievement score and the obtained achievement score, based on the Utah Estimator software, or

- (B) Must produce a report that shows a significant discrepancy, based on a commercial software program that employs a clearly specified regression formula that considers the relationship between the intelligence and achievement tests as well as the tests' reliability.
- (5) The requirements of Rules II.D-H must be met.
  - (6) Each team member must certify in writing (§300.311(b)) whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions.

## **11. SPEECH/LANGUAGE IMPAIRMENT.**

### **a. DEFINITION.**

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

### **b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents, including a qualified speech/language pathologist (SLP), determines eligibility as defined above.

- (1) The speech or language impairment must adversely affect the student's educational performance.
- (2) The student with the speech or language impairment must require special education and related services.
- (3) Students who qualify in disability categories other than that of speech or language impairment may qualify for speech or language impairment services; however, in order for the

student to be classified as having a speech or language impairment, the team must determine that the speech or language impairment is the student's primary disability.

- (4) In order for a student whose primary home language is other than English to be eligible for classification with a speech or language impairment, the team (including an SLP) must determine that the speech or language impairment exists in the student's primary language and is not the result of learning English as a second language.
- (5) The student with an Orofacial Myofunctional Disorder or OMD (formerly called Tongue Thrust) may be served **only if there is an associated speech or language impairment.**
- (6) Some students with mild hearing impairments may be classified as having a speech or language impairment, if the manifestation of the disability is only as a speech or language impairment and the services of a teacher of the hearing impaired are not required.
- (7) The requirements of Rule II.I must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having a speech or language impairment (primary disability or requiring related services).

- (1) The student must be evaluated by a qualified SLP using assessment instruments and procedures that are appropriate for the determination and appraisal of a speech or language impairment.
- (2) Documentation must be provided that indicates that the student has an impairment in listening, reasoning, and/or speaking to such a degree that special education is needed.
- (3) For the student suspected of having a speech impairment, the team should consider the potential relationship of such an impairment to phonological processing and phonemic awareness.
- (4) A complete battery of assessments (e.g., intellectual, physical, or adaptive behavior) may not be needed to

determine that a speech or language impairment exists. Needed assessments are determined by the team.

- (5) The requirements of Rules II.D-H must be met.

## **12. TRAUMATIC BRAIN INJURY.**

### **a. DEFINITION.**

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 student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech, that affects a student's educational performance. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

### **b. ELIGIBILITY CRITERIA.**

While there must be prior documentation by a physician that a student has an acquired injury to the brain caused by an external physical force, a team of qualified professionals and the student's parents determine eligibility.

- (1) The traumatic brain injury must adversely affect the student's educational performance.
- (2) The student with the traumatic brain injury must require special education and related services.
- (3) The team must determine that traumatic brain injury is the student's primary disabling condition.
- (4) The requirements of Rule II.I must be met.

### **c. EVALUATION.**

- (1) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits. Informal assessment and diagnostic teaching must be part of the full evaluation. Data that are gathered must include information on the

student's developmental history and/or pre-injury learning and educational performance.

- (2) The student's prior medical history, from a qualified health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's education program.
- (3) Although other evaluations could be considered, the following areas must be considered for evaluation:
  - (a) Augmentative communication assistive service needs,
  - (b) Rehabilitative team evaluations,
  - (c) Self-help/adaptive behavior,
  - (d) Academics,
  - (e) Speech/language,
  - (f) Social skills and classroom behavior,
  - (g) Intellectual/cognitive,
  - (h) Vocational (secondary students), and
  - (i) Gross/fine motor skills.
- (4) The requirements of Rules II.D-H must be met.

**13. VISUAL IMPAIRMENT (INCLUDING BLINDNESS).**

**a. DEFINITION.**

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

**b. ELIGIBILITY.**

While the student's vision history from a qualified eye care professional must be on record, a team of qualified professionals and the student's parents determine eligibility as defined above.

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- (1) The visual impairment must adversely affect the student's educational performance.
- (2) The student with a visual impairment must require special education and related services.
- (3) The team must determine that the visual impairment is the student's primary disability.
- (4) The requirements of Rule II.I must be met.
- (5) When classifying a student as visually impaired, the IEP team must consider whether other impairments interfere with the comprehension of visual and/or auditory stimuli.

### **c. EVALUATION.**

- (1) A description of the student's visual impairment and visual capabilities must be on record from a qualified eye care professional.
- (2) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) A qualified professional must assess:
  - (a) The kind and extent of instruction needed, based on the student's present level of performance, including the functioning level of the student in adjusting to visual problems and gaining educational and social success.
  - (b) The student's current and future need for instruction in Braille or the use of Braille.
- (4) Orientation and Mobility (O&M) must be assessed if the student is determined to be blind or visually impaired.
- (5) The requirements of Rules II.D-H must be met.

**III. IEP DEVELOPMENT AND SERVICE DELIVERY.**

**III.A. INDIVIDUALIZED EDUCATION PROGRAM (IEP).**

Each LEA shall develop policies and procedures for the implementation of these IEP requirements, including the LRE requirements, consistent with Part B of the IDEA and these Rules.

**III.B. WHEN IEPS MUST BE IN EFFECT. (§300.323)**

1. At the beginning of each school year, each LEA must have in effect, for each student with a disability within its jurisdiction, an IEP.
2. Each LEA must ensure that:
  - a. A meeting to develop an IEP for a student is conducted within thirty (30) calendar days of a determination that the student needs special education and related services; and
  - b. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.
  - c. Each LEA must ensure that the student's IEP is:
    - (1) Accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and
    - (2) Each teacher and provider is informed of:
      - (a) His or her specific responsibilities related to implementing the student's IEP; and
      - (b) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

**III.C. TRANSFER STUDENTS. (§300.323)**

1. Transfers within Utah.
  - a. In the case of a student with a disability with a current IEP who transfers from one LEA to another within the State within the same school year, and who enrolls in a new school, the LEA, in

consultation with the parents, must provide a FAPE to the student, including services comparable to those described in the previously held IEP, until such time as the new LEA:

- (1) Adopts the previously held IEP, or
- (2) Develops, adopts, and implements a new IEP that is consistent with Federal regulations and these Rules.

2. Transfers from out of State.

a. In the case of a student with a disability with a current IEP who transfers LEAs within the same school year, who enrolls in a new school, and who has an IEP that was in effect in another State, the LEA, in consultation with the parents, must provide the student with a FAPE, including services comparable to those described in the previously held IEP, until the new LEA:

- (1) Conducts an evaluation, if determined to be necessary by the LEA; and
- (2) Develops a new IEP, if appropriate, that is consistent with Federal and State law.

b. The evaluation for eligibility that may be conducted by the receiving LEA is considered an initial evaluation, not a reevaluation. (IDEA 2004 Regulations Comments, p. 46681-82)

3. To facilitate the transition for a student described above:

a. The new LEA in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous LEA in which the student was enrolled; and

b. The previous LEA in which the student was enrolled must take reasonable steps to promptly respond to the request from the new LEA.

4. Experiencing difficulty in obtaining the IEP from the previous LEA does not relieve the LEA where the student is currently enrolled of its obligation to have a current IEP in place for an eligible student.

**III.D. LEA RESPONSIBILITY FOR IEP MEETINGS.**

1. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability ages 3 through 21, consistent with these Rules.
2. A meeting to develop an IEP for an eligible student must be conducted within thirty (30) calendar days of a determination that a student needs special education and related services (§300.323(c)(1)).

**III.E. IEP TEAM MEMBERSHIP. (§300.321)**

The LEA must ensure that the IEP team for each student with a disability includes:

1. The parents of the student;
2. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
4. A representative of the LEA who:
  - a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
  - b. Is knowledgeable about the general education curriculum; and
  - c. Is knowledgeable about the availability of resources of the LEA.
  - d. An LEA may designate an LEA member of the IEP team to also serve as the LEA representative, if the above criteria are satisfied.
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section;
6. At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
7. Whenever appropriate, the student with a disability.

8. The determination of knowledge or special expertise of any individual described in #6 above must be made by the party (parents or LEA) who invited the individual to be a member of the IEP team.
9. If a purpose of the IEP team meeting is consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, the LEA must invite the student with a disability to attend the student's IEP meeting. If the student does not attend the IEP meeting, the LEA must take other steps to ensure that the student's preferences and interests are considered.
10. To the extent appropriate, with the consent of the parents or a student who has reached age 18 or older, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

**III.F. IEP TEAM ATTENDANCE. (§300.321)**

1. A required member of the IEP team is not required to attend a particular IEP team meeting, in whole or in part, if the parent of a student with a disability and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A required member of the IEP team may be excused from attending an IEP 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 LEA 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.

**III.G. PARENT PARTICIPATION. (§300.322)**

1. Each LEA must take steps to ensure that one or both of the parents of a student 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.

2. If neither parent can attend, the LEA must use other methods to ensure parent participation, including individual or conference telephone calls. The parent of a student with a disability and an LEA may agree to use alternative means of meeting participation, such as video conferences and conference calls (§300.328).
3. A meeting may be conducted without a parent in attendance if the LEA is unable to convince the parents that they should attend. In this case, the LEA must keep a record of its 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.
4. The LEA must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
5. The parents of a student with a disability are participants along with school personnel in developing, reviewing, and revising the IEP for their student. This is an active role in which parents:
  - a. Provide critical information regarding the strengths of their student and express their concerns for enhancing the education of their student;
  - b. Participate in the discussion of the student's need for special education and related services, and supplementary aids and services; and
  - c. Join with other participants in deciding how the student will be involved and progress in the general curriculum, how the student will participate in State- and district-wide assessments, and what services the LEA will provide to the student and in what setting.
6. The LEA must give the parent a copy of the student's IEP at no cost to the parent.

**III.H. NOTICE OF MEETING. (§300.322)**

1. The notice of meeting required to be provided to parents must:
  - a. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - b. Inform the parents of the provision for participation of other individuals who have knowledge or special expertise about the student on the IEP team.
  - c. Inform the parents that at their request the Part C service coordinator or other representatives of the Part C system may be invited to participate at the initial IEP team meeting for a student previously served under Part C of the IDEA.
2. For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16 (such as in an IEP meeting conducted when the student is 15 years old), 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 the postsecondary goals and transition services for the student; and
  - b. Indicate that the LEA will invite the student; and
  - c. Identify any other agency that will be invited, with parental consent, to send a representative.
3. When conducting IEP team meetings and placement meetings and carrying out administrative matters, the parent of a student with a disability and an LEA may agree to use alternative means of meeting participation such as video conferences and conference calls (§300.328).

**III.I. DEVELOPMENT, REVIEW, AND REVISION OF THE IEP. (§300.324)**

1. Development, review, and revision of the IEP.
  - a. In developing each student's IEP, the IEP team must consider:
    - (1) The strengths of the student;
    - (2) The concerns of the parents for enhancing the education of their student;

- (3) The results of the initial or most recent evaluation of the student, and
  - (4) The academic, developmental, and functional needs of the student.
- b. The IEP team, in conducting a meeting to develop, review and, if appropriate, revise a student's IEP, must consider the following special factors:
- (1) In the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP;
  - (2) In the case of a student 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 student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student'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 student;
  - (3) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;
  - (4) Consider whether the student needs assistive technology devices and services; and
  - (5) In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
    - (a) When making decisions on behavioral interventions, the IEP team must refer to the *USOE Special Education Least Restrictive Behavior Interventions (LRBI) Guidelines* for information on research-based intervention procedures.

- (b) The purpose of the *LRBI Guidelines* related to the use of positive behavioral supports and behavioral interventions in schools is to:
    - (A) Protect the safety and well-being of students with disabilities;
    - (B) Provide protection for students, teachers, other school personnel, LEAs, and the USOE; and
    - (C) Ensure that parents are involved in the consideration and selection of behavior interventions to be used with their students.
  - (c) When an emergency situation occurs that requires the immediate use of moderately or highly intrusive interventions to protect the student or others from harm, the staff shall complete and submit the emergency contact information to the LEA and notify the student's parents within 24 hours.
  - (d) As appropriate, the student should receive a functional behavioral assessment and behavior intervention services and modifications that are designed to address the behavior (§300.530(d)(1)(ii)).
- c. If, in considering the special factors described above, the IEP team determines that a student needs a particular device or services for educational purposes (including an intervention, accommodation, or other program modification) in order for the student to receive a FAPE, the IEP team must include a statement to that effect in the student's IEP.
- d. A regular education teacher of a student with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:
- (1) Appropriate positive behavioral interventions and supports and other strategies for the student; and
  - (2) Supplementary aids and services, program modifications, and support for school personnel consistent with the IEP.

2. Changes to the IEP.
  - a. In making changes to a student's IEP after the annual IEP team meeting for a school year, the parent of a student with a disability and the LEA may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.
  - b. Upon request the parent must be provided with a revised copy of the IEP with the amendments incorporated.
  - c. If changes are made to the student's IEP through the amendment process, the LEA must ensure that the student's IEP team is informed of those changes.
3. To the extent possible, the LEA must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student (§300.324(a)(5)).
4. Review and revision of the IEP.

Each LEA must ensure that the IEP team:

- a. Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and
- b. Revises the IEP, as appropriate, to address:
  - (1) Any lack of expected progress toward the annual goals in the IEP and in the general education curriculum, if appropriate;
  - (2) The results of any reevaluation;
  - (3) Information about the student provided to, or by, the parents;
  - (4) The student's anticipated needs; or
  - (5) Other matters.
- c. In conducting a review of the student's IEP, the IEP team must consider the special factors in III.K.1.b.

- d. A regular education teacher of the student, as a member of the IEP team, must participate in the review and revision of the IEP of the student, if the student is or may be participating in the general education classroom.
- e. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
- f. 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 students with disabilities who meet the eligibility criteria of that agency.

**III.J. DEFINITION OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP).  
 (§300.320)**

- 1. Definition of individualized education program (IEP).

The term individualized education program or IEP means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting.

- 2. The IEP must include:

- a. A statement of the student's present levels of academic achievement and functional performance, including:

- (1) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students); or
- (2) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

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

- (1) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
- (2) Meet each of the student's other educational needs that result from the student's disability;

- c. For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- d. A description of:
  - (1) How the student's progress toward meeting the annual goals will be measured; and
  - (2) When periodic reports to the parents on the progress the student 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;
- e. 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 student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:
  - (1) To advance appropriately toward attaining the annual goals;
  - (2) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
  - (3) To be educated and participate with other students with disabilities and non-disabled students in the activities described in this section;
- f. An explanation of the extent, if any, to which the student will not participate with non-disabled students in the regular education environment and in the activities described in this section;
- g. A statement of:
  - (1) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on State- and district-wide assessments; and

- (2) If the IEP team determines that the student must take an alternate assessment instead of a particular regular State- or district-wide assessment of student achievement, a statement of why:
    - (a) The student cannot participate in the regular assessment; and
    - (b) The particular alternate assessment selected is appropriate for the student; and
- h. The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
- i. A statement of school to post-school transition services. Beginning not later than the first IEP to be in effect when the student turns 16 (such as in an IEP meeting conducted when the student is 15 years old), or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP must include:
  - (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training or education, employment, and, where appropriate, independent living skills; and
  - (2) The transition services (including courses of study) needed to assist the student in reaching those goals.
- j. Transfer of rights at age of majority. Beginning not later than one (1) year before the student reaches the age of majority, age 18 in Utah, the IEP must include a statement that the student has been informed of the student's rights under Part B of the IDEA that will transfer to the student on reaching the age of majority.
- k. Nothing in this section shall be construed to require that additional information be included in a student's IEP beyond what is explicitly required in Section 614 of Part B of the IDEA, or require the IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

**III.K. IEP AND SERVICES FOR PRESCHOOL STUDENTS AGES 3 THROUGH 5.**

1. IEP development and contents: (§300.323)
  - a. In developing the IEP for a student with a disability age 3 through 5 or, at the discretion of the LEA, a two-year-old student with a disability who will turn age 3 during the school year, the IEP team must consider the contents of an Individual Family Service Plan that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
  - b. The IFSP may not serve as the IEP of the student.
  - c. The LEA must develop an IEP for the student in accordance with the procedures in these Rules.
2. Services for students with disabilities ages 3 through 5, served in preschool programs of the LEA, are to be provided consistent with these Rules (§300.124).
3. Transition planning for students referred from Part C providers must be conducted consistent with the State's current interagency transition agreement with Part C. This planning shall be implemented at least ninety (90) calendar days, as required by Part C regulations 637(a)(9), before the student is eligible for the preschool program under Part B of the IDEA in accordance with these Rules. Each LEA will participate (§300.124) in the transition planning meeting arranged by the lead agency for the Part C program.
4. Services for students age 3.
  - a. By the eligible student's third birthday, the LEA must ensure that an IEP has been developed and is being implemented for the student (§300.124(b)).
  - b. If a student's third birthday occurs after the end of the school year, the LEA must ensure that an IEP has been developed, and the student's IEP team shall determine the date in the next school year when services under the IEP will begin, except that the IEP team may determine that extended school year services are needed outside the school year.

5. Students counted under the preschool program who are being served by Head Start must meet all of the requirements in these Rules, including the eligibility criteria and provision of a FAPE.

**III.L. PHYSICAL EDUCATION. (§300.108)**

1. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving a FAPE, unless the LEA enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.
2. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless:
  - a. The student is enrolled full time in a separate facility; or
  - b. The student needs specially designed physical education, as prescribed in the student's IEP.
3. If specially designed physical education is prescribed in a student's IEP, the LEA responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs.
4. The LEA responsible for the education of a student with a disability who is enrolled in a separate facility must ensure that the student receives appropriate physical education services.

**III.M. ASSISTIVE TECHNOLOGY. (§300.105)**

1. Each LEA must ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability if required as a part of the student's:
  - a. Special education;
  - b. Related services; or
  - c. Supplementary aids and services.
2. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive a FAPE.

