

PROCEDURES

GOVERNING PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES



EXCEPTIONAL CHILDREN DIVISION

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SECTION .1500 - PROCEDURES GOVERNING PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES

.1501 DEFINITIONS

- A. Children with Disabilities. The term "children with disabilities" includes, without limitation, all children who, because of permanent or temporary mental, physical or emotional disabilities, need special education, are unable to have all their educational needs met in a regular class without special education and related services, or are unable to be adequately educated in the public schools. It includes those who are autistic, behaviorally-emotionally disabled, deaf-blind, hearing impaired, mentally disabled, multihandicapped, orthopedically impaired, other health impaired, pregnant, specific learning disabled, speech-language impaired, traumatic brain injured and visually impaired. The term "preschool children with disabilities" includes, without limitation, all 3- and 4-year-old children and those 5-year-old children who are ineligible for kindergarten and who because of permanent or temporary cognitive, communication, social/emotional and/or adaptive disabilities are unable to have all of their developmental needs met in a natural environment without special education and related services. Preschool children with disabilities become eligible for a free appropriate public education upon reaching their third birthday.

The terms used in this definition are defined as follows:

- (1) **Autism**. Autism is a developmental disorder which is characterized by significant and pervasive impairment in several areas of development: reciprocal social interaction skills, communication skills, and the presence of restricted and/or repetitive behavior, interests and activities. This impairment, sometimes called Autism Spectrum Disorder, may include: Autistic Disorder, Atypical Autism (Pervasive Developmental Disorder--Not otherwise Specified), Asperger's Disorder, Rett's Disorder, Childhood Disintegrative Disorder or all Pervasive Developmental Disorders. These disorders can co-exist with other disorders such as mental retardation, learning disabilities, attention deficit disorder, Down Syndrome, or Tourette's Disorder.
- (2) **Behaviorally-Emotionally Disabled** Behaviorally-emotionally disabled students are students who, after receiving specially designed educational support services and intervention strategies in the regular educational setting, still exhibit patterns of situationally inappropriate interpersonal or intrapersonal behavior. The inappropriate behaviors must be long-standing patterns of behavior which occur regularly and often enough as to interfere consistently with the student's own learning process. A behavioral-emotional disability is evidenced by one or more of the following characteristics, which cannot be attributed primarily to physical, sensory, or intellectual deficits:
 - (a) inability to achieve adequate academic progress (not due to a learning disability);
 - (b) inability to maintain satisfactory interpersonal and/or intrapersonal relationships;

- (c) inappropriate or immature types of behavior or feelings under normal conditions;
- (d) a general pervasive mood of unhappiness or depression;
- (e) a tendency to develop physical symptoms, pains or fears associated with personal or school problems.

The term does not include the socially maladjusted student unless it is determined that he/she is also behaviorally-emotionally disabled.

- (3) **Deaf-Blind.** Deaf-blind students have concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.
- (4) **Hearing Impaired.** Hearing impaired children are those with hearing losses which are disabling educationally and developmentally and who, with or without amplification, may require various instructional modifications and related services in order to make full use of their learning opportunities. Hearing impaired is a generic term which includes deafness and all hearing losses ranging from mild to profound.
- (5) **Mentally Disabled.** Mentally disabled refers to significantly subaverage general cognitive functioning and a reduced rate of learning. This condition exists concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance.
- (6) **Multihandicapped.** Multihandicapped students have a pervasive primary disability that is cognitive and/or behavioral in combination with one or more other disabilities, the combination of which causes such developmental and educational problems that the children cannot be accommodated in special programs that primarily serve one area of disability.
- (7) **Orthopedically Impaired.** Orthopedically impaired children possess a severe orthopedic impairment which adversely affects their educational performance. The term includes impairments caused by congenital abnormalities and impairments from other causes. Preschool children who are orthopedically impaired have an orthopedic impairment which adversely affects physical and motor development and which interferes with the acquisition of skills. The term includes impairments caused by congenital abnormalities and impairments from other causes.
- (8) **Other Health Impaired.** Other health-impaired students have chronic or acute health problems which cause limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, to such an extent that special educational services are necessary. The health problems may include heart conditions, chronic lung disease, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia,

diabetes, attention deficit disorder or attention deficit hyperactivity disorder, genetic impairments or some other illness which may cause a student to have limited strength, vitality or alertness, adversely affecting educational performance or developmental progress.