**III.N. EXTENDED SCHOOL YEAR (ESY) SERVICES. (§300.106)**

1. Extended school year services means special education and related services that:
  - a. Are provided to a student with a disability:
    - (1) Beyond the normal school year of the LEA;
    - (2) In accordance with the student's IEP; and
    - (3) At no cost to the parents of the student; and
  - b. Meet the standards of the USOE.
2. Each LEA shall ensure that extended school year services are available as necessary to provide FAPE, consistent with these Rules.
3. Extended school year services must be provided only if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.
4. In implementing the requirements of this section, an LEA may not:
  - a. Limit extended school year services to particular categories of disability; or
  - b. Unilaterally limit the type, amount, or duration of those services.

**III.O. CHARTER SCHOOLS AND THEIR STUDENTS. (§300.209)**

1. Students with disabilities ages 3 through 21 who attend public charter schools and their parents retain all rights under Part B of the IDEA and these Rules.
2. If the public charter school is an LEA that receives funding under Part B, that charter school is responsible for ensuring that all of the requirements of Part B of the IDEA and these Rules are met.
3. If the public charter school is not an LEA receiving funding under Part B, or a school that is part of an LEA receiving funding under Part B, the SEA is responsible for ensuring that the requirements of Part B and these Rules are met.
4. For charter schools that are public schools of an LEA, in carrying out Part B of the IDEA and these Rules, the LEA must:

- a. Serve students with disabilities attending those charter schools in the same manner as the LEA serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
- b. Provide funds under Part B of the IDEA to those charter schools:
  - (1) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of students with disabilities; and
  - (2) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
- c. If the public charter school is a school of an LEA that receives funding under Part B of the IDEA and these Rules and includes other public schools:
  - (1) The LEA is responsible for ensuring that the requirements of Part B of the IDEA and these Rules are met; and
  - (2) The LEA must meet the requirements of 4.a in this section.

**III.P. LEAST RESTRICTIVE ENVIRONMENT (LRE). (§300.114)**

- 1. Each LEA must ensure that:
  - a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled; and
  - b. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 2. A State funding mechanism must not result in placements that violate the LRE requirements of III.P-S; and
  - a. A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a

student is served that will result in the failure to provide a student with a disability a FAPE according to the unique needs of the student, as described in the student's IEP.

**III.Q. CONTINUUM OF ALTERNATIVE PLACEMENTS. (§300.115)**

1. Each LEA must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.
2. The continuum required must:
  - a. Include the following alternative placements for instruction:
    - (1) Regular classes,
    - (2) Special classes,
    - (3) Special schools,
    - (4) Home instruction, and
    - (5) Instruction in hospitals and institutions; and
  - b. Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

**III.R. PLACEMENTS. (§300.116)**

1. In determining the educational placement of a student with a disability, including a preschool student with a disability, each LEA must ensure that:
  - a. The placement decision:
    - (1) Is made by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and
    - (2) Is made in conformity with the LRE provisions above.
  - b. The student's placement:
    - (1) Is determined at least annually;

- (2) Is based on the student 's IEP; and
- (3) Is as close as possible to the student 's home;
- c. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled;
- d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and
- e. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

**III.S. PARENTAL INVOLVEMENT IN PLACEMENT DECISIONS. (§300.327 & §300.501)**

- 1. Each LEA shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of the parent's student (Rule IV.B).
- 2. In implementing this requirement, each LEA shall use procedures for parent involvement in placement decisions consistent with those used for parent participation in IEP meetings.
- 3. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the LEA shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- 4. A group may make a placement decision without the involvement of the parents if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA must have a record of its attempts to ensure their involvement.

**III.T. PARENTAL CONSENT FOR SERVICES. (§300.300)**

- 1. An LEA that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

2. An LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the eligible student with disabilities.
3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the LEA:
  - a. May not use the procedures in Section IV. of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
  - b. Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
  - c. Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.
4. If, at any time subsequent to the initial provision of special education and related services, the parent of a student revokes consent in writing for the continued provision of special education and related services, the LEA:
  - a. May not continue to provide special education and related services to the student, but must provide written prior notice in accordance with Section IV. D. of these Rules before ceasing the provision of special education and related services.
  - b. May not use the procedures in Section IV. of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
  - c. Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
  - d. Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.

5. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA, or to fail to provide a student with a FAPE.
6. Consent means that the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time (§300.9).
  - a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

**III.U. NONACADEMIC SETTINGS. (§300.117)**

1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities in Rule III.V, each LEA must ensure that each student with a disability participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student.
2. The LEA must ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

**III.V. NONACADEMIC SERVICES. (§300.107)**

1. Each LEA must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
2. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

#### **IV. PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES FOR PARENTS AND STUDENTS (SUBPART E).**

Consistent with the requirements of Part B of the IDEA and these Rules, each LEA shall establish, maintain, and implement procedural safeguards for students with disabilities and their parents.

##### **IV.A. PARENTAL OPPORTUNITY TO EXAMINE RECORDS AND PARTICIPATE IN MEETINGS. (§300.501)**

The parents of a student with a disability must be afforded, in accordance with these Rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student.

##### **IV.B. PARENT PARTICIPATION IN MEETINGS. (§300.501)**

1. The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student. Each LEA must provide notice, consistent with these Rules, to ensure that parents of students with disabilities have the opportunity to participate in meetings.
2. A meeting does not include informal or unscheduled conversations involving LEA 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 LEA personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.
3. Each LEA must ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's student, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed-on time and place (§300.322(a)).
4. The notice of meeting must indicate the purpose(s), time, and location of the meeting and who will be in attendance and inform the parents of their right to bring other individuals who have knowledge or special expertise about the student (§300.322(b)).
5. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the LEA must

use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

6. A placement decision may be made by a group without the involvement of a parent, if the LEA is unable to obtain the parent's participation in the decision. In this case, the LEA must have a record of its attempt to ensure their involvement.

#### **IV.C. INDEPENDENT EDUCATIONAL EVALUATION. (§300.502)**

1. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.
2. Each LEA shall establish and implement policies and procedures related to independent educational evaluation that meet the requirements of Part B of the IDEA and these Rules.
3. The following requirements must be addressed:
  - a. The parents of a student with a disability have the right to obtain an independent educational evaluation of the student at public expense if they disagree with an evaluation obtained by the LEA.
  - b. The LEA must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the LEA criteria applicable for independent educational evaluations. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student; and public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
  - c. If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet LEA criteria. If the LEA files a due process complaint notice to request a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If a parent requests an independent educational evaluation, the LEA 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 LEA may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

- d. A parent is entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.
  - e. If the parent obtains an independent educational evaluation at public expense or shares with the LEA an evaluation obtained at private expense, the results of the evaluation must be considered by the LEA, if it meets LEA criteria, in any decision made with respect to the provision of a FAPE to the student and may be presented by any party as evidence at a hearing on a due process complaint regarding that student.
  - f. 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.
  - g. 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 LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
  - h. Except for the criteria described above, an LEA may not impose additional conditions or timelines related to obtaining an independent educational evaluation at public expense.
4. An independent educational evaluation conducted at the LEA's expense becomes the property of the LEA, in its entirety.

#### **IV.D. WRITTEN PRIOR NOTICE. (§300.503)**

1. Written prior notice must be given to the parents of a student with a disability a reasonable time before the LEA:
  - a. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or

- b. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student.
2. The notice required must include:
- a. A description of the action proposed or refused by the LEA;
  - b. An explanation of why the LEA proposes or refuses to take the action;
  - c. A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
  - d. A statement that the parents of a student with a disability have protection under the procedural safeguards of Part B of the IDEA 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;
  - e. Sources for parents to contact to obtain assistance in understanding the provisions of Part B of the IDEA;
  - f. A description of other options that the IEP team considered and the reasons why those options were rejected; and
  - g. A description of other factors that are relevant to the LEA's proposal or refusal.
3. The notice 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.
    - (1) If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that:
      - (a) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
      - (b) The parent understands the content of the notice; and

- (c) There is written evidence that the requirements have been met.

**IV.E. PROCEDURAL SAFEGUARDS NOTICE. (§300.504)**

1. A copy of the procedural safeguards available to the parents of a student with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents:
  - a. Upon initial referral or parent request for evaluation;
  - b. Upon receipt of the first State complaint or a due process complaint in that school year; and
  - c. Upon request by a parent.
2. An LEA may place a current copy of the procedural safeguards notice on its web site if a web site exists.
3. The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to:
  - a. Independent educational evaluations;
  - b. Prior written notice;
  - c. Parental consent;
  - d. Access to educational records;
  - e. The opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including the time period in which to file a complaint;
  - f. The opportunity for the LEA to resolve the complaint, and 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;
  - g. The availability of mediation;
  - h. The student's placement during pendency of hearings on due process complaints;

- i. Procedures for students who are subject to placement in an interim alternative educational setting;
  - j. Requirements for unilateral placement by parents of students in private schools at public expense;
  - l. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
  - m. State-level appeals;
  - n. Civil actions, including the time period in which to file those actions; and
  - o. Attorneys' fees.
- 4. The notice required must be in language understandable to the parents.
  - 5. A parent of a student with a disability may elect to receive notices by an electronic mail communication, if the LEA makes that option available (§300.505).

**IV.F. PARENTAL CONSENT. (§300.300)**

- 1. The granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
- 2. Informed written parental consent must be obtained prior to the LEA conducting an initial evaluation or reevaluation to determine if a student qualifies or continues to qualify as a student with a disability.
- 3. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- 4. The LEA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation or reevaluation to determine whether the student is a student with a disability.
- 5. For initial evaluations only, if the student is a ward of the State and is not residing with the student's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

- a. Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the student;
  - b. The rights of the parents of the student 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 student.
6. If the parent of a student 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 LEA may, but is not required to, pursue the evaluation of the student by utilizing the mediation or due process procedures in Rules IV.G-Q.
7. Informed parental consent for reevaluation need not be obtained if the LEA can demonstrate that:
  - a. It made reasonable efforts to obtain such consent; and
  - b. The student's parent has failed to respond.
8. To meet the reasonable efforts requirements to obtain informed parental consent, such efforts must be documented and may include detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.
9. When conducting psychological evaluations, the LEA is referred to the parental consent requirements of UCA 53A-13-302 (Utah FERPA).
10. Parental consent for services.
  - a. An LEA that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.
  - b. The LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

- c. If the parent of a student fails to respond to a request to provide consent for the initial provision of special education and related services or refuses to consent to the initial provision of services, the LEA:
  - (1) May not use the mediation or due process procedures in Rule IV.H-Q in order to obtain agreement or a ruling that the services may be provided to the student;
  - (2) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
  - (3) Is not required to convene an IEP team meeting or develop an IEP for the student.
  
- 11. Other consent requirements.
  - a. Parental consent is not required before:
    - (1) Reviewing existing data as part of an evaluation or a reevaluation; or
    - (2) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.
  - b. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA.
  
- 12. If a parent of a student 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:
  - a. The LEA may not use the consent override procedures; and
  - b. The LEA is not required to consider the student as eligible for special education and related services.

**IV.G. STATE COMPLAINT PROCEDURES. (§300.151-153)**

1. The Utah State Office of Education (USOE) has adopted procedures for resolving any complaint under Part B of the IDEA and these Rules, including a complaint filed by an organization or individual from another State. The complaint must be in writing to the superintendent or charter school administrator of the LEA in which the alleged violation has occurred, and the party filing the complaint must forward a copy to the State Director of Special Education at the same time the party files the complaint with the LEA. If the parents are unable to file in writing, they may contact the LEA or USOE for assistance.
2. The complaint must include the following:
  - a. A statement that the LEA has violated a requirement of Part B of the IDEA or these Rules.
  - b. The facts on which the statement is based.
  - c. The signature and contact information for the complainant.
  - d. If alleging violations with respect to a specific student:
    - (1) The name and address of the residence of the student;
    - (2) The name of the school the student is attending;
    - (3) In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
    - (4) A description of the nature of the problem of the student, including facts relating to the problem; and
    - (5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is received as described in IV.E.1.
3. The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than two (2) years prior to the date the complaint is received by the LEA.

4. The LEA shall resolve the complaint within thirty (30) calendar days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information). An extension of time shall not exceed ten (10) calendar days. Within this time limit, the LEA shall:
  - a. Carry out an independent on-site investigation, if the LEA determines that such an investigation is necessary.
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - c. Review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA or of these Rules.
  - d. Issue a written decision to the complainant, with a copy sent to the State Director of Special Education that addresses each allegation in the complaint and contains:
    - (1) Findings of fact and conclusions, and
    - (2) The reasons for the LEA's final decisions.
  - e. Permit an extension of the time limit under IV.G.4.a only if:
    - (1) Exceptional circumstances exist with respect to a particular complaint; or
    - (2) The parent, individual, or organization and the LEA involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution available in the State; and
  - f. Determine procedures for the effective implementation of the LEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
  - g. Inform the complainant in writing of the right to appeal the decision for review to the USOE, and the procedures for doing so. The appeal request must be received by the State Director of Special Education within ten (10) calendar days of the receipt of the LEA's final decision.
5. The procedures for reviewing the LEA's final decision on appeal to the USOE shall be the same as those outlined above. Within the remaining

days of the sixty (60) calendar day time period after receipt of a written request for review, the USOE shall issue a final, written decision on the complaint.

6. In resolving a complaint in which it has found a failure to provide appropriate services, the USOE, pursuant to its general supervisory authority under Part B of the IDEA, must address:
  - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.
  - b. Appropriate future provision of services for all students with disabilities.
7. If a written State complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures in these Rules, or contains multiple issues of which one or more are part of that hearing, the LEA (or the USOE if the State complaint is an appeal of an LEA decision) must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.
8. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding on that issue. The USOE must inform both parties of this fact. A complaint alleging an LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the USOE.
9. Parents and other interested individuals, including parent training and information centers, independent living centers, representatives of protection and advocacy agencies, professional organizations, and other appropriate entities, shall be informed about these procedures through:
  - a. Procedural safeguards notice provided by LEAs.
  - b. Presentations and other training events by USOE staff conducted throughout the State.

#### **IV.H. MEDIATION. (§300.506)**

1. Each LEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under Part B of the IDEA,

including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

2. The procedures must ensure that the mediation process:
  - a. Is voluntary on the part of the parties;
  - b. Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA; and
  - c. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
3. An LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party 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 who would explain the benefits of, and encourage the use of, the mediation process to the parent.
4. The USOE maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
5. The USOE selects mediators on a random, rotational, or other impartial basis.
6. The USOE bears the cost of the mediation process, including the costs of meetings described in this section.
7. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
8. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:
  - a. Sets forth that resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
  - b. Is signed by both the parent and a representative of the LEA who has the authority to bind such agency.

9. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
10. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court.
11. An individual who serves as a mediator:
  - a. May not be an employee of the USOE or the LEA that is involved in the education or care of the student; and
  - b. Must not have a personal or professional interest that conflicts with the person's objectivity.
12. A person who otherwise qualifies as a mediator is not an employee of an LEA or USOE solely because he or she is paid by the agency to serve as a mediator.

#### **IV.I. FILING A DUE PROCESS COMPLAINT. (§300.507)**

1. Advocates and legal representation.
  - a. Persons with special expertise, including advocates, may assist or accompany either party to a due process hearing.
  - b. The parties may:
    - (1) Be represented by an attorney authorized to practice law in the State of Utah; or
    - (2) Represent themselves, also referred to as pro se representation, (CFT 300.512(b)(a)(1), (Utah Bar Rules 14-102-111, 14-802(c)(8)).
2. The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint, except:
  - a. If the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

- b. The LEA's withholding of information from the parent that was required under Part B of the IDEA to be provided to the parent.
3. The LEA must inform the parent of any free or low-cost legal and other relevant services available in the area if:
  - a. The parent requests the information; or
  - b. The parent or the LEA requests a hearing under this section.

**IV.J. DUE PROCESS COMPLAINT. (§300.508)**

1. The LEA must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
2. The party filing a due process complaint must forward a copy of the due process complaint to the USOE.
3. The due process complaint must include:
  - a. The name of the student;
  - b. The address of the residence of the student;
  - c. The name of the school the student is attending;
  - d. In the case of a homeless student or youth, available contact information for the student and the name of the school the student is attending;
  - e. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
  - f. A proposed resolution of the problem to the extent known and available to the party at the time.
4. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements listed above.
5. The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen (15) calendar

days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.

- a. Within five (5) calendar days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements, and must immediately notify the parties in writing of that determination.
  - b. A party may amend its due process complaint only if:
    - (1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting, or
    - (2) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) calendar days before the due process hearing begins.
  - c. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.
6. If the LEA has not sent a written prior notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten (10) calendar days of receiving the due process complaint, send to the parent a response that includes:
- a. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
  - b. A description of other options that the IEP team considered and the reasons why those options were rejected;
  - c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
  - d. A description of the other factors that are relevant to the LEA's proposed or refused action.
7. If an LEA has not sent written prior notice to the parent regarding the subject matter of the parent's due process complaint until after the due process complaint is received, the LEA may still assert that the parent's due process complaint was insufficient, where appropriate.

8. The party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

#### **IV.K. MODEL FORMS. (§300.509)**

The USOE has developed model forms to assist parents in filing a State complaint, a due process hearing complaint, and requesting mediation. These forms are available on the Utah State Office of Education web site at [www.schools.utah.gov](http://www.schools.utah.gov). Parties are not required to use the State's model forms. Parents, public agencies, and other parties may use the appropriate State model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements for filing a due process complaint or the requirements for filing a State complaint.

#### **IV.L. RESOLUTION PROCESS. (§300.510)**

1. Within fifteen (15) calendar days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:
  - a. Includes a representative of the LEA who has decision-making authority on behalf of that agency, and
  - b. May not include an attorney of the LEA unless the parent is accompanied by an attorney.
2. The purpose of the meeting is for the parents of the student to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
3. The resolution meeting need not be held if the parents and the LEA agree in writing to waive the meeting, or the parents and the LEA agree to use the mediation process.
4. The parents and the LEA determine the relevant members of the IEP team to attend the meeting.
5. If the LEA has not resolved the due process complaint to the satisfaction of the parents within thirty (30) calendar days of the receipt of the due process complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the expiration of this 30-day period.

6. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
7. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parents' due process complaint.
8. If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
9. The forty-five (45) day timeline for the due process hearing starts the day after one of the following events:
  - a. Both parties agree in writing to waive the resolution meeting;
  - b. After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
  - c. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or LEA withdraws from the mediation process.
10. If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA and that is enforceable in any State court of competent jurisdiction or in a district court of the United States.
11. If the parties execute an agreement, a party may void the agreement within three (3) business days of the agreement's execution.

#### **IV.M. IMPARTIAL DUE PROCESS HEARING. (§300.511)**

1. Whenever a due process complaint is filed, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

2. The impartial due process hearing shall be conducted by the USOE. The USOE Director of Special Education or designee shall assign an impartial hearing officer on a random (rotation) basis, and in accordance with USOE procedures.
3. At a minimum, a hearing officer must:
  - a. Not be an employee of the USOE or the LEA that is involved in the education or care of the student; or
  - b. Not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
  - c. Must possess knowledge of, and the ability to understand, the provisions of Part B of the IDEA, Federal and State regulations pertaining to Part B of the IDEA, and legal interpretations of Part B of the IDEA by Federal and State courts;
  - d. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - e. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
4. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
5. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.
6. A parent or LEA must request an impartial hearing on their due process complaint within two (2) years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint.
7. Exceptions to the timeline. The timeline described in IV.M.6 does not apply to a parent if the parent was prevented from filing a due process complaint due to:
  - a. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or
  - b. The LEA's withholding of information from the parent that was required to be provided to the parent.

8. The USOE shall monitor all due process hearings to ensure adherence to required procedures.

**IV.N. HEARING RIGHTS. (§300.512)**

1. Any party to a hearing or an appeal has the right to:
  - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
  - b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
  - d. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing, and
  - e. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
2. At least five (5) business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
3. A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed at least five (5) business days prior to the hearing at the hearing without the consent of the other party.
4. Parents involved in hearings must be given the right to:
  - a. Have the student who is the subject of the hearing present;
  - b. Open the hearing to the public; and
  - c. Have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

**IV.O. HEARING DECISIONS. (§300.513)**

1. A hearing officer's determination of whether the student received a FAPE must be based on substantive grounds.
2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:
  - a. Impeded the student's right to a FAPE;
  - b. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' student; or
  - c. Caused a deprivation of educational benefit.
3. Nothing in IV.N.2 shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements.
4. A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.
5. The USOE, after deleting any personally identifiable information, must:
  - a. Transmit the findings and decisions on the due process complaint to the Utah Special Education Advisory Panel, and
  - b. Make those findings and decisions available to the public.

**IV.P. FINALITY OF DECISION. (§300.514)**

A decision made in a hearing conducted is final, unless a party to the hearing appeals the decision to a civil action.

**IV.Q. STATE ENFORCEMENT MECHANISMS. (§300.537)**

Notwithstanding the provisions for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

**IV.R. TIMELINES AND CONVENIENCE OF HEARINGS. (§300.515)**

1. The USOE must ensure that not later than forty-five (45) calendar days after the expiration of the thirty (30) calendar day resolution period, or the adjusted time periods resulting from the resolution process, (1) a final decision is reached in the hearing, and (2) a copy of the decision is mailed to each of the parties.
2. A hearing officer may grant specific extensions of time at the request of either party.
3. Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and student involved.

**IV.S. CIVIL ACTION. (§300.516)**

1. Any party aggrieved by the findings and decision who does not have the right to an appeal, and any party aggrieved by the findings and decision, has the right to bring a civil action with respect to the complaint notice requesting a due process hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
2. A civil action may be filed in either state or federal court; if appealed to state court, the appeal must be filed within 30 days of the date of the due process hearing decision. A federal court may apply a similar time limit. *Utah Code 53A-15-305(6)*
3. In any civil action, the court receives the records of the administrative proceedings; hears additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
4. The district courts of the United States have jurisdiction of actions brought under the Procedural Safeguards of Part B of the IDEA without regard to the amount in controversy.
5. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under the Procedural Safeguards of Part B of the IDEA, the procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

**IV.T. ATTORNEYS' FEES. (§300.517)**

1. In any action or proceeding brought under Procedural Safeguards of Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:
  - a. To the prevailing party who is the parent of a student with a disability;
  - b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
  - c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
2. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding. An LEA may use funds under Part B of the IDEA for conducting an action or proceeding under the Procedural Safeguards of Part B of the IDEA.
3. A court awards reasonable attorneys' fees consistent with the following:
  - a. Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.
  - b. No bonus or multiplier may be used in calculating the fees awarded.
  - c. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:
    - (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins;
    - (2) The offer is not accepted within ten (10) calendar days; and

- (3) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
4. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation under §300.506.
5. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or an administrative hearing or judicial action for purposes of attorneys' fees in this section.
6. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
7. The court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that:
  - a. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  - b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
  - c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - d. The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice.
8. The above regulations regarding attorneys' fees do not apply in any action or proceeding if the court finds that the LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of the Procedural Safeguards of Part B of the IDEA.

#### **IV.U. STUDENT'S STATUS DURING PROCEEDINGS. (§300.518)**

1. During the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the LEA and the parents of the student agree otherwise, the student involved in the complaint must remain in his or her current educational placement.

2. If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
3. If the decision of a hearing officer in a due process hearing conducted by the USOE agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the LEA and the parents.

**IV.V. SURROGATE PARENTS. (§300.519)**

1. Each LEA must ensure that the rights of a student are protected when:
  - a. No parent can be identified;
  - b. The LEA, after reasonable efforts, cannot locate a parent;
  - c. The student is a ward of the State under the laws of that State; or
  - d. The student is an unaccompanied homeless youth.
2. The duties of an LEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student.
3. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements.
4. The LEA may select a surrogate parent in any way permitted under State law.
5. LEAs must ensure that a person selected as a surrogate parent:
  - a. Is not an employee of the USOE, the LEA, or any other agency that is involved in the education or care of the student;
  - b. Has no personal or professional interest that conflicts with the interest of the student he or she represents; and
  - c. Has knowledge and skills that ensure adequate representation of the student.

6. A person otherwise qualified to be a surrogate parent is not an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.
7. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates until a surrogate can be appointed that meets all of the requirements.
8. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student.
9. The USOE must make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty (30) calendar days after an LEA determines that the student needs a surrogate.

**IV.W. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY. (§300.520)**

1. The USOE requires that when a student with a disability reaches the age of majority under State law (age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law):
  - a. The LEA must provide any notice required by Part B of the IDEA to both the individual and the parents; and
  - b. All other rights accorded to parents under Part B of the IDEA transfer to the student;
  - c. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution; and
  - d. Whenever a State transfers rights, the LEA must notify the individual and the parents of the transfer of rights.

**IV.X. CONFIDENTIALITY. (§300.610)**

The USOE and LEAs take appropriate steps to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the USOE and LEAs pursuant to Part B of the IDEA.

1. Definitions. (§300.611) As used in these safeguards:

- a. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
  - b. *Education records* means the type of records covered under the definition of “education records” in 34 CFR 99, implementing regulations for the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).
  - c. *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.
2. Notice to parents. (§300.612)
- a. The USOE and LEA must give notice that is adequate to fully inform parents, including:
    - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
    - (2) A description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the USOE 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 LEAs 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 students regarding this information, including the rights under FERPA.
3. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State and LEAs of the activity.
4. Access rights. (§300.613)
- a. Each LEA must permit parents to inspect and review any education records relating to their students that are collected, maintained, or used by the LEA. The LEA must comply with a request without

unnecessary delay and before any meeting regarding an IEP, or any hearing, or resolution session, and in no case more than forty-five (45) calendar days after the request has been made.

- b. The right to inspect and review education records under this section includes:
  - (1) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
  - (2) The right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - (3) The right to have a representative of the parent inspect and review the records.
- c. An LEA may presume that the parent has authority to inspect and review records relating to his or her student unless the LEA has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

5. Record of access. (§300.614)

Each LEA 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 LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

6. Records on more than one student. (§300.615)

If any education record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their student or to be informed of that specific information.

7. List of types and locations of information. (§300.616)

On request, the LEA must provide parents with a list of the types and locations of education records collected, maintained, or used by the LEA.

8. Fees. (§300.617)
  - a. The USOE and each LEA may charge a fee for copies of records that are made for parents under Part B of the IDEA if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
  - b. The USOE and an LEA may not charge a fee to search for or to retrieve information under Part B of the IDEA.
9. Amendment of records at parent's request. (§300.618)
  - a. A parent who believes that information in the education records collected, maintained, or used under Part B of the IDEA is inaccurate or misleading or violates the privacy or other rights of the student may request the LEA that maintains the information to amend the information.
  - b. The LEA must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If the LEA decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing on the matter.
10. Opportunity for a hearing. (§300.619)

The LEA must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.
11. Result of hearing. (§300.620)
  - a. If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA.

- c. Any explanation placed in the records of the student under this section must:
  - (1) Be maintained by the LEA as part of the records of the student as long as the record or contested portion is maintained by the LEA; and
  - (2) If the records of the student or the contested portion is disclosed by the LEA to any party, the explanation must also be disclosed to the party.

12. Hearing procedures. (§300.621)

A hearing that challenges education records must be conducted according to the procedures under 34 CFR 99.22 as described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements:

- a. The hearing shall be held within a reasonable period of time after the LEA receives the request, and the parent of the student or student age 18 or older shall be given notice of the date, place, and time reasonably in advance of the hearing.
- b. The hearing may be conducted by any party, including an official of the LEA, that does not have a direct interest in the outcome of the hearing.
- c. The parent of the student or student age 18 or older shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his or her choice at his or her own expense, including an attorney.
- d. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
- e. The decision of the LEA shall be based solely upon the evidence presented at the hearing, and shall include a summary of the evidence and the reasons for the decision.

13. Consent. (§300.622)

- a. Except as to disclosures addressed in referral to and action by law enforcement and judicial authorities, for which parental consent is not required by 34 CFR 99, parental consent must be obtained before personally identifiable information is:

- (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under Part B of the IDEA, or
  - (2) Used for any purpose other than meeting a requirement of Part B of the IDEA.
- b. An LEA may not release information from education records to participating agencies without parental consent unless authorized to do so by 34 CFR 99.31 and 99.34 (FERPA):
- (1) Regulation 34 CFR 99.31 allows an LEA to disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the student age 18 or older, if the disclosure is:
    - (a) To other school officials, including teachers within the LEA who have been determined by the LEA to have legitimate educational interests.
    - (b) To officials of another school or school site in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR 99.34 below.
  - (2) Regulation 34 CFR 99.34 requires that an LEA transferring the education records of a student pursuant to 34 CFR 99.34 above shall make a reasonable attempt to notify the parent of the student or the student age 18 or older of the transfer of records at the last known address of the parent or student age 18 or older, except that the LEA does not have to provide any further notice of the transfer of records when:
    - (a) The transfer is initiated by the parent or student age 18 or older at the sending LEA.
    - (b) The LEA includes in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which a student seeks or intends to enroll.
- c. An LEA receiving personally identifiable information from another educational agency or institution may make further disclosure of the information on behalf of the LEA without the prior written consent of the parent or student age 18 or older if the conditions of 34 CFR

99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements.

- d. If the parents refuse consent for the release of personally identifiable information to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

**Note:** As authorized in 34 CFR 99.31 (FERPA), Utah LEAs include in the annual procedural safeguards notice that it is their policy to forward educational records of a student with disabilities without parental consent or notice to officials of another school or school district in which a student seeks or intends to enroll.

14. Safeguards. (§300.623)

- a. Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- b. One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- c. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures in this section and 34 CFR 99.
- d. Each LEA must maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to personally identifiable information on students with disabilities.

15. Destruction of information. (§300.624)

- a. The LEA must inform parents or student age 18 or older when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to the student.
- b. The information no longer needed must be destroyed at the request of the parents or student age 18 or older. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

- c. Each student's records may be considered "no longer needed to provide educational services" and may be destroyed three (3) years after the student graduates or three (3) years after the student turns 22.

16. Students' rights. (§300.625)

- a. The rights of privacy afforded to parents are transferred to the student who reaches the age of 18, providing the student has not been declared incompetent by a court order.
- b. Under the regulations for FERPA at 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.
- c. Because the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of 18, the rights regarding educational records must also be transferred to the student. However, the LEA must provide any notice required under Section 615 of Part B of the IDEA to the student and the parents.

17. Enforcement. (§300.626)

The confidentiality requirements of Part B of the IDEA are reviewed and approved as part of the LEA eligibility process.

18. U.S. Department of Education use of personally identifiable information. (§300.627)

If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding students with disabilities that is not subject to the Privacy Act of 1974, 5 USC 552a, the Secretary applies the applicable Federal statute, and the regulations implementing those provisions in 34 CFR 5b.

**V. DISCIPLINE PROCEDURES. (§300.530)**

**V.A. DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES.**

Consistent with the requirements of Part B of the IDEA and these Rules, each LEA shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

**V.B. AUTHORITY OF SCHOOL PERSONNEL.**

1. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.
2. School personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.
3. After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the LEA must provide services to the extent required.
4. For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except after the 10<sup>th</sup> day of removal that constitutes a change in placement, the LEA must provide services to the student.

**V.C. SERVICES.**

1. A student with a disability who is removed from the student's current placement must:
  - a. Continue to receive educational services, so as to enable the student to continue to participate in the general education

curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

- b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
2. The services may be provided in an interim alternative educational setting.
3. An LEA is only required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.
4. After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
5. If the removal is a change of placement, the student's IEP team determines appropriate services to be provided during the removal.

**V.D. CHANGE OF PLACEMENT DUE TO DISCIPLINARY REMOVALS. (§300.536)**

1. For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if:
  - a. The removal is for more than ten (10) consecutive school days; or
  - b. The student has been subjected to a series of removals that constitute a pattern:
    - (1) Because the series of removals total more than ten (10) school days in a school year;
    - (2) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
    - (3) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

2. The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

**V.E. MANIFESTATION DETERMINATION. (§300.530)**

1. Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:
  - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
  - b. If the conduct in question was the direct result of the LEA's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's IEP team determine that the misconduct was caused by or had a direct and substantial relationship to the student's disability, or was the direct result of the LEA's failure to implement the IEP.
3. If the LEA, the parent, and relevant members of the student's IEP team determine that the misconduct was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.
4. If the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the student's disability, the IEP team must:
  - a. Either:
    - (1) Conduct a functional behavioral assessment (FUBA), unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the student; 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; and
  - b. Unless the misconduct falls under the definition of special circumstances in V.E.5, return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
5. **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:
  - a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an LEA;
  - b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an LEA, or
  - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA.
  - d. Definitions. For purposes of this section, the following definitions apply:
    - (1) Controlled substance means a drug or other substance that cannot be distributed without a prescription, identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).
    - (2) Illegal drug means a controlled substance but does not include a drug controlled, possessed, or used under the supervision of a licensed health-care professional or one legally possessed or used under the Controlled Substances Act or under any other provision of Federal law (21 USC 812).
    - (3) Serious bodily injury means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty

(18 USC 1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (20 USC 1365).

- (4) Weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches (18 USC 930).

#### **V.F. PROCEDURAL SAFEGUARDS NOTICE.**

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice.

#### **V.G. DETERMINATION OF SETTING. (§300.531)**

The student's IEP team determines the interim alternative educational setting for services if the behavior that gives rise to the removal is not a manifestation of the student's disability, the removal constitutes a change of placement, or the behavior falls under the special circumstances in V.E.

#### **V.H. APPEALS BY PARENT OR LEA. (§300.532)**

1. The parent of a student with a disability who disagrees with any decision regarding placement, or the manifestation determination, or an LEA that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a due process hearing complaint.
2. Authority of hearing officer.
  - a. A due process hearing officer hears, and makes a determination regarding an appeal.
  - b. In making the determination, the hearing officer may:
    - (1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the discipline procedures under Part B of the IDEA or these Rules or that

the student's behavior was a manifestation of the student's disability; or

- (2) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
  - c. The appeal procedures may be repeated if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.
3. Expedited due process hearing.
- a. Whenever a hearing is requested, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.
  - b. The LEA is responsible for arranging the expedited due process hearing with the USOE, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten (10) school days after the hearing.
  - c. Unless the parents and LEA agree in writing to waive the resolution meeting, or agree to use mediation:
    - (1) A resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint; and
    - (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) calendar days of the receipt of the due process complaint.
  - d. The decisions on expedited due process hearings are appealable.

#### **V.I. PLACEMENT DURING APPEALS. (§300.533)**

When an appeal has been made by either the parent or the LEA, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified, whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

**V.J. PROTECTIONS FOR STUDENTS NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES. (§300.534)**

1. A student who has not been determined to be eligible for special education and related services under Part B of the IDEA, and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
2. An LEA must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:
  - a. The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate LEA, or a teacher of the student, that the student is in need of special education and related services;
  - b. The parent of the student requested an evaluation of the student; or
  - c. The teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the LEA or to other supervisory personnel of the LEA.
3. An LEA would not be deemed to have knowledge that a student is a student with a disability if:
  - a. The parent of the student:
    - (1) Has not allowed an evaluation of the student; or
    - (2) Has refused services under this part; or
  - b. The student has been evaluated in accordance with and determined to not be a student with a disability under Part B of the IDEA.
4. If an LEA does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors.

- a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
  - (1) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
  - (2) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA must provide special education and related services.