- (9) **Pregnant Students.** Pregnant students with special educational needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular education services.
- (10) **Developmentally Delayed.** Children identified in this area are those ages three through seven whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.
- (11) **Specific Learning Disabled.** Specific learning disability is an inclusive term used to denote various processing disorders presumed to be intrinsic to an individual (e.g., acquisition, organization, retrieval, or expressions of information). For the purpose of special education services, students classified as learning disabled are those who, after receiving instructional intervention in the regular education setting, have a substantial discrepancy between ability and achievement. The disability is manifested by substantial difficulties in the acquisition and use of skills in listening comprehension, oral expression, written expression, basic reading, reading comprehension, mathematics calculation, and mathematics reasoning. A learning disability may occur concomitantly with, but is not the primary result of other disabilities and/or environmental, cultural, and/or economic influences.
- (12) **Speech-Language Impaired.** A pupil who has a speech-language impairment has a disorder in articulation, language, voice, and/or fluency. A speech-language impairment may range in severity from mild to severe. It may be developmental or acquired, and pupils may demonstrate one or any combination of the four parameters listed above. A speech-language impairment may result in a primary disability or it may be secondary to other disabilities. A communication difference/dialect is a variation of a symbol system used by a group of individuals which reflects and is determined by shared regional, social or cultural/ethnic factors and should not be considered a disorder of speech or language. The components of speech-language impairment include:
 - (a) **articulation.** An articulation disorder is an abnormal, nondevelopmental production of phonemes (speech sounds). Types of misarticulations include omissions, substitutions, and distortions;
 - (b) **language.** A language disorder is the impairment of comprehension and/or production of an oral communication system. The disorder may involve the form of language (phonologic, morphologic, and syntactic systems), the content of language (semantic system), the function of language (pragmatic system), and/or any combination of the above.
 - (i) **form of language**
Phonology is the sound system of a language and the linguistic rules

- that govern it; Morphology is the rule system that governs the structure of words and the elements of meaning used in their construction; Syntax is the linguistic rule governing the order and combination of words to form sentences, and the relationships among the elements within a sentence;
- (ii) content of language
Semantics refers to the content or meaning of words and utterances;
 - (iii) function of language
Pragmatics refers to the social use of language and its appropriateness in a given situation;
- (c) voice. A voice disorder is an abnormal production of pitch (e.g., range, inflection, appropriateness), intensity (loudness), resonance (e.g., excessive nasality), and quality (e.g., breathiness, hoarseness, and harshness);
 - (d) fluency. A fluency disorder is a disruption in the normal, rhythmic flow of speech that interferes with communication. The disorder may include, but not be limited to, frequency of dysfluencies, duration of dysfluencies, struggle and avoidance characteristics, and types of dysfluencies (repetition--phrases, whole words, syllables, and phonemes; prolongations; and blocks).
- (13) Traumatic Brain Injury. Traumatic brain injury is an acquired open or closed head injury caused by an external physical force that impairs a student's cognitive, communicative, perceptual, behavioral, social-emotional, and/or physical abilities to the extent that the student requires special education. Congenital, degenerative, or brain injuries induced by birth trauma are not included in this definition.
- (14) Visually Impaired.
- (a) functionally blind children have so little remaining vision that they use Braille as their reading medium. Preschool children who are functionally blind use predominantly tactile or auditory mediums in order to learn. In children for whom formal vision measures are not appropriate, sufficient documentation for low vision will include diagnosed pathology and functional assessment that describes visual deficits significant enough to interfere with learning;
 - (b) partially seeing children have a loss of vision but are able to use regular or large type as their reading medium. These will generally be children who have a visual acuity between 20/70 and 20/200 in the better eye after correction. Preschool children with low vision have a loss of vision but are able to use the visual medium as their predominant means of learning. These generally will be children who have an actual or estimated visual acuity between 20/70 and 20/200 in the better eye after correction or whose visual impairment impedes the acquisition of developmental milestones;
 - (c) children who are legally blind have a visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees.

B. Adapted Physical Education.

Adapted physical education is a diversified program of activities specially designed for an individual who meets eligibility criteria for special education and/or related services and is not able to participate safely and/or successfully in the regular physical education program.