**V.K. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES. (§300.535)**

- 1. Nothing in Part B of the IDEA prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.
- 2. Transmittal of records.
  - a. An LEA reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the LEA reports the crime.
  - b. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

## **VI. STUDENTS WITH DISABILITIES IN OTHER SETTINGS.**

### **VI.A. PRIVATE SCHOOL PLACEMENTS BY LEAs. (§300.325)**

1. Developing IEPs.
  - a. Before an LEA places a student with a disability in, or refers a student to, a private school or facility, the LEA must initiate and conduct a meeting to develop an IEP for the student in accordance with Part B of the IDEA and these Rules.
  - b. The LEA must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
2. Reviewing and revising IEPs.
  - a. After a student with a disability is placed in a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.
  - b. If the private school or facility initiates and conducts these meetings, the LEA must ensure that the parents and an LEA representative:
    - (1) Are involved in any decisions about the student's IEP; and
    - (2) Agree to any proposed changes in the IEP before those changes are implemented.
3. Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the LEA and the USOE.
4. Residential placement. (§300.104)

If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the student.

5. **Students With Disabilities in Private Schools Placed or Referred by Public Agencies.** (§300.145-147)
  - a. Only for students with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services, the USOE must:
    - (1) Ensure that a student with a disability who is placed in or referred to a private school or facility by a public agency:
      - (a) Is provided special education and related services:
        - (i) In conformance with an IEP that meets the requirements in Rule III.H; and
        - (ii) At no cost to the parents;
      - (b) Is provided an education that meets the standards that apply to education provided by the USOE and LEAs including the requirements of these Rules; and
      - (c) Has all of the rights of a student with a disability who is served by a public agency.
6. The USOE must:
  - a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
  - b. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a student with a disability; and
  - c. Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

**VI.B. STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS NOT AT ISSUE (UNILATERAL PLACEMENT).** (§300.130)

Parentally placed private school students with disabilities means students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school in Part B of the IDEA.

Elementary school (§300.13) means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

Secondary school (§300.36) means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

1. Child Find for parentally placed private school students with disabilities. (§300.131).
  - a. Each LEA must locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA.
  - b. The Child Find process must be designed to ensure:
    - (1) The equitable participation of parentally placed private school students; and
    - (2) An accurate count of those students.
  - c. The LEA must undertake activities similar to the activities undertaken for the LEA's public school students.
  - d. The cost of carrying out the Child Find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under spending a proportionate share of funds under Part B of the IDEA to provide services to parentally placed private school students.
  - e. The Child Find process must be completed in a time period comparable to that for students attending public schools in the LEA.
  - f. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the Child Find requirements in this section, include parentally placed private school students who reside in a State other than the State in which the private schools that they attend are located.

2. Basic requirements for provision of services for parentally placed private school students with disabilities. (§300.132)
  - a. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those students in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services, including direct services.
  - b. The LEA must develop and implement a services plan for each private school student with a disability who has been designated by the LEA in which the private school is located to receive special education and related services.
  - c. Each LEA must maintain in its records, and provide to the USOE, the following information related to parentally placed private school students:
    - (1) The number of students evaluated;
    - (2) The number of students determined to be students with disabilities; and
    - (3) The number of students served.
3. Expenditures. (§300.133)
  - a. Each LEA must spend the following on providing special education and related services (including direct services) to parentally placed private school students with disabilities:
    - (1) For students ages 3 through 21, an amount that is the same proportion of the LEA's total subgrant under Section 611(f) of Part B of the IDEA as the number of private school students with disabilities ages 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of students with disabilities in its jurisdiction ages 3 through 21.
    - (2) For students ages 3 through 5, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the Part B of the IDEA as the number of parentally placed private school students with disabilities ages 3 through 5

who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA, is to the total number of students with disabilities in its jurisdiction ages 3 through 5.

- (a) Students ages 3 through 5 are considered to be parentally placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private preschool that is part of a private elementary school.
- (3) If an LEA has not expended for equitable services all of the required funds by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally placed private school students with disabilities during a carryover period of one additional year.
- b. In calculating the proportionate amount of Federal funds to be provided for parentally placed private school students with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete Child Find process to determine the number of parentally placed students with disabilities attending private schools located in the LEA.
- c. Annual count of the number of parentally placed private school students with disabilities.
  - (1) Each LEA must:
    - (a) After timely and meaningful consultation with representatives of parentally placed private school students with disabilities, determine the number of parentally placed private school students with disabilities attending private schools located in the LEA; and
    - (b) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

- (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally placed private school students with disabilities in the next subsequent fiscal year.
  - d. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally placed private school students with disabilities.
4. Consultation. (§300.134)

To ensure timely and meaningful consultation, an LEA must consult with private school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students regarding the following:

- a. The Child Find process, including:
  - (1) How parentally placed private school students suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.
- b. The determination of the proportionate share of Federal funds available to serve parentally placed private school students with disabilities, including the determination of how the proportionate share of those funds was calculated.
- c. The consultation process among the LEA, private school officials, and representatives of parents of parentally placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally placed students with disabilities identified through the Child Find process can meaningfully participate in special education and related services.
- d. How, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including a discussion of:
  - (1) The types of services, including direct services and alternate service delivery mechanisms; and

- (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and
    - (3) How and when those decisions will be made;
  - e. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
- 5. Written affirmation. (§300.135)
  - a. When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.
  - b. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the USOE.
- 6. Compliance. (§300.136)
  - a. A private school official has the right to submit a complaint to the USOE that the LEA:
    - (1) Did not engage in consultation that was meaningful and timely; or
    - (2) Did not give due consideration to the views of the private school official.
  - b. Procedure.
    - (1) If the private school official wishes to submit a complaint, the official must provide to the USOE the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
    - (2) The LEA must forward the appropriate documentation to the USOE.
    - (3) If the private school official is dissatisfied with the decision of the USOE, the official may submit a complaint to the

Secretary by providing the information on noncompliance described above; and the USOE must forward the appropriate documentation to the Secretary.

7. Equitable services determined. (§300.137)
  - a. No parentally placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.
  - b. Decisions about the services that will be provided to parentally placed private school students with disabilities must be made in accordance with the consultation and proportionate share requirements.
  - c. The LEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school students with disabilities.
  - d. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from an LEA, the LEA must:
    - (1) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and
    - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
8. Equitable services provided. (§300.138)
  - a. The services provided to parentally placed private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements.
  - b. Parentally placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools.

- c. Services provided in accordance with a services plan.
  - (1) Each parentally placed private school student with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the student in light of the services that the LEA has determined it will make available to parentally placed private school students with disabilities.
  - (2) The services plan must, to the extent appropriate:
    - (a) Meet the same content requirements as the IEP including access and progress in the general curriculum, or for a student ages 3 through 5, including access and progress in age appropriate activities, with respect to the services provided; and
    - (b) Be developed, reviewed, and revised consistent with the IEP provisions in Rule III.H.
- d. Provision of equitable services.
  - (1) Services must be provided:
    - (a) By employees of an LEA; or
    - (b) Through contract by the LEA with an individual, association, agency, organization, or other entity.
  - (2) Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, must be secular, neutral, and nonideological.
- 9. Location of services and transportation. (§300.139)
  - a. Services to parentally placed private school students with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
  - b. Transportation.
    - (1) If necessary for the student to benefit from or participate in the services provided under this part, a parentally placed

private school student with a disability must be provided transportation:

- (a) From the student's school or the student's home to a site other than the private school; and
  - (b) From the service site to the private school, or to the student's home, depending on the timing of the services.
- (2) LEAs are not required to provide transportation from the student's home to the private school.
  - (3) The cost of the transportation may be included in calculating whether the LEA has met the requirements for proportionate share spending.
10. Due process complaints and State complaints. (§300.140)
- a. Due process not applicable, except for Child Find.
    - (1) Except as provided in VI.B.10.b, the procedures for State complaints and due process hearing requests do not apply to complaints that an LEA has failed to meet the requirements of Part B of the IDEA and these Rules, including the provision of services indicated on the student's services plan.
  - b. Child Find complaints to be filed with the LEA in which the private school is located.
    - (1) The procedures for State complaints and due process hearing requests apply to complaints that an LEA has failed to meet the Child Find requirements in Part B of the IDEA and these Rules.
    - (2) Any due process complaint regarding the Child Find requirements (as described in VI.B.10.b(1)) must be filed with the LEA in which the private school is located, and a copy must be forwarded to the USOE.
  - c. State complaints.
    - (1) Any complaint that an LEA has failed to meet the requirements for provision of services, expenditures, consultation, written affirmation, determination of equitable

services, location of services, due process and State complaints, funds not to benefit a private school, use of personnel, separate classes prohibited, and use of property, equipment, and supplies must be filed in accordance with the State complaint procedures described in Rule IV.G.

- (2) A complaint filed by a private school official under the meaningful and timely consultation, or due consideration to views of private school official requirements must be filed with the USOE in accordance with the procedures in VI.B.6.b.

11. Requirement that funds not benefit a private school. (§300.141)

- a. An LEA may not use funds provided under Section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- b. The LEA must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally placed private school students with disabilities, but not for meeting:
  - (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in the private school.

12. Use of personnel. (§300.142)

- a. An LEA may use funds available under Sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:
  - (1) To the extent necessary to provide services contained in service plans for parentally placed private school students with disabilities; and
  - (2) If those services are not normally provided by the private school.
- b. An LEA may use funds available under Sections 611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services contained in service plans for parentally placed private school students with disabilities if:

- (1) The employee performs the services outside of his or her regular hours of duty; and
- (2) The employee performs the services under public supervision and control.

13. Separate classes prohibited. (§300.143)

An LEA may not use funds available under Section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if:

- a. The classes are at the same site; and
- b. The classes include students enrolled in public schools and students enrolled in private schools.

14. Property, equipment, and supplies. (§300.144)

- a. An LEA must control and administer the funds used to provide special education and related services, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.
- b. The LEA may place equipment and supplies in a private school for the period of time needed for the Part B program.
- c. The LEA must ensure that the equipment and supplies placed in a private school:
  - (1) Are used only for Part B purposes; and
  - (2) Can be removed from the private school without remodeling the private school facility.
- d. The LEA must remove equipment and supplies from a private school if:
  - (1) The equipment and supplies are no longer needed for Part B purposes; or
  - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- e. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

**VI.C. STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE. (§300.148)**

1. An LEA is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if that LEA made a FAPE available to the student and the parents elected to place the student in a private school or facility. However, the LEA must include that student in the population whose needs are addressed consistent with Rule VI.B.
2. Disagreements between the parents and an LEA regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the State complaint and due process procedures in Rule IV.G-V.
3. If the parents of a student with a disability, who previously received special education and related services under the authority of an LEA, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the USOE and LEAs.
4. The cost of reimbursement may be reduced or denied if:
  - a. At the most recent IEP team meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or
  - b. At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the LEA of the information described in VI.C.4.a;
  - c. Prior to the parents' removal of the student from the public school, the LEA informed the parents, through the written prior notice requirements of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and

reasonable), but the parents did not make the student available for the evaluation; or

- d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
5. Notwithstanding the requirements for parents to provide notice to the LEA prior to removal of the student, the cost of reimbursement:
- a. Must not be reduced or denied for failure to provide the notice if:
    - (1) The school prevented the parents from providing the notice;
    - (2) The parents had not received written prior notice of the notice requirement in VI.C.4.a-b; or
    - (3) Compliance with the notice requirements in VI.C.4.a-b would likely result in physical harm to the student; and
  - b. May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
    - (1) The parents are not literate or cannot write in English; or
    - (2) Compliance with VI.C.4.a-b would likely result in serious emotional harm to the student.

#### **VI.D. STUDENTS WITH DISABILITIES ENROLLED IN HOME SCHOOL.**

- 1. The LEA is responsible for location, identification, and evaluation for eligibility for home-schooled students in its boundaries.
- 2. A home-schooled student shall meet the eligibility criteria for students with disabilities in conformity with II.D-H, including proper documentation, using comparable procedures to those required for identifying an eligible public school student.
- 3. If a parent of a student 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 (§300.300):
  - a. The LEA may not use the consent override procedures; and
  - b. The LEA is not required to consider the student as eligible for services.

4. **Students enrolled in home school full time.** No student with a disability who is home-schooled full time has an individual right to receive any of the special education and related services that the student would receive if enrolled in a public school.
5. The LEA must make the final decision with respect to the services, if any, to be provided to eligible home school students with disabilities.
6. The LEA may develop a services plan (SP) for home-schooled students with disabilities who are eligible for special education and related services under Part B of the IDEA and these Rules. The services plan shall describe the special education and related services, if any, that the LEA will provide to the student, and must, to the extent appropriate:
  - a. Meet the IEP content requirements with respect to the services provided; and
  - b. Be developed, reviewed, and revised consistent with the IEP provisions in Rule III.H.
7. The LEA shall determine where and when any services specified in the services plan will be provided.
8. **Dual enrollment.** A student with a disability who is enrolled in both home school and a public school is considered a dual enrollment student (UCA 53-A-11-102.5) and is entitled to be served under an IEP for a portion of the school day the student is enrolled in public school.
9. Home schools do not meet the definition of private schools. (Letter from Utah State Attorney General's Office to State Superintendent of Public Instruction, February 14, 1997.)

**VI.E. APPLICABILITY OF PART B OF THE IDEA TO STATE AND LOCAL AGENCIES. (§300.2)**

1. The provisions of Part B of the IDEA and these Rules:
  - a. Apply to all political subdivisions of the State that are involved in the education of students with disabilities, including:
    - (1) The State educational agency (SEA/USOE).
    - (2) Local educational agencies (LEAs), and public charter schools that are not otherwise included as LEAs and are not a school of an LEA.

- (3) Other State agencies and schools (such as the Department of Human Services and State schools for students with deafness or students with blindness).
  - (4) State and local juvenile and adult correctional facilities; and
- b. Are binding on each educational and non-educational public agency in the State that provides special education and related services to students with disabilities, regardless of whether that agency is receiving funds under Part B of the IDEA.

**VI.F. USOE RESPONSIBILITIES FOR STUDENTS WITH DISABILITIES IN PRIVATE INSTITUTIONS AND FACILITIES. (§300.118)**

- 1. The USOE must ensure that the LRE requirements of Part B of the IDEA and these Rules are effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).
- 2. USOE responsibility for general supervision. (§300.149)
  - a. The USOE is responsible for ensuring:
    - (1) That the requirements of Part B of the IDEA are carried out; and
    - (2) That each educational program for students with disabilities administered within the State, including each program administered by any other State or local agency:
      - (a) Is under the general supervision of the persons responsible for educational programs for students with disabilities in the USOE; and
      - (b) Meets the educational standards of the USOE.
  - b. Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to students with disabilities in the State.
  - c. The Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons (§300.149).

**VI.G. METHODS AND PAYMENT FOR FAPE IN RESIDENTIAL FACILITIES.  
(§300.103)**

1. Each state may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the IDEA. For example, if it is necessary to place a student with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.
2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.
3. The USOE must ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

**VI.H. STUDENTS WITH DISABILITIES CONVICTED AS ADULTS AND  
INCARCERATED IN ADULT PRISONS. (§300.324)**

1. The obligation to make FAPE available, including special education and related services under Part B of the IDEA and these Rules, to all students with disabilities applies to students ages 18 through 21 who are incarcerated in adult prisons, with the following exceptions:
  - a. The requirements relating to participation of students with disabilities in State- and district-wide assessments.
  - b. The requirements relating to transition planning and transition services with respect to students 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.
2. The IEP team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The IEP and LRE requirements do not apply with respect to such modification.

**VII. TRANSITIONS.****VII.A. TRANSITION FROM PART C TO PART B OF THE IDEA.**

1. At the beginning of each school year, each LEA must have in effect, for each student with a disability within its jurisdiction, an IEP for students ages 3 through 5 (§300.323).
2. The USOE and LEA must have in effect policies and procedures (§300.124) to ensure that:
  - a. Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs;
  - b. By the eligible student's third birthday, an IEP has been developed and is being implemented for the student;
  - c. If a student's third birthday occurs after the end of the school year, the student's IEP team shall determine the date in the next school year when services under the IEP will begin, except that the IEP team may determine that extended school year services are needed outside the school year; and
  - d. Each affected LEA will participate in transition planning conferences arranged by the designated lead agency for Part C.
3. In developing the IEP for a student with a disability ages 3 through 5 or, at the discretion of the LEA, a two-year-old student with a disability who will turn age 3 during the school year, the IEP team must consider the contents of an Individual Family Service Plan that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills (§300.323).
4. In the case of a student who was previously served under Part C of the IDEA, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services (§300.321).

**VII.B. TRANSITION SERVICES—SCHOOL TO POST-SCHOOL.**

## 1. Purpose. (§300.1)

To ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

## 2. Definition. (§300.43)

## a. Transition services means a coordinated set of activities for a student with a disability that:

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student's needs, taking into account the student's strengths, preferences and interests; and includes:

(a) Instruction;

(b) Related services;

(c) Community experiences;

(d) The development of employment and other post-school adult living objectives; and

(e) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

## b. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

3. Parent participation (§300.322). For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16 (such as in an IEP meeting conducted when the student is 15 years old), or younger if determined appropriate by the IEP team, the notice of meeting must indicate:
  - a. That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student; and
  - b. That the LEA will invite the student; and
  - c. Identify any other agency that will be invited, with the consent of the parents or student age 18 or older, to send a representative.
4. IEP team (§300.321). For an IEP team meeting that includes as a purpose the development of a transition plan:
  - a. The LEA must invite the student with a disability to attend the student's IEP meeting if a purpose of the meeting will be the consideration of the post-secondary goals for the student and the transition services needed to assist the student in reaching those goals.
  - b. If the student does not attend the IEP meeting, the LEA must take other steps to ensure that the student's preferences and interests are considered.
  - c. To the extent appropriate, with the consent of the parents or a student who is age 18 or older, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
5. Definition of IEP. (§300.320(b))
  - a. Transition services. Beginning not later than the first IEP to be in effect when the student turns 16 (such as in an IEP meeting conducted when the student is 15 years old), or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP must include:
    - (1) Appropriate measurable postsecondary goals, including academic and functional goals, based upon age-appropriate transition assessments related to training or education, employment, and, where appropriate, independent living skills;

- (2) The transition services, including courses of study, needed to assist the student in reaching the student's post-secondary goals.
  
- 6. Transfer of rights at age of majority. (§300.320(c) & §300.520)
  - a. Beginning not later than one year before the student reaches the age of majority (age 18), the IEP must include a statement that the student and the student's parents have been informed of the student's rights under Part B of the IDEA that will transfer to the student on reaching the age of majority (except for a student with a disability who has been determined to be incompetent by a court). These rights include:
    - (1) An adult student has the right to approve his or her own educational placement and Individualized Education Program (IEP) without help from parents, family, or special advocates.
    - (2) An adult student has the right to allow parents, family, or special advocates to help if he/she desires.
  - b. The LEA must provide any notice required by Part B of the IDEA and these Rules to both the student and the parents (§300.520).
  - c. All rights accorded to parents under Part B of the IDEA transfer to the student.
  - d. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.
  
- 7. Termination of eligibility as a change of placement. (§300.305)
  - a. An evaluation is not required before the termination of a student's eligibility under this part due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE under Utah law.
  - b. For a student whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE under Utah law, an LEA must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

8. Failure to meet transition objectives. (§300.324)
  - a. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
  - b. Nothing 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 students with disabilities who meet the eligibility criteria of that LEA (§300.324).
  - c. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or an interagency agreement, to provide or pay for any services that are also considered special education or related services such as, but not limited to, services relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services that are necessary for ensuring a FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement or as provided in an interagency agreement.
  - d. If a public agency other than an educational agency fails to provide or pay for the special education and related services, the LEA must provide or pay for these services to the student in a timely manner. The LEA is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA in accordance with the terms of the interagency agreement (§300.154).
9. Students with disabilities in adult prisons. (§300.324)
  - a. The requirements relating to transition planning and transition services, do not apply with respect to those students 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.
  - b. The obligation to make FAPE available to all students with disabilities (§300.102) does not apply with respect to students ages 18 through 21 to the extent that State law does not require that

special education and related services under Part B of the IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility:

- (1) Were not actually identified as being a student with a disability; and
  - (2) Did not have an IEP under Part B of the IDEA.
- c. The exception does not apply to students with disabilities, ages 18 through 21, who:
- (1) Had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or
  - (2) Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability.

**VII.C. GRADUATION.**

- 1. The obligation of the LEA to make FAPE available to all students with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma (§300.102(a)(3)(i)).
  - a. The exception in VII.C.1 does not apply to students that have graduated from high school but have not been awarded a regular high school diploma (§300.102(a)(3)(ii)).
  - b. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice (§300.102(a)(3)(ii)).
    - (1) The written prior notice must contain all the requirements in IV.D of these Rules (§300.503), including being given a reasonable time before the LEA proposed to terminate the student’s eligibility under the IDEA by issuing the student a diploma.
  - c. The term “regular high school diploma” does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED) (§300.102(a)(3)(iv)).

2. The IEP team may amend graduation requirements and must document in the IEP the nature and extent of any modifications, substitutions, and/or exemptions made to accommodate the needs of a student with disabilities.
3. The IEP team must refer to the *USOE Special Education Graduation Guidelines* for additional information.

**VII.D. UTAH SPECIAL EDUCATION ADVISORY PANEL (USEAP) (§300.168)**

USEAP must include not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities.

**VII.E. USOE USE OF PART B FUNDS. (§300.704)**

The USOE may use funds from Part B of the IDEA for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

**VIII. RESPONSIBILITIES OF THE UTAH STATE OFFICE OF EDUCATION.****VIII.A. GENERAL SUPERVISORY AUTHORITY.**

Authority and responsibility to make policy and set standards in the area of education of students with disabilities rests with the Utah State Board of Education by virtue of its constitutional mandate to provide general control and supervision of the public school system (Article X, Section 8) and by specific legislative enactment found in the Utah Code Annotated (UCA) 53A-15-301 through 305. The statutes cited indicate an intended partnership arrangement between the State Board of Education and local education agencies (LEAs). The statute provides for general supervision of educational programs for students with disabilities served by all LEAs and institutions concerned with the education of students with disabilities.

**UCA 53A-15-301.**

- (1) (a) All students with disabilities, who are between the ages of 3 and 22 and have not graduated from high school with a regular diploma, are entitled to a free appropriate public education.
- (b) The State Board of Education shall adopt Rules consistent with applicable State and Federal law to implement this chapter.
- (2) The Rules adopted by the State Board shall include the following:
  - (a) Appropriate and timely identification of students with disabilities.
  - (b) Diagnosis, evaluation, and classification by qualified personnel.
  - (c) Standards for classes and services.
  - (d) Provision for multi-district programs.
  - (e) Provision for delivery of service responsibilities.
  - (f) Certification/licensure and qualifications for instructional staff.
  - (g) Services for dual enrollment students attending public school on a part-time basis under UCA 53A-11-102.5.
- (3) (a) The State Board shall have general control and supervision over all educational programs for students within the State who have disabilities.
- (b) Those programs must comply with Rules adopted by the State

Board under this section.

- (4) The State Superintendent of Public Instruction shall enforce this chapter.

**UCA 53A-15-302.**

- (1) The State Board of Education shall appoint a State Director of Special Education, who shall be qualified and experienced in the area of special education.
- (2) The State Director has the following duties and responsibilities:
- (a) To assist the State Board and State Superintendent of Public Instruction in performing their duties under this chapter.
  - (b) To encourage and assist school districts and other authorized public agencies in the organization of programs for students with disabilities.
  - (c) To provide general supervision over all public programs offered through a public school, public agency, public institution, or private agency for students with disabilities.
  - (d) To cooperate with private schools and other private agencies concerned with educating and training students with disabilities.
  - (e) To coordinate all State programs for students with disabilities.

**UCA 53A-15-303.**

- (1) Each school district shall provide, either singly or in cooperation with other school districts or public institutions, a free appropriate education program for all students with disabilities who are residents of the district. The program shall include necessary special facilities, instruction, and education-related services. The costs of a district's program, or a district's share of a joint program, shall be paid from district funds.

[Each public charter school shall provide a free appropriate education for all eligible students with disabilities who are enrolled in the school.]

- (2) School districts [and public charter schools] that provide special education services under this chapter in accordance with applicable Rules of the State Board of Education shall receive reimbursement from the Board under Chapter 17, Title 53A, the Minimum School Finance Act, and other applicable laws.

- (3) A school district may, singly or in cooperation with other public entities, provide education and training for persons with disabilities who are younger than 3 or older than 22. The cost of such a program may be paid from fees, contributions, and other funds received by the district for support of the program, but may not be paid from public education funds.

In order to obtain funds under Part B of the Individuals with Disabilities Education Act (IDEA), the State Office of Education must submit to the U.S. Department of Education, on behalf of the State of Utah as a whole, written policies and procedures governing the operation of special education programs, and must comply with a series of Federal administrative requirements described in these Rules. Therefore, all provisions under Part B of the IDEA apply to each political subdivision of the State that is involved in the education of students with disabilities, irrespective of whether the subdivision receives any funds under Part B of the IDEA. This includes State and local juvenile and adult correctional facilities. The requirements of Part B of the IDEA and these Rules are binding on each LEA and other public agency that has direct or delegated authority to provide special education and related services in the State of Utah.

#### **VIII.B. STATE ELIGIBILITY.**

1. Eligibility for assistance (§300.100). A State is eligible for assistance under Part B of the IDEA for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in this section.
2. State Eligibility for Preschool (§300.804). A state is eligible for a grant under Section 619 of the IDEA if the State is eligible under Section 612 of the IDEA to receive a grant under Part B of the IDEA; and makes FAPE available to all students with disabilities, ages 3 through 5, residing in the State.
3. Program options (§300.110). The State must ensure that each LEA takes steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to nondisabled students in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.
4. Individualized education programs (IEP) (§300.112). The State must ensure that an IEP is developed, reviewed, and revised for each student with a disability in accordance with Section III of these Rules.
5. Technical assistance and training activities (§300.119). Each SEA must carry out activities to ensure that teachers and administrators in all public agencies:

- a. Are fully informed about their responsibilities for implementing the least restrictive environment (LRE) requirements of Part B of the IDEA; and
  - b. Are provided with technical assistance and training necessary to assist them in this effort.
6. Procedural safeguards. (§300.121)
  - a. General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §300.500 through 300.536.
  - b. Procedural safeguards identified. Students with disabilities and their parents must be afforded the procedural safeguards identified in Sections IV and V of these Rules.
7. Evaluation (§300.122). Students with disabilities must be evaluated accordance with §300.300 through 300.311 and Section II of these Rules.
8. Confidentiality of personally identifiable information (§300.123). The State must have policies and procedures in effect to ensure that public agencies in the State comply with §300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.
9. State responsibility regarding students in private schools (§300.129). The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §300.130 through 300.148.
10. SEA implementation of procedural safeguards (§300.150). The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the students with disabilities served by that public agency.
11. Responsibility of SEA and other public agencies (§300.500). Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Section IV and V of these Rules.
12. Overidentification and disproportionality (§300.173). The State has in effect, consistent with the purposes of Part B and with Section 618(d) of the IDEA and Section II of these Rules, policies and procedures designed

to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of students as students with disabilities, including students with disabilities with a particular impairment.

### **VIII.C. STATE MONITORING AND ENFORCEMENT. (§300.600)**

1. The USOE must:
  - a. Monitor the implementation of Part B of the IDEA and these Rules;
  - b. Make determinations annually about the performance of each LEA using the categories in 300.603(b)(1);
  - c. Enforce implementation of Part B of the IDEA and these Rules using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in 300.604(a)(1)(technical assistance), (a)(3) (conditions on funding of an LE), (b)(2)(i) (a corrective action plan or improvement plan, (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds in whole or in part, by the SEA); and
  - d. Report annually on the performance of the State and of each LEA under the IDEA. 300.602(b)(1)(i)(A) and (b)(2).
2. In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.
3. The primary focus of the State's monitoring activities must be on:
  - a. Improving educational results and functional outcomes for all students with disabilities; and
  - b. Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.
4. As a part of its responsibilities, the USOE uses quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas, and the indicators established by the Secretary for the State performance plans.

5. As required by this section, the USOE monitors the public agencies located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
  - a. Provision of a free appropriate public education in the least restrictive environment.
  - b. General supervision, including Child Find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services.
  - c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
6. Monitoring activities for Least Restrictive Environment (LRE). (§300.120)
  - a. The USOE must carry out activities to ensure that the LRE requirements are implemented by each LEA.
  - b. If there is evidence that an LEA makes placements that are inconsistent with the LRE requirements, the USOE must:
    - (1) Review the LEA's justification for its actions; and
    - (2) Assist in planning and implementing any necessary corrective action.

#### **VIII.D. USOE PROGRAM MONITORING.**

1. The Utah State Office of Education (USOE) is responsible for the monitoring and evaluation of all public agencies within the State of Utah involved in the education of students with disabilities, ages 3 through 21. Consistent with Federal efforts to create a monitoring system that focuses on program effectiveness and student results, the USOE has developed a model that emphasizes a systematic approach to improve and sustain the service delivery system and to positively affect student success. This monitoring system, Utah's Program Improvement Planning System (UPIPS), promotes a partnership between each LEA or other public agency and the USOE. UPIPS involves active strategic planning and continuous improvement within the framework of compliance.
2. In the UPIPS process, LEAs are scheduled on a staggered five-year cycle.

- a. Each year of the process, Years 1-5, contains a set of activities that moves from LEA self assessment, USOE validation of findings, implementation of corrective actions, if needed, and program improvement planning.
  - b. LEAs shall complete the required activities according to the timeline provided by the USOE.
  - c. All LEAs entering the five-year cycle are provided with training and printed details of all requirements.
  - d. Additional training, technical assistance, and ongoing support for LEA staff in addressing the responsibilities and requirements is provided throughout the process, as needed. Details of the process and requirements of UPIPS are available at [www.schools.utah.gov](http://www.schools.utah.gov).
3. Results of the monitoring process, for the State as a whole and for each LEA, are posted on the USOE web site annually.

**VIII.E. STATE PERFORMANCE PLANS AND DATA COLLECTION. (§300.601)**

1. In conformance with Federal requirements, the USOE has in place a State Performance Plan (SPP) that evaluates the USOE's efforts to implement the requirements and purposes of Part B of the IDEA, and describes how the USOE will improve such implementation.
  - a. The USOE has submitted the SPP to the Secretary of Education for approval in accordance with the approval process.
  - b. Each state must review its SPP at least once every six years, and submit any amendments to the Secretary.
  - c. As part of the SPP, the USOE has established measurable and rigorous targets for the indicators established by the Secretary under the priority areas.
2. Data collection.
  - a. The USOE must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the SPP.
  - b. The USOE, as permitted by the Secretary, collects data on specific indicators through USOE monitoring or sampling, and collects data on those indicators for each LEA at least once during the period of the SPP.

- c. Nothing in Part B of the IDEA shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the IDEA.
3. State use of targets and reporting. (§300.602)
- a. The USOE uses the targets established in the State Performance Plan (SPP) and the priority areas to analyze the performance of each LEA.
  - b. Public reporting and privacy.
    - (1) The USOE:
      - (a) Reports annually to the public on the performance of each LEA located in the State on the targets in the SPP as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary; and
      - (b) Makes each of the following items available through public means; the State's performance plan (SPP); annual performance reports (APR); and the State's annual reports on the performance of each LEA location in the State.
    - (2) In doing so, the State must, at a minimum, post the plan and reports on the SEA's web site, and distribute the plan and reports to the media and through public agencies.

**VIII.F. PERFORMANCE GOALS AND INDICATORS. (§300.157)**

- 1. The USOE has established goals for the performance of students with disabilities in the State that:
  - a. Promote the purposes of these Rules as specified in Rule I.A;
  - b. Are the same as the State's objectives for progress by students in its definition of adequate yearly progress, including the State's objectives for progress by students with disabilities under Section 1111(b)(2)(C) of the ESEA;
  - c. Address graduation rates and dropout rates; and

- d. Are consistent, to the extent appropriate, with any other goals and academic standards for students established by the State.
2. The USOE has established performance indicators that the State will use to assess progress toward achieving those goals, including measurable annual objectives for progress by students with disabilities under the ESEA.
3. The USOE reports annually to the Secretary and the public on the progress of the State, and of students with disabilities in the State, toward meeting the goals established under VIII.F.1, which include elements of the reports required under Section 1111(h) of the ESEA.

**VIII.G. SECRETARY'S REVIEW AND DETERMINATION REGARDING STATE PERFORMANCE. (§300.603)**

1. The Secretary annually reviews the USOE's submitted performance report.
2. Based on the information provided by the USOE in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the USOE:
  - a. Meets the requirements and purposes of Part B of the IDEA;
  - b. Needs assistance in implementing the requirements of Part B of the IDEA;
  - c. Needs intervention in implementing the requirements of Part B of the IDEA; or
  - d. Needs substantial intervention in implementing the requirements of Part B of the IDEA.
3. Notice and opportunity for a hearing.
  - a. For such determinations, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.
  - b. The hearing consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in VIII.G.2.

4. Enforcement. (§300.604)
  - a. **Needs assistance.** If the Secretary determines, for two consecutive years, that an SEA needs assistance in implementing the requirements of Part B of the IDEA, the Secretary takes one or more of the following actions:
    - (1) Advises the State of available sources of technical assistance that may help the SEA address the areas in which the SEA needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include:
      - (a) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
      - (b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
      - (c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
      - (d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the IDEA, and private providers of scientifically based technical assistance.
    - (2) Directs the use of State-level Section 611 funds under on the area or areas in which the State needs assistance.
    - (3) Identifies the State as a high-risk grantee and imposes special conditions on the SEA's grant under Part B of the IDEA.

- b. **Needs intervention.** If the Secretary determines, for three or more consecutive years, that an SEA needs intervention in implementing the requirements of Part B of the IDEA, the following shall apply:
- (1) The Secretary may take any of the actions described in the “needs assistance” section above.
  - (2) The Secretary takes one or more of the following actions:
    - (a) Requires the SEA to prepare a corrective action plan or improvement plan if the Secretary determines that the SEA should be able to correct the problem within one year.
    - (b) Requires the State to enter into a compliance agreement under Section 457 of the General Education Provisions Act, as amended, 20 USC 1221 et seq. (GEPA), if the Secretary has reason to believe that the SEA cannot correct the problem within one year.
    - (c) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the SEA's funds under Section 611 of the IDEA, until the Secretary determines the SEA has sufficiently addressed the areas in which the State needs intervention.
    - (d) Seeks to recover funds under Section 452 of GEPA.
    - (e) Withholds, in whole or in part, any further payments to the State under Part B of the IDEA.
    - (f) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- c. **Needs substantial intervention.** At any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the IDEA or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the IDEA, the Secretary takes one or more of the following actions:
- (1) Recovers funds under Section 452 of GEPA.

- (2) Withholds, in whole or in part, any further payments to the State under Part B of the IDEA.
    - (3) Refers the case to the Office of the Inspector General at the Department of Education.
    - (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
  - d. Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within thirty (30) days of taking enforcement action pursuant to needs assistance, needs intervention, and needs substantial intervention, on the specific action taken and the reasons why enforcement action was taken.
5. Withholding funds. (§300.605)
- a. Prior to withholding any funds under Part B of the IDEA, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §300.180 through 300.183.
  - b. Pending the outcome of any hearing to withhold payments, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the IDEA, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the IDEA should not be suspended.
  - c. Nature of withholding.
    - (1) If the Secretary determines that it is appropriate to withhold further payments, the Secretary may determine:
      - (a) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination; or
      - (b) That the SEA must not make further payments under Part B of the IDEA to specified State agencies or LEAs that caused or were involved in the Secretary's determination.