- (1) Physical education is the development of:
 - (a) skills leading to physical and motor fitness;
 - (b) fundamental motor skills and patterns; and
 - (c) skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports).
- (2) Physical education includes special physical education, adapted physical education, movement education, and motor development.
- (3) Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education.
- (4) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:
 - (a) the child is enrolled full time in a separate facility; or
 - (b) the child's adapted physical education program, as described in the IEP, requires an alternative service delivery model.
- (5) If adapted physical education is required in a child's IEP, the local education agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (6) Adapted physical education services must be provided, to the maximum extent appropriate, in regular class environments with children who are not disabled. Placement for adapted physical education services is to be made on the basis of the individual student's educational needs as required in the IEP.
- (7) The local education agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

C. Assistive Technology.

- (1) Assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

- (2) Assistive technology service is any service that directly assists a child with a disability in the evaluation for, and/or selection, acquisition, or use of an assistive technology device.

D. Day; Business Day; School Day.

- (1) Day means calendar day unless otherwise indicated as business day or school day;
- (2) Business day means Monday through Friday, except Federal and State holidays; and
- (3) School day means any day including a partial day that children are in attendance at school for instructional purposes.

E. Evaluation.

A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to the initial placement of a student with a disability in a special education program. Eligibility of children must be determined by using multiple sources of data and must not be dependent upon single test scores.

Evaluation procedures may include, but are not limited to, observations, interviews, behavior checklists, structured interactions, play assessment, adaptive and developmental scales, criterion-referenced and norm referenced instruments, clinical judgment, and tests of basic concepts or other techniques and procedures as deemed appropriate by the professional(s) conducting the evaluations. Evaluations and screenings for determining eligibility for special educational services are defined as follows:

- (1) Adaptive Behavior Evaluation The adaptive behavior evaluation refers primarily to the effectiveness with which the individual generally meets the standards of personal independence and social responsibility expected of his/her age and cultural group. It has two major facets:
 - (a) the extent to which the individual is able to function independently; and
 - (b) the extent to which he/she satisfactorily meets the culturally imposed demands of personal and social responsibility. Evaluations of adaptive behavior look at the total environment of the child. Thus, effort is made to obtain such information from the parents or other appropriate persons in the child's home and community. An adaptive behavior evaluation may be part of the psychological evaluation, and for preschool children, it also may be included as part of the educational evaluation. It may be conducted by professional personnel who are trained in the assessment of adaptive behavior and in the interpretation of this information.
- (2) Audiological Evaluation. An audiological evaluation is an examination by a licensed audiologist to determine auditory acuity, auditory perception, and

amplification needs for the purpose of planning education services. Whenever possible, the evaluation shall include air conduction testing, bone conduction testing, acoustic immittance measures (e.g. tympanometry), speech reception, discrimination and/or perception testing with amplification and without amplification. When behavioral audiometric testing is not feasible or is unreliable, auditory brain stem responses and/or otacoustic emissions are to be used.

- (3) Braille Skills Inventory. The inventory is an appraisal of the child's most efficient reading medium (Braille and/or print). Items to be considered in the appraisal may include, but are not limited to, noting the working distance from the page, reading rates and accuracy, visual fatigue, and tactile discrimination.
- (4) Educational Evaluation. An educational evaluation is an evaluation of a child's educational functioning in relation to his/her current educational program. The results of this evaluation are expressed in terms of both the child's academic and/or developmental strengths and needs. This evaluation should be comprehensive, using a full range of available instruments and observations, including diagnostic tests and other appropriate formal and informal measures. For preschool children, an educational evaluation must be conducted by a licensed teacher or other appropriate professional and should measure the child's progress in learning and skill acquisition. If educational strengths and needs have been addressed and reported as part of other required evaluations (e.g. psychological evaluation), then no further educational evaluation may be needed. For a child whose disability is one of speech-language impairment only, a detailed educational evaluation may not be necessary. For school-age children, speech-language pathologists should have information as to the student's grade placement and areas of academic strengths and needs and should consider such information. For preschool children, speech-language pathologists should consider information related to the child's developmental status in the following areas: physical, cognitive, communication, social/emotional, and adaptive development.
- (5) Health Screening. Health screening may include, but is not necessarily limited to, as many of the following areas as may be appropriate: vision screening, hearing screening, dental screening, review of health history, review of developmental milestones, assessment of physical growth and assessment of nutritional status. Health screening may be performed by a school nurse or other appropriately trained persons.
- (6) Health/Medical Evaluation. Evaluations in this area must be conducted by appropriately trained and/or licensed health professionals and may include one or more of the following areas, as indicated through screening procedures:
 - (a) audiological;
 - (b) ophthalmological/optometric;
 - (c) orthopedic;
 - (d) medical (significant health conditions affecting development), and/or

(e) neurological.