- (2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified:
  - (a) Payments to the State under Part B of the IDEA must be withheld in whole or in part; and
  - (b) Payments by the SEA under Part B of the IDEA must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination, as the case may be.

6. Public attention. (§300.606)

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action subject to (§300.604), the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action, including, at a minimum, by posting the notice on the USOE's Web site and distributing the notice to the media and through public agencies.

7. Divided SEA responsibility for students convicted as adults. (§300.607)

If responsibility for ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to an LEA rather than the USOE, and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the IDEA are related to a failure by the LEA, the Secretary takes appropriate corrective action to ensure compliance with Part B of the IDEA, except that:

- a. Any reduction or withholding of payments to the State must be proportionate to the total funds allotted under Section 611 of the IDEA to the State as the number of eligible students with disabilities in adult prisons under the supervision of the other LEA is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the USOE; and
- b. Any withholding of funds under must be limited to the specific LEA or other public agency responsible for the failure to comply with Part B of the IDEA.

**VIII.H. STATE ENFORCEMENT (§300.608)**

1. If the USOE determines that an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the SPP, the USOE must

prohibit the LEA from reducing the LEA's maintenance of effort for any fiscal year.

2. Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the IDEA.

#### **VIII.I. SEA REPORTING REQUIREMENTS.**

1. The SEA must annually report to the Secretary on the information required by Section 618 of the IDEA at times specified by the Secretary, and the SEA must submit the report on forms provided by the Secretary (§300.640).
2. Annual report of children served—information required in the report. (§300.641)
  - a. For purposes of the annual report required by Section 618 of the IDEA and §300.640, the State and the Secretary of the Interior must count and report the number of students with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.
  - b. For the purpose of this reporting provision, a student's age is the student's actual age on the date of the child count.
  - c. The SEA may not report a student under more than one disability.
  - d. If a student with a disability has more than one disability, the SEA must report that student in accordance with the following procedure:
    - (1) If a student has only two disabilities and those disabilities are deafness and blindness, and the student is not reported as having a developmental delay, that student must be reported under the category "deafblindness."
    - (2) A student who has more than one disability and is not reported as having deafblindness or as having a developmental delay must be reported under the category "multiple disabilities."
3. Data reporting. (§300.642)
  - a. Protection of personally identifiable data. The data described in Section 618(a) of the IDEA and in §300.641 must be publicly reported by each state in a manner that does not result in

disclosure of data identifiable to individual students.

- b. Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in Section 618(a) of the IDEA through sampling.
4. Annual report of students served—certification (§300.643). The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of students with disabilities receiving special education and related services on the dates in question.
5. Annual report of children served—criteria for counting students. (§300.644)

The SEA may include in its report students with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that:

- a. Provides them with both special education and related services that meet State standards;
  - b. Provides them only with special education, if a related service is not required, that meets State standards; or
  - c. In the case of students with disabilities enrolled by their parents in private schools, counts those students who are eligible under the IDEA and receive special education or related services or both that meet State standards under §300.132 through 300.144.
6. Annual report of children served—other responsibilities of the SEA. (§300.645)

In addition to meeting the other reporting requirements, the SEA must:

- a. Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;
- b. Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a);
- c. Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

- d. Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §300.640 through 300.644; and
  - e. Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.
7. Disproportionality. (§300.646)
- a. Each state that receives assistance under Part B of the IDEA must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to:
    - (1) The identification of students as students with disabilities, including the identification of students as students with disabilities in accordance with a particular impairment described in Section 602(3) of the IDEA;
    - (2) The placement in particular educational settings of these students; and
    - (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
  - b. Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of students as students with disabilities, or the placement in particular educational settings of these students, in accordance with VIII.I.7.a, the State must:
    - (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.
    - (2) Require any LEA identified under VIII.I.7.a to reserve the maximum amount of funds under Section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve students in the LEA, particularly, but not exclusively, students in those groups that were significantly overidentified under VIII.I.7.a; and
    - (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under VIII.I.7.b(1).

**VIII.J. PROVISION OF TECHNICAL ASSISTANCE. (§300.704(b)(4)(i))**

1. Each LEA in the State shall be assigned a USOE Special Education Specialist as a Technical Assistant (TA).
  - a. The USOE TAs are responsible for establishing and maintaining communication links with their assigned LEAs as well as offering technical assistance to support LEAs in providing appropriate special education services to students with disabilities.
  - b. The TAs also assist LEA administrative and program staff in developing and delivering inservice training programs designed to provide personnel with the skills and competencies needed to work effectively with students with disabilities.
  - c. The USOE staff assists LEAs in ensuring continued compliance with State and Federal special education law, including the resolution of allegations of noncompliance received under the State complaint, mediation, and due process hearing procedures.
2. TAs provide ongoing support to LEAs in response to newly emerging and long-term issues.

**VIII.K. PERSONNEL QUALIFICATIONS. (§300.156)**

1. Consistent with the provisions of Part B of the IDEA, the USOE has established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities.
2. The USOE's system for ensuring that personnel are appropriately and adequately prepared and trained includes conformance with Utah State Board of Education Administrative Rule.
3. Qualifications for special education teachers.

The qualifications established by the USOE ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the ESEA.

4. Related services personnel and paraprofessionals.

The qualifications include qualifications for related services personnel and paraprofessionals that:

- a. Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
- b. Ensure that related services personnel who deliver services in their discipline or profession:
  - (1) Meet the requirements; and
  - (2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- c. Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part, to be used to assist in the provision of special education and related services under Part B of the IDEA to students with disabilities.

5. Addressing Shortage of Personnel.

- a. The USOE has adopted a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to students with disabilities.
- b. The Utah Board of Education Administrative Rules contain additional information.

6. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular USOE, LEA, or other public agency employee to be highly qualified, or to prevent a parent from filing a State complaint about staff qualifications with the USOE.

**VIII.L. INTERAGENCY COLLABORATION.**

It is the policy of this State that all agencies that provide services to persons with disabilities coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the legislature that services and supports

provided be coordinated to meet the individual needs of persons with disabilities; and, within appropriations authorized by the legislature, the State Director of Special Education, the Executive Director of the Utah State Office of Rehabilitation, the Executive Director of the Department of Human Services, and the Family Health Services Director within the Department of Health, or their designees, and the affected local education agency shall, to the extent possible, cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students with disabilities entitled to a free appropriate education under UCA 62A-5a-105, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.

1. **Coordinating Council for People with Disabilities (CCPD).** The CCPD mandated by UCA 62A-5a-103 shall consist of:
  - a. The Director of the Division of Services for People with Disabilities within the Department of Human Services, or designee.
  - b. The Director of Family Health Services Programs, appointed under Section 26-10-3, or designee.
  - c. The Executive Director of the Utah State Office of Rehabilitation, or designee.
  - d. The State Director of Special Education, or designee.
  - e. The Director of the Division of Health Care Financing within the Department of Human Services, or designee.
  - f. The Director of the Division of Mental Health within the Department of Human Services, or designee.
  - g. The Superintendent of Schools for the Deaf and the Blind, or designee.
  - h. A person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities appointed by the members listed above.

The CCPD has authority, if local or individual efforts have failed, to coordinate the appropriate transition of persons with disabilities who receive services and support from one State agency to receive services and support from another State agency; coordinate policies governing the provision of services and support for persons with disabilities by State agencies; and consider issues regarding eligibility for services and support

and, where possible, develop uniform eligibility standards for State agencies.

2. Utah's Administrative Procedures Act details the procedures by which issues of program and financial responsibility are determined and conflicts arising from interagency efforts are resolved. The Administrative Procedures Act also identifies procedures under which the LEAs and other public agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to an agreed-upon education and treatment plan, or to otherwise implement the provisions of the agreement. The Coordinating Council for People with Disabilities (CCPD) is the State-level policy body responsible, under guidance of the Administrative Procedures Act and under mandate from the Omnibus Disability Services Act (1991), for:
  - a. Coordinating and ensuring that services and supports are provided in a cost-effective manner. It is the intent of the legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities.
  - b. Whenever possible, regard an individual's personal choices concerning services and supports that are best suited to his/her individual needs and that promote his/her independence, productivity, and integration in community life.
3. Methods of ensuring services. (§300.154)

The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the SEA, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute. All interagency agreements or mechanisms will include:

- a. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in this section, including the provision of these services during the pendency of any dispute.
- b. Identification of or a method for defining the financial responsibilities of each agency for providing services.
  - (1) The financial responsibility of each noneducational public agency obligated under Federal or State law, or assigned

responsibility under State policy to provide or pay for any services that are also considered special education or related services, including the State Medicaid agency and other public insurers of students with disabilities, must precede the financial responsibility of the LEA, or the State agency responsible for developing the student's IEP.

- c. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism. (See Utah Administrative Procedures Act.)
  - d. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
  - e. Procedures under which LEAs may initiate proceedings to secure reimbursement from agencies that are parties to the agreement or otherwise implement the agreement.
  - f. Procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.
4. Obligation of noneducational public agencies. (§300.154(b))

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services as defined in these Rules (such as, but not limited to, related services described assistive technology devices and assistive technology services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement.

- a. A noneducational public agency described in this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
- b. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the LEA (or State agency responsible for developing the student's IEP) must provide or pay for these services to the student in a timely manner. The LEA or State agency is authorized

to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in this section.

5. Students with disabilities who are covered by public benefits or insurance. (§300.154(d))
  - a. An LEA may use Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this section, as permitted under the public insurance program, except as provided in VIII.K.9.b.
  - b. With regard to services required to provide a FAPE to an eligible student as described in this section, the LEA:
    - (1) May not require parents to sign up for or enroll in public insurance programs in order for their student to receive a FAPE under Part B of the IDEA.
    - (2) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided as described in this section, but may pay the cost that the parent otherwise would be required to pay. (See VIII.K.11)
    - (3) May not use a student's benefits under a public insurance program if that use would:
      - (a) Decrease available lifetime coverage or any other insured benefit;
      - (b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
      - (c) Increase premiums or lead to the discontinuation of benefits or insurance; or
      - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

- (4) Must obtain parental consent each time that access to public benefits or insurance is sought; and
  - (5) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the LEA or other public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
6. Students with disabilities who are covered by private insurance.  
(§300.154(e))

With regard to services required to provide a FAPE to an eligible student as described in these Rules, an LEA may access a parent's private insurance proceeds only if the parent provides consent. Each time the LEA proposes to access the parent's private insurance proceeds, it must:

- a. Obtain parental consent.
  - b. Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
7. Use of Part B funds.
- a. If an LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits, or insurance when the parent would incur a cost for a specified service required under these Rules to ensure FAPE, the LEA may use its Part B funds to pay for the service.
  - b. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).
8. Proceeds from public or private insurance.
- a. Proceeds from public or private benefits or insurance will not be treated as program income for purposes of 34 CFR 80.25.
  - b. If an LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under these Rules, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in these Rules.

9. Nothing in this section should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public benefits or insurance program.

#### **VIII.M. REPORTING ON SUSPENSION AND EXPULSION RATES. (§300.170)**

1. Annually, LEAs shall report to the USOE on the rates of long-term suspensions and expulsions of students with disabilities and nondisabled students, including data disaggregated by race and ethnicity, for the preceding school year. The USOE shall examine these data to determine if significant discrepancies are occurring:
  - a. Among LEAs in Utah; or
  - b. Between nondisabled students and students with disabilities within an LEA.
2. If discrepancies are occurring, the USOE shall review and, if appropriate, require revisions in both USOE and LEA policies, procedures, and practices to ensure compliance with Part B of the IDEA.
3. Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:
  - a. The development and implementation of IEPs;
  - b. The use of positive behavioral interventions and supports; and
  - c. Procedural safeguards.

#### **VIII.N. PUBLIC PARTICIPATION. (§300.165)**

1. The USOE ensures that, prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA, including any amendments to those policies and procedures, there are public hearings, an adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of students with disabilities.
2. The USOE complies with the requirement of VIII.N.1, by maintaining documentation that, prior to the adoption of policies and procedures, the policies and procedures were subjected to a public review and comment

process consistent with these Rules and in accordance with the Utah Administrative Rulemaking Act, Title R-15-4-4 of the Utah Code.

**VIII.O. UTAH STATE ADVISORY PANEL ON SPECIAL EDUCATION. (§300.167-169)**

The USOE has established and maintains the Utah Special Education Advisory Panel (USEAP) on the education of students with disabilities for the purpose of providing policy guidance to the USOE with respect to special education and related services for students with disabilities, as specified in this section.

1. The membership of the State Advisory Panel, on which each member appointed by the Utah State Superintendent of Public Instruction shall serve a three-year term, shall include, but not be limited to, the following individuals that are representative of the State population, and composed of individuals involved in, or concerned with, the education of students with disabilities:
  - a. Parents of students with disabilities;
  - b. Individuals with disabilities;
  - c. Teachers;
  - d. Representatives of institutions of higher education that prepare special education and related services personnel;
  - e. State and local educational officials;
  - f. Administrators of programs for students with disabilities, including administrators of the McKinney-Vento Homeless Act;
  - g. Representatives of other State agencies involved in the financing or delivery of related services to students with disabilities;
  - h. Representatives of private schools and public charter schools;
  - i. At least one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities;
  - j. A representative from the State child welfare agency responsible for foster care; and
  - k. Representatives from State juvenile and adult corrections agencies.

- I. A majority of the members of the panel must be individuals with disabilities or parents of students with disabilities.
        - m. At the discretion of the State Director of Special Education, the panel may be expanded to include additional members who are involved in or concerned with the education of students with disabilities.
2. The functions of the State Advisory Panel shall include the following:
  - a. Advise the USOE of unmet needs within the State in the education of students with disabilities.
  - b. Comment publicly on any Rules or regulations proposed for issuance by the State regarding the education of students with disabilities.
  - c. Advise the USOE in developing evaluations and reporting on data to the Secretary of the U.S. Department of Education under Section 618 of the Individuals with Disabilities Education Act.
  - d. Advise the USOE in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA.
  - e. Advise the USOE in developing and implementing policies relating to the coordination of services for students with disabilities.
3. The State Advisory Panel shall:
  - a. Meet as often as necessary to conduct its business.
  - b. By July 1 of each year, submit an annual report of panel activities and suggestions to the USOE. This report shall be made available for dissemination to the public in a manner consistent with other public reporting requirements under Part B of the IDEA.
  - c. Ensure that official minutes are kept on all panel meetings and shall be made available to the public upon request.
  - d. Announce all panel meetings and agenda items far enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.
  - e. Ensure that interpreters and other necessary services are provided at panel meetings for panel members or participants.

- f. The members of the State Advisory Panel shall serve without compensation, but the State shall reimburse panel members for reasonable and necessary expenses for attending meetings and performing duties.

**VIII.P. SUBPART G—AUTHORIZATION, ALLOTMENT, USE OF FUNDS, AND AUTHORIZATION OF APPROPRIATIONS.**

The Secretary makes grants to states and provides funds to assist them to provide special education and related services to students with disabilities in accordance with Part B of the Act (§300.700).

- 1. Supplementation of State, local, and other Federal funds. (§300.162)
  - a. Funds paid to a State under Part B of the IDEA must be expended in accordance with all the provisions of Part B of the IDEA.
  - b. Prohibition against commingling.
    - (1) Funds paid to a State under Part B must not be commingled with State funds.
    - (2) The USOE may use a separate accounting system that includes an audit trail of the expenditure of funds under Part B paid to the State to ensure no commingling occurs.
  - c. Funds paid to a State under Part B of the IDEA must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the USOE or LEAs) expended for special education and related services provided to students with disabilities under Part B of the IDEA, and in no case to supplant those Federal, State, and local funds.
- 2. Maintenance of State financial support. (§300.163)
  - a. A State must not reduce the amount of State financial support for special education and related services for students with disabilities, or otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.
  - b. The Secretary reduces the allocation of funds under Section 611 of the IDEA for any fiscal year following the fiscal year in which the State fails to comply with the maintenance of State financial support

requirement by the same amount by which the State fails to meet the requirement.

3. Rule of construction (§300.166). In complying with §300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.
4. Annual description of use of Part B funds. (§300.171)
  - a. In order to receive a grant in any fiscal year, a State must annually describe:
    - (1) How amounts retained for State administration and State-level activities will be used to meet the requirements of Part B of the IDEA; and
    - (2) How those amounts will be allocated among the activities described in §300.704 to meet State priorities based on input from LEAs.
  - b. If a State's plans for use of its funds for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement.
5. **State-level activities. (§300.704)**
  - a. For the purpose of administering Part B of the IDEA, including the high cost fund, Section 619 of the IDEA, and the coordination of activities under Part B of the IDEA with, and providing technical assistance to other programs that provide services to students with disabilities, each state may reserve for each fiscal year an amount calculated by the Secretary.
  - b. States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is calculated based on requirements in §300.704(b)(1-2).
  - c. Some portion of the reserved funds must be used to carry out the following activities:
    - (1) For monitoring, enforcement, and complaint investigation; and

- (2) To establish and implement the mediation process required Part B of the IDEA, including providing for the costs of mediators and support personnel.
- d. Reserved funds also may be used to carry out the following activities:
- (1) For support and direct services, including technical assistance, personnel preparation, and professional development and training;
  - (2) To support paperwork reduction activities, including expanding the use of technology in the IEP process;
  - (3) To assist LEAs in providing positive behavioral interventions and supports and mental health services for students with disabilities;
  - (4) To improve the use of technology in the classroom by students with disabilities to enhance learning;
  - (5) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for students with disabilities;
  - (6) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
  - (7) To assist LEAs in meeting personnel shortages;
  - (8) To support capacity building activities and improve the delivery of services by LEAs to improve results for students with disabilities;
  - (9) Alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities, students enrolled in State-operated or State-supported schools, and students with disabilities in charter schools;
  - (10) To support the development and provision of appropriate accommodations for students with disabilities, or the development and provision of alternate assessments that

are valid and reliable for assessing the performance of students with disabilities, in accordance with Sections 1111(b) and 6111 of the ESEA; and

- (11) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in Section 1116(e) of the ESEA to students with disabilities, in schools or LEAs identified for improvement under Section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, who teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 1111(b)(2)(G) of the ESEA.

e. **Local education agency high-cost fund.**

- (1) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high-need students with disabilities, the USOE has reserved for each fiscal year 10 percent of the amount of funds reserved for other State-level activities:
  - (a) To finance and make disbursements from the high cost fund to LEAs in accordance with VIII.O.5.f(3) during the first and succeeding fiscal years of the high cost fund; and
  - (b) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs.
- (2) A State must not use any of the funds the State reserves which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund.
  - (a) A State must not use more than five (5) percent of the funds the State reserves for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

- (3) The USOE has developed, and must annually review, and amend as necessary, a State plan for the high-cost fund. The plan must:
  - (a) Establish, in consultation and coordination with representatives from LEAs, a definition of a high-need student with a disability that, at a minimum:
    - (i) Addresses the financial impact a high-need student with a disability has on the budget of the student's LEA; and
    - (ii) Ensures that the cost of the high-need student with a disability is greater than three times the average per pupil expenditure (as defined in Section 9101 of the ESEA) in that State;
  - (b) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need students with disabilities served by an LEA;
  - (c) Establish criteria to ensure that placements supported by the fund are consistent with the LRE requirements;
  - (d) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State;
  - (e) Establish an annual schedule by which the USOE must make its distributions from the high cost fund each fiscal year; and
  - (f) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing, describe how these funds will be used.
  - (g) The State makes its final State plan for the high-cost fund available to the public not less than thirty (30) days before the beginning of the school year, including dissemination of such information on the State web site.
- (4) The USOE makes all annual disbursements from the high-cost fund established in accordance with the published State plan.

- (5) The costs associated with educating a high-need student with a disability are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary to implement a student's IEP.
  - (6) The funds in the high-cost fund remain under the control of the State until disbursed to an LEA to support a specific student who qualifies under the State plan for the high-cost funds or distributed to LEAs.
  - (7) The disbursements must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student with a disability to ensure a FAPE for such student.
  - (8) Nothing in this section:
    - (a) Limits or conditions the right of a student with a disability who is assisted under Part B of the IDEA to receive a FAPE in the least restrictive environment; or
    - (b) Authorizes the USOE or an LEA to establish a limit on what may be spent on the education of a student with a disability.
  - (9) Disbursements provided under this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student with a disability under the State Medicaid program under Title XIX of the Social Security Act.
- f. A State may use funds the State reserves for administration, coordination, and technical assistance under VIII.O.1-2 without regard to:
- (1) The prohibition on commingling of funds.
  - (2) The prohibition on supplanting other funds.
6. **Subgrants to LEAs for eligible students ages 3 through 21. (§300.705)**
- a. Each state that receives a grant under section 611 of the IDEA for any fiscal year must distribute any funds the State does not reserve

under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under Section 613 of the IDEA for use in accordance with Part B of the IDEA. **Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs including public charter schools that operate as LEAs, even if the LEA is not servicing any students with disabilities.**

- b. Allocations to LEAs. For each fiscal year for which funds are allocated to States, each state shall allocate funds as follows:
- (1) The State first must award each eligible LEA the amount the LEA would have received under Section 611 of the IDEA for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under Section 611(d) of the IDEA, as that section was then in effect.
  - (2) For any fiscal year after 1999:
    - (a) If a new LEA is created, the State must divide the base allocation for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21, currently provided special education by each of the LEAs;
    - (b) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and
    - (c) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each affected LEA.
    - (d) **If an LEA received a base payment of zero in its first year of operation, the USOE must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities. The USOE must divide the base allocation for the LEAs that would have been**

responsible for serving students with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

c. Reallocation of LEA funds. (300.705)

- (1) If the USOE determines that an LEA is adequately providing FAPE to all students with disabilities residing in the areas served by that agency with State and local funds, the USOE may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the state that are not adequately providing special education and related services residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent that the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.704.
- (2) After the USOE distributes funds under this part to an eligible LEA that is not serving any students with disabilities, the USOE must determine, within a reasonable period of time prior to the end of the carryover period, whether the LEA has obligated the funds. The USOE may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.705.
- (3) Allocation of remaining funds. After making allocations and adjustments, the State must:

- (a) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of students enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
    - (b) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of students living in poverty, as determined by the USOE.
  - d. If the USOE determines that an LEA is adequately providing FAPE to all students with disabilities residing in the area served by that LEA with State and local funds, the USOE may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other LEAs.
- 7. Annually, the USOE shall notify each eligible LEA of the availability of Part B funds. (See Rule IX. A., LEA Eligibility for Part B Funds.)
  - a. Annual requests for Part B funds shall be submitted to the Special Education Services Section of the USOE for review and recommendation for approval.
  - b. Personnel of the Special Education Services Section shall initially review the request for consistency with Federal requirements and will approve appropriate requests.
  - c. An LEA that receives approval for funding shall be notified in writing of:
    - (1) The amount of the grant.
    - (2) The period during which the district may obligate the funds.
    - (3) The Federal requirements that apply to the grant.
  - d. If an LEA makes an amendment to its policies and procedures, the district shall use the same steps as those noted in Rule IX.A.1-2 for submitting original policies and procedures. The State's procedures for approving amended policies and procedures are also contained in Rule IX.A.

### VIII.Q. SUBPART H—PRESCHOOL FOR STUDENTS WITH DISABILITIES.

1. The Secretary provides grants under Section 619 of the IDEA to assist States to provide special education and related services (§300.800);
  - a. To students with disabilities ages 3 through 5; and
  - b. To 2-year-old students with disabilities who will turn 3 during the school year.
2. Reservation for State activities. (§300.812)
  - a. Each state may reserve not more than the amount described in VIII.P.4 for administration and other State-level activities.
  - b. For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under Section 619 of the IDEA for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of:
    - (1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under Section 619 of the Act; or
    - (2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.
3. State administration of Section 619, preschool. (§300.813)
  - a. For the purpose of administering Section 619 of the IDEA (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to students with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under §300.812 for any fiscal year.
4. **Other State-level activities under Section 619. (§300.814)**

Each state must use any funds the State reserves and does not use for administration:

  - a. For support services (including establishing and implementing the mediation process required by Section 615(e) of the IDEA), which may benefit students with disabilities younger than 3 or older than 5

as long as those services also benefit students with disabilities ages 3 through 5;

- b. For direct services for students eligible for services under Section 619 of the IDEA;
- c. For activities at the State and local levels to meet the performance goals established by the State under Section 612(a)(15) of the IDEA; or
- d. To supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for students and families, including students with disabilities and their families, but not more than one percent of the amount received by the State under Section 619 of the IDEA for a fiscal year.

**5. Subgrants to LEAs under Section 619 for eligible students ages 3 through 5. (§300.815)**

Each state that receives a grant under 619 of the IDEA for any fiscal year must distribute all of the grant funds the State does not reserve under §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the IDEA. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children ages three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

- a. Allocations to LEAs. (§300.816)
  - (1) The State must first award each eligible LEA the amount that agency would have received under Section 619 of the IDEA for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under Section 619(c)(3), as such section was then in effect.
  - (2) For fiscal year 1998 and beyond:
    - (a) If a new LEA is created, the State must divide the base allocation determined under VIII.P.5.a for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities

ages 3 through 5 currently provided special education by each of the LEAs;

- (b) If one or more LEAs are combined into a single new LEA, the USOE must combine the base allocations of the merged LEAs:
  - (c) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 5 changes, the base allocations of affected must be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 5 currently provided special education by each LEA; and
  - (d) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any students with disabilities aged three through five years. The State must divide the base allocation determined for the LEAs that would have been responsible for serving students with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of students with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 21, 2009.
- (3) After making allocations as described above, the State must:
- (a) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of students enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
  - (b) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of students living in poverty, as determined by the USOE.
- b. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of students enrolled in public and

private elementary and secondary schools and the numbers of students living in poverty.

6. Reallocation of LEA funds. (§300.817)
  - a. If the USOE determines that an LEA is adequately providing FAPE to all students with disabilities ages 3 through 5 residing in the area served by the LEA with State and local funds, the USOE may reallocate any portion of the funds under Section 619 of the IDEA that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related to all students with disabilities ages 3 through 5 residing in the areas the other LEAs serve. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 300.812.
  - b. After the USOE distributes section 619 funds to an eligible LEA that is not serving any children with disabilities ages three (3) through five (5) years, as provided in §300.815, the USOE must determine, within a reasonable period of time prior to the end of the carryover period, whether the LEA has obligated the funds. The USOE may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas served by those other LEAs. The USOE may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.812.

#### **VIII.R. SEA RESPONSIBILITIES.**

1. **Direct Services by the SEA** (§300.227). The USOE must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to students with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency:
  - a. Has not provided the information needed to establish the eligibility of the LEA under Part B of the IDEA, or elected not to apply for its Part B allotment.
  - b. Is unable to establish and maintain programs of free appropriate public education that meet the requirements of these Rules.

- c. Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs.
    - d. Has one or more students with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these students.
  2. The SEA may provide special education and related services under VIII.Q.1 in the manner and at the locations as the SEA considers appropriate. The services must be provided in accordance with Part B of the IDEA.
  3. If the SEA after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement for eligibility (§300.201-213, Section IX of these Rules), the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement (§300.222(a)).
    - a. Any LEA in receipt of a notice described in VIII.R.3 above, shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency (§300.222(b)).
    - b. The SEA must consider any decision resulting from a hearing held under the procedural safeguards in §300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision (§300.222(c)).
  4. If the LEA is found to be in noncompliance with the provisions of the IDEA and the requirement for submission of local policies and procedures, as described in USOE policy, the LEA shall be given reasonable notice and provided an opportunity for a hearing (§300.155).
    - a. If an LEA disagrees with the decision of the USOE, it shall request a hearing within thirty (30) days of the action.
    - b. Within thirty (30) days after it receives a request for a hearing, the USOE shall hold a hearing on the record and shall review its action.
    - c. No later than ten (10) days after the hearing, the USOE shall issue its written ruling, including findings of fact and reasons for the ruling.

- d. If the USOE determines that its action was contrary to State or Federal statutes, regulations, or rules that govern the program, the USOE shall rescind its action.
5. If the USOE determines that an LEA is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities, a consolidated request for Part B funds shall be required in order to establish joint eligibility (§300.223).
    - a. Annually, the State Director of Special Education shall notify those LEAs within the State that are required to submit a consolidated request.
    - b. A consolidated request shall meet the same minimum requirements of a single district request, including adopting policies and procedures consistent with these Rules, and must be signed by the superintendent of each participating LEA (§300.224).
    - c. LEAs participating in a consolidated request shall be jointly responsible for implementing a program of free appropriate public education for all their students with disabilities.
    - d. Each LEA participating in a consolidated request shall use an accounting system that permits identification of the costs paid for under its subgrant.
    - e. The State shall not make a subgrant that exceeds the sum of the entitlements of the separate local LEAs.
    - f. The provision of services through the establishment of joint eligibility must be consistent with III.P-LRE.

#### **VIII.S. RECORDS RETENTION REQUIREMENTS.**

As required by Federal regulations (2 CFR 11 215.53), all records related to Federal grant funds and compliance shall be retained by the USOE and the LEA for three years (or longer if under an audit exception) after completion of the activity for which they used the funds.

1. Records related to grant funds shall be kept that fully show:
  - a. The amount of funds under the grant;
  - b. How the funds were used;
  - c. The total cost of the project;

- d. The share of that cost provided from other sources; and
  - e. Other records to facilitate an effective audit
2. Records related to program compliance shall include:
- a. Interim and final monitoring reports;
  - b. Negotiated action plans, including documentation of corrective actions taken by the LEA and the USOE;
  - c. Actions taken by an LEA to resolve a formal complaint with the USOE;
  - d. Documentation supporting the implementation of a hearing officer's final decision in a due process hearing;
  - e. Child count and S-3 documents, to include, but not be limited to, entry/exit dates, locations, and service codes; and
  - f. Individual student records, including IEPs, evaluation data, and required consent and written prior notice forms.

**VIII.T. PRIVATE SCHOOL APPROVAL.**

- 1. The USOE shall ensure that a student with disabilities who is placed in a private school or facility by an LEA as a means of providing a free and appropriate public education through an IEP has all the rights of a student with disabilities who is served by an LEA.
- 2. Prior to placement of the student, the USOE and the LEA will review the program of the private school, to determine its compliance with State and Federal regulations for serving students with disabilities.

**VIII.U. DISSEMINATION OF INFORMATION.**

The USOE shall disseminate information throughout the State on program requirements and successful practices in the education of students with disabilities. This shall be ongoing and include activities such as conducting Statewide inservice training, publishing annual committee reports, developing technical assistance papers, guidelines, and manuals, and sponsoring State conferences.

### **VIII.V. FISCAL AUDITING PROCEDURES.**

1. The USOE shall adopt and implement fiscal auditing procedures consistent with Federal single audit requirements. Annually, the Division of School Finance and Business shall conduct an on-site audit review of fiscal records in every LEA in the State. The results of these reviews shall be shared with the Special Education Services Section for the primary purposes of:
  - a. Coordinating the inservice training of district personnel in record keeping procedures; and
  - b. Incorporating the findings into Utah's Program Improvement Planning System (UPIPS) process in order to reduce duplication of effort.
  - c. If FAPE is not being provided by an LEA, the USOE may determine that a special education fiscal audit is required.

### **VIII.W. ACCESS TO INSTRUCTIONAL MATERIALS. (§300.172)**

1. Utah has adopted the National Instructional Materials Accessibility Standard (NIMAS) and is coordinating with the National Instructional Materials Accessibility Center (NIMAC) for the purpose of providing instructional materials to blind persons or other persons with print disabilities, in accordance with publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084).
2. For all purposes of this section, the USOE defines a "timely manner" as follows: the USOE and LEAs must take reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other students receive instructional materials.
3. The USOE is responsible for ensuring that students with disabilities who need instructional materials in accessible formats, and who are not included under the definition of blind or other persons with print disabilities in this section or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
4. USOE coordinates with NIMAC by, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, entering into a written contract with the publisher of the print instructional materials to:

- a. Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
  - b. Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
5. The USOE, to the maximum extent possible, works collaboratively with the State agency responsible for assistive technology programs.
6. Definitions for this section and Rule IX.I:
- a. "Blind persons or other persons with print disabilities" means students served under Part B of the IDEA who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 USC 135a.
  - b. "National Instructional Materials Access Center or NIMAC" means the center established pursuant to Section 674(e) of the IDEA.
  - c. "National Instructional Materials Accessibility Standard or NIMAS" has the meaning given the term in Section 674(e)(3)(B) of the IDEA.
  - d. "Specialized formats" has the meaning given the term in Appendix C of Part B of the IDEA.
7. The definitions in VIII.W.6 apply to each LEA, whether or not the LEA chooses to coordinate with the NIMAC.

#### **VIII.X. PROHIBITION ON MANDATORY MEDICATION. (§300.174)**

1. The USOE prohibits State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812(c)) for a student as a condition of attending school, receiving an evaluation, or receiving services under Part B of the IDEA.
2. Nothing in VIII.X.1 shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the

classroom or school, or regarding the need for evaluation for special education or related services related to Child Find.

**VIII.Y. STATE ADMINISTRATION. (§300.199)**

1. Each state that receives funds under Part B of the IDEA must:
  - a. Ensure that any State rules, regulations, and policies relating to Part B of the IDEA conform to the purposes of this part;
  - b. Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations; and
  - c. Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the IDEA.
2. State rules, regulations, and policies under Part B of the IDEA must support and facilitate LEA and school-level system improvement designed to enable students with disabilities to meet the challenging State student academic achievement standards.

**VIII.Z. NOTIFICATION OF LEA OR STATE AGENCY IN CASE OF INELIGIBILITY. (§300.221)**

If the SEA determines that an LEA or State agency is not eligible under Part B of the IDEA, then the SEA must notify the LEA or State agency of that determination, and provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

**IX. LEA ELIGIBILITY AND RESPONSIBILITIES.****IX.A. LEA ELIGIBILITY FOR IDEA-B FUNDS. (§300.200-300.224)**

1. Annually, the USOE shall notify Local Education Agencies (LEAs), including public charter schools, of the availability of Federal funds under Part B of the IDEA. In order to receive IDEA-B flow-through funds, each LEA must have in effect policies, procedures, and programs that are consistent with these Utah State Board of Education (USBE) Special Education Rules.
2. The LEA must have on file with the USOE the policies and procedures described in this section, including any supporting documentation necessary to ensure their implementation. At a minimum, the LEA must address the following components:
  - a. General Information
  - b. Budget Information and Categories (§300.301-300.376)
  - c. Assurances
  - d. Narrative
    - (1) Introduction
    - (2) Requirements
      - (a) General program description
      - (b) Free Appropriate Public Education/exception to FAPE for certain ages (§300.102)
      - (c) A detailed timeline for accomplishing Full Educational Opportunity Goal
      - (d) Child Find
      - (e) Evaluation and determination of eligibility
      - (f) Confidentiality of personally identifiable information
      - (g) Individualized Education Programs
      - (h) Procedural safeguards

- (i) Least Restrictive Environment
  - (j) Transition of students from Part C to Part B preschool program
  - (k) Participation in assessments and reporting assessment results
  - (l) Public participation in policies and procedures development and public posting of USOE monitoring results
  - (m) Methods of ensuring services
  - (n) Supervision
  - (o) Students in private schools
  - (p) Use of Part B funds
  - (q) Personnel standards
  - (r) Performance goals and indicators in the State Performance Plan
- e. Additional procedures and information which the USOE may require in order to meet Federal requirements including suspension and expulsion rates, LRE environments, disproportionality data, and others (§300.211).
3. As part of establishing eligibility for Part B funds, the LEA must have revised policies and procedures in alignment with the IDEA 2004 final regulations and these Utah State Board of Education Special Education Rules within one year of the final Board approval of these State Rules.
4. Policies and procedures submitted by the LEA in accordance with this section (§300.220), and approved by the USOE, remain in effect until any of the following occur:
- a. The LEA submits modifications to the USOE that the SEA or LEA determines are necessary;
    - (1) The provisions of these Rules apply to any modifications in an LEA's polices and procedures in the same manner and to

the same extent as the LEA's original policies and procedures.

- b. The USOE gives the LEA notice of a new interpretation of the IDEA by Federal or State courts, or a change in Federal statute; or
  - c. There is an official finding of noncompliance with Federal or State law or regulations that requires a change in the LEA's policy and procedures.
5. The LEA must have on file with the USOE information to demonstrate that it will make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the IDEA (§300.212).
  6. Any state agency that desires to receive a subgrant for any fiscal year must demonstrate to the satisfaction of the SEA that:
    - a. All students with disabilities who are participating in programs and projects funded under Part B of the IDEA receive FAPE, and that those students and their parents are provided all the rights and procedural safeguards described in these Rules; and
    - b. The agency meets the other conditions of this subpart that apply to LEAs.

#### **IX.B. USE OF PART B FUNDS BY THE LEA.**

1. An LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in this section (§300.200).
2. The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established in these Rules (§300.201).
3. **Use of amounts** (§300.202). The LEA must have on file with the USOE information to demonstrate that amounts provided to the LEA under Part B of the IDEA:
  - a. Will be expended in accordance with the applicable provision of these Rules.

- b. Will be used only to pay the excess costs of providing special education and related services to students with disabilities consistent with these Rules.
  - c. Will be used to supplement State, local, and other Federal funds and not to supplant those funds.
- 4. The excess cost requirement prevents an LEA from using funds provided under Part B of the IDEA to pay for all of the costs directly attributable to the education of a student with a disability.
- 5. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students with disabilities before funds under Part B of the IDEA are used.
- 6. **Maintenance of effort (§300.203).** Except as noted in IX.B.9, funds provided to the LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures of the preceding fiscal year.
- 7. Annually the LEA must have on file with the USOE information to demonstrate that the maintenance of effort requirements, that is, that the LEA budgets, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
  - a. Local funds only.
  - b. The combination of State and local funds.
- 8. The USOE may not consider any expenditures made from funds provided by the Federal Government for which the USOE is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the USOE in determining an LEA's compliance with the maintenance of effort requirements.
- 9. **Exception to maintenance of effort (§300.204).** An LEA may reduce the level of expenditures by the LEA under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:
  - a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

- b. A decrease in the enrollment of students with disabilities.
- c. The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the USOE, because the student:
  - (1) Has left the jurisdiction of the LEA;
  - (2) Has reached the age at which the obligation of the LEA to provide a FAPE to the student has terminated; or
  - (3) No longer needs the program of special education.
- d. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- e. The assumption of cost by the high cost fund operated by the USOE.

10. **Adjustment to local fiscal efforts in certain fiscal years. (§300.205)**

- a. For any fiscal year for which the allocation received by an LEA under Part B of the IDEA exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by maintenance of efforts requirements by not more than 50 percent of the amount of that excess.
- b. **Use of amounts to carry out activities under ESEA.** If an LEA exercises the authority to reduce the level of expenditures due to an increase in Part B funds, the LEA must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the ESEA, regardless of whether the LEA is using funds under the ESEA for those activities.
- c. The USOE must prohibit the LEA from reducing the level of expenditures for a fiscal year, if the USOE determines that:
  - (1) An LEA is unable to establish and maintain programs of FAPE that meet the requirements of Part B of the IDEA, or
  - (2) The USOE has taken action against the LEA under Section 616 of the IDEA and subpart F of the regulations (Monitoring, Technical Assistance, and Enforcement).

- d. The amount of funds expended by an LEA for early intervening services shall count toward the maximum amount of expenditures that the LEA may reduce under the requirements of this section.
11. If the USOE determines that an LEA is not meeting the requirements of these Rules, the USOE may prohibit the LEA from treating funds received under Part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the State constitution or State statute.
12. **Schoolwide programs under Title I of the Elementary and Secondary Education Act (ESEA). (§300.206)**
- a. An LEA may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program under Section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of the IDEA for that fiscal year:
    - (1) Divided by the number of students with disabilities in the jurisdiction of the LEA; and
    - (2) Multiplied by the number of students with disabilities participating in the schoolwide program.
  - b. The funds described in this section must be considered as Federal Part B funds for purposes of the calculations required for excess costs and supplanting.
  - c. The funds may be used without regard to the requirements of X.B.1.a of these Rules.
  - d. All other requirements of Part B of the IDEA must be met by an LEA using Part B funds for schoolwide programs under Section 1114 of the ESEA, including ensuring that students with disabilities in schoolwide program schools:
    - (1) Receive services in accordance with a properly developed IEP; and
    - (2) Are afforded all of the rights and services guaranteed to students with disabilities under Part B of the IDEA.
13. **Permissive use of funds (§300.208).** Funds provided to an LEA under Part B of the IDEA may be used for the following activities:

- (1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a student with a disability in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.
- (2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with IX.C.
- (3) High-cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high-cost special education and related services.
- (4) An LEA may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students with disabilities that is needed for the implementation of those case management activities.

**IX.C. EARLY INTERVENING SERVICES. (§300.226)**

1. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the IDEA for any fiscal year, less any amount reduced by the LEA pursuant to maintenance of effort, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
2. In implementing coordinated, early intervening services, an LEA may carry out activities that include:
  - a. Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral

interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

- b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
3. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a student suspected of having a disability.
4. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the USOE on:
  - a. The number of students served under this section who received early intervening services; and
  - b. The number of students served under this section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.
5. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

**IX.D. PERSONNEL DEVELOPMENT. (§300.207)**

The LEA must ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements related to personnel qualifications and Section 2122 of the ESEA.

**IX.E. FUNDED PREVALENCE OF DISABLING CONDITIONS. (UCA 53A-17a-111.5.b)**

1. The Utah State Board of Education shall limit a district's allocation of State special education monies to 12.18 percent of the district's average daily membership (ADM).
2. Students 3 and 4 years of age and those students turning 5 after September 1st who are classified as developmentally delayed are not included in the district's 12.18 percent ADM maximum.

3. Public charter schools are not subject to the prevalence funding limits in this section because a charter school's boundaries are not defined.

**IX.F. LEA PROVISION OF FAPE. (§300.101)**

1. The LEA will oversee the caseload of each special educator (including psychologists, social workers, speech/language pathologists, occupational therapists, physical therapists, adaptive P.E. specialists, and any other related servers) to ensure that a free appropriate public education is available to all eligible students with disabilities.
2. The LEA must refer to the *USOE Special Education Caseload Guidelines*.

**IX.G. ROUTINE CHECKING OF HEARING AIDS AND EXTERNAL COMPONENTS OF SURGICALLY IMPLANTED MEDICAL DEVICES. (§300.113)**

1. Hearing aids. Each public agency must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.
2. External components of surgically implanted medical devices.
  - a. Subject to IX.G.2.b, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
  - b. For a student with a surgically implanted medical device who is receiving special education and related services, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

**IX.H. EDUCATOR LICENSE REQUIREMENTS.**

Professionals providing services to students with disabilities must hold a Utah Professional Educator License or Endorsement in the area in which they provide services. This includes special education teachers, speech/language pathologists, school psychologists, school social workers, and other professionals. Physical and occupational therapists must hold a Utah State Educator License. The district superintendent or charter school administration shall be responsible for the evaluation of the appropriateness of licenses and endorsements when assigning staff members.

1. “Special Education (Birth-Age 5) Certificate” [License] means a certificate required for teaching preschool students with handicaps [disabilities] (R277-504-J).
2. “Special Education (K-12) Certificate” [License] means the certificate required for teaching students with handicaps [disabilities] in kindergarten through grade twelve. Special Education Certificates carry endorsements in at least one of the following areas (R277-504-K):
  - a. Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;
  - b. Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;
  - c. Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;
  - d. Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.
3. Teachers providing services to the single category of Speech/Language Impairment must hold the appropriate license, endorsement, or area of concentration in the category of Speech/Language Impairment.
4. Teachers assigned to teach academic subjects in elementary and secondary special education programs must, in addition to their special education license, meet the standards for highly qualified personnel under the ESEA. (See Board Administrative Rules.)
5. School social workers and school psychologists providing services to students with disabilities must be licensed by the State Board of Education as school social workers or school psychologists, or hold Utah State licensure.
6. Teachers serving preschool-aged students with disabilities must hold the Special Education (Birth–Age 5) educator license.
7. Individuals providing psychological evaluation services for students with disabilities must hold a Utah education license for school psychologists or Utah State licensure.

**IX.I. PURCHASE OF INSTRUCTIONAL MATERIALS IN ACCESSIBLE FORMATS.  
 (§300.210)**

1. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the USOE under Rule VIII.V.
2. If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
3. Nothing in this section relieves an LEA of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
4. For all purposes of this section, the USOE defines a “timely manner” as follows: the SEA and LEAs must take reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other students receive instructional materials.

## X. FUNDING.

State special education funds provide restricted (categorical) monies, which must be spent for the education of students with disabilities. Each year, the School Finance Law determines the total number of weighted pupil units and the corresponding dollar amount, creating a base for available State funds.

### X.A. ALLOCATION OF STATE REVENUES FOR PROGRAMS FOR STUDENTS WITH DISABILITIES.

Each LEA, including school districts and public charter schools, shall receive its allocation of monies appropriated for programs for students with disabilities as provided in this section.

1. The Utah State Board of Education shall use a district's [or public charter school's] average number of special education add-on weighted pupil units determined by the previous five years' average daily membership data as a foundation for the special education add-on appropriation. (UCA 53A-17a-111.5b)

**Note:** The funding formula for public charter schools that are LEAs in the first five years of operation is based on the December 1 annual child count.

2. A district's special education add-on WPU's for the current year may not be less than the foundation special education add-on WPU's.
3. Growth WPU's shall be added to the prior year special education add-on WPU's, and growth WPU's shall be determined as follows:
  - a. The special education student growth factor is calculated by comparing S-3 total special education ADM of two years previous to the current year to the S-3 total special education ADM three years previous to the current year, not to exceed the official October total district growth factor from the prior year.
  - b. When calculating and applying the growth factor, a district's S-3 total special education ADM for a given year is limited to 12.18 percent of the district's S-3 total student ADM for the same year.
  - c. Growth ADMs are calculated by applying the growth factor to the S-3 total special education ADM of two years previous to the current year.

- d. Growth ADMs for each district are multiplied by 1.53 weighted pupil units and added to the prior year special education add-on WPU to determine each district's total allocation.
4. If monies appropriated under this section for programs for students with disabilities do not meet the costs of districts for those programs, each district shall first receive the amount generated for each student with a disability under the basic program.
5. **Preschool special education appropriation. (UCA 53A-17a-112)**
  - a. Money appropriated to the State Board of Education for the preschool special education program shall be allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages 3 through 5.
  - b. The monies shall be distributed on the basis of a school district's previous year December 1 disabled preschool child count, as mandated by Federal law.
  - c. The State Board of Education shall compute preschool funding by a factor of 1.47 times the current December 1 child count of eligible preschool aged three-, four-, and five-year-olds times the WPU value, limited to 8 percent growth over the prior year December 1 count.
  - d. The board shall develop guidelines to implement the funding formula for preschool special education, and establish prevalence limits for distribution of the monies.
6. Funds allocated but unspent must be carried as a balance the following year.
7. Funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.
8. Allowable direct costs for approved programs for students with disabilities are as follows:

**Object codes:**

- 115 Properly licensed personnel in direct supervision or coordination of special education programs.
- 131 Properly licensed teachers who teach students in special education programs/services.
- 132 Substitute teachers.
- 141 Social workers who work directly with students in special education programs/services.
- 143 Properly licensed health personnel who are assigned to work with students in special education programs/services.
- 144 Properly licensed persons qualified as psychologists who are used in identifying and evaluating students with disabilities, and in instructional or treatment services.
- 152 Secretarial personnel assigned to work directly with special education programs/services.
- 161 Teachers' aides and paraprofessionals (including bus aides).

**Note:** Personnel who are assigned to work directly with programs for students with disabilities on a parttime basis must have their salaries prorated accordingly from special education funds and other funds, and such must be documented.

- 200 Employee benefits.

Based on the number of weighted pupil units in special education within a school district, the special education program is entitled to its equitable share of the social security and retirement lines in the minimum school budget. It may be appropriate to expend State special education funds for excess costs for social security and retirement at local board discretion, consistent with the treatment of other restricted programs.

Special education funds can be used for this purpose only when the district does not receive sufficient social security and retirement funds to cover all eligible district special

- education employees, not to exceed the actual percent of deficit.
- 210 State retirement.
  - 220 Social Security.
  - 230 Local retirement (for individual special education employees).
  - 240 Group Insurance. Certificated [licensed] and classified personnel who are assigned to programs for students with disabilities (to be prorated, if part-time).
  - 270 Industrial Insurance—Workman's Compensation.
  - 280 Unemployment Insurance (for individual special education employees).
  - 290 Other employee benefits (for individual special education employees).
  - 320 Contracted services and other costs for instructional programs, which can be traced directly to special education programs/services without the need for proration.
  - 452 Rental of equipment for programs for students with disabilities.
  - 580 Approved travel for personnel in conjunction with their assignments to special education programs/services.
  - 610 Teaching supplies.
  - 641 Textbooks.
  - 644 Library books.
  - 650 Instructional media/materials (periodicals).
  - 660 Audiovisual materials.
  - 730 Equipment for the special education programs/services.

**Following are examples of *UNALLOWABLE* direct costs:**

2300 Administration.

2700 Pupil transportation (provided under the transportation program).

**Function codes:**

2600 Operation and maintenance of school plant.

**Exception:** Telephone charges for the school may not be prorated to the special education program even though the school placed an extension phone in the special education area. The special education department may be billed for telephone charges only if a separate direct line is provided to the special education area specifically.

4000 Capital outlay, except for equipment for programs specifically for students with disabilities.

**Object codes:**

451 Rental of land and buildings.

520 Insurance.

800 Other objects.

**9. Indirect costs are unallowable.**

Indirect costs are those elements of cost necessary in the provision of a program that cannot be readily or accurately identified with the specific special education service. For example, the custodial staff may clean corridors in a school building which is used jointly by administrative, instructional, maintenance, and attendance personnel. In this case, a part of custodial salaries is an indirect expense of each service using the corridors. However, it is impossible to determine readily or accurately the amount of the salary to charge each of these services. The same is true of such supplies as paper towels or tissue, writing paper, etc.

**10. Contracted services.**

Contracted services are rendered by personnel who are not on the payroll of the LEA. Funds expended for contracted services for

students with disabilities are limited to those appropriate expenses authorized by the contract.

**11. General funds.**

All costs of programs for students with disabilities borne by the district that are not classified as direct costs will come from general funds of the district.

**X.B. ADMINISTRATIVE PROCEDURES FOR DETERMINING AGGREGATE DAYS OF MEMBERSHIP.**

1. **Membership** is the sum of all days a student is a member, absent or present, of a class or school. A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official withdrawal from the class or school because of completion, dismissal, death, transfer, or administrative withdrawal. The date of withdrawal is the date on which it is officially known that the student has left school for one of the above reasons, and is not necessarily the first day after the date of last attendance. In no case may the date of withdrawal be longer than 10 days after the last day of attendance, except for reasons of sickness, hospitalization, pending court investigation or action, or prior-approved trips.
2. **Official records.** To determine membership, LEAs shall ensure that records of attendance are kept in each school which clearly and accurately show the entry date and exit date of each student and whether a student is absent from school ten consecutive school days. A minimum of one attendance check shall be made by the school each school day.

**X.C. CORRELATION OF REPORTS.**

In order to ensure accuracy, LEAs shall provide a procedure for program, financial, and statistical personnel to coordinate and correlate information required by the State Office of Education. (Example: A count of students served, as reported on the S-3 report, must agree with the official attendance records maintained by the LEA.)

**X.D. RECOVERY OF FUNDS FOR MISCLASSIFIED STUDENTS.**

1. Section II.D-J of these Rules describes evaluation procedures for determining eligibility for special education and related services under Part B of the IDEA. An identified student with a disability whose evaluation report does not support or substantiate the

classification of a disability condition will be considered an erroneously classified student not eligible to be counted under the provisions of the State or Federal requirements, or to receive Federal or State funds.

2. An independent auditor shall be employed by each LEA to audit its student accounting records annually and report the findings to the district Board of Education. Reporting due dates and suggested forms and procedures are found in the Guidelines and Procedures for Conducting the Annual Statistical Audits of Fall Enrollment and Student Membership provided to LEAs by the USOE.
3. The USOE shall review student membership and fall enrollment audits as they relate to the allocation of State funds. These audits will determine whether criteria established by the Utah State Board of Education Special Education Rules have been met by reviewing the required documentation of selected classified students. If a student is found to be misclassified, and Federal and/or State expenditures have been made for direct or related service to that student, a notification of audit exception will be given to the LEA. Reimbursement for expenditures made on a student erroneously classified as having a disability will be made to the USOE within ninety (90) days of notification of audit exception.
4. If an LEA disagrees with the findings of the independent auditor, a hearing may be requested by following the procedure outlined in these Rules (See Rule VIII.R)