- (7) Motor Screening. Motor screening includes reviewing written and verbal information, observing the child in a variety of settings and/or administering screening instruments to determine adequacy of motoric functioning and need for further evaluation. Persons who may screen motor skills are psychologists, specially trained teachers of children with special needs including adapted physical education teachers, occupational therapists, physical therapists, and other health professionals.
- (8) Motor Evaluation. A motor evaluation obtains and provides information to assess a student's current level of motoric functioning and any problems encountered in performing motor tasks. This information may be collected through review of educational and medical records; interviews with teachers, parents, and others, including the student; clinical observations; and the administration of formal testing instruments, procedures, and techniques. A motor evaluation should include, but is not limited to, as many of the areas listed below as may be appropriate:
- (a) musculo-skeletal status;
 - (b) neuromotor/neurodevelopmental status;
 - (c) gross-motor development and coordination;
 - (d) fine-motor development and coordination;
 - (e) sensory-motor skills;
 - (f) visual-motor skills;
 - (g) bilateral coordination;
 - (h) postural control and balance skills;
 - (i) praxis/motor planning skills;
 - (j) oral-motor skills;
 - (k) gait and functional mobility skills.
- Motor evaluations are performed by physical therapists or occupational therapists or, when appropriate, adapted physical education teachers. Oral-motor skills may be assessed by speech-language pathologists when appropriate.
- (9) Observation. Observations of school-age students usually occur in the regular classroom setting and must document areas of strength as well as areas of need. Observations of the preschool child should be made in his/her natural environment; that is, the setting within the community where preschool children without disabilities usually are found (home, child care, Head Start, etc.) and must document areas of strength and areas which are the focus of concern. Observational data on the preschool child's interactions with persons and objects, and his/her compliance with structure, taking into consideration age-appropriate expectations, may be helpful. Observations may be conducted by a teacher, social worker, program coordinator, or other involved professionals.
- (10) Ophthalmological or Optometric Evaluation. An ophthalmological or optometric evaluation is an evaluation by an ophthalmologist or optometrist to determine visual acuity and function and whether or not magnification is

needed.

- (11) Otological Evaluation. An otological evaluation is an evaluation by a licensed otologist to determine the presence or absence of ear pathology and the need for medical treatment.
- (12) Psychological Evaluation. A psychological evaluation includes those procedures utilized by a psychologist. The evaluation should include an assessment of cognitive functioning and may also include, but not be limited to, assessments of educational performance, social/emotional/behavioral functioning, and adaptive behavior. Procedures used by the psychologist may include formal and informal assessment measures, observations, interviews, and other techniques as deemed appropriate by the psychologist. The assessment of cognition may include intelligence, memory, reasoning, problem solving, attending, and processing. Where these instruments are clearly inappropriate as standardized, the psychologist should use his/her professional judgment about the selection of instruments for assessing the intellectual functioning of children. Psychological evaluations shall be performed by qualified examiners. School psychologists employed by the public schools must be licensed by the State Department of Public Instruction. Psychologists contracting with schools on a private basis must be licensed as psychological associates or practicing psychologists by the North Carolina Psychology Board. When contracting with state agencies for psychological services, the local educational agency's contract must be with the agency and not with the individual psychologist.
- (13) Social History. A social history documents normal and abnormal developmental and/or medical events and includes a review of information gathered during the screening process. For preschool children, a social history must include an assessment of family composition, support systems, stressors, and environment as they correlate with the child's need or special services. The history also must include the family's or caregiver's perspective about the child and the need for special services. The history may be obtained by a licensed social worker, special educator, psychologist, counselor, nurse, teacher or other appropriate persons.
- (14) Speech-Language Screening. Speech-language screening quickly and reliably provides information in the areas of articulation, expressive and receptive language, voice and fluency for determining which students have communication within normal limits and which ones should be referred for further evaluation.
- (15) Speech-Language Evaluation. A speech-language evaluation includes the following aspects of speech-language: articulation, fluency, voice, and language (form, content, and function). A speech-language evaluation is conducted by a speech-language pathologist licensed by the State Department of Public Instruction and/or licensed by the State of North Carolina.

- (16) Vocational Evaluation. Vocational evaluation is a process involving an interdisciplinary team approach in assessing an individual's vocational potential and training and work placement needs.

F. Free Appropriate Public Education.

As used in this part, the term "free appropriate public education" means special education and related services which:

- (1) are provided at public expense, under public supervision and direction, and without charge;
- (2) meet the standards of the state education agency;
- (3) include preschool, elementary school, or secondary school; and
- (4) are provided in conformity with an individualized education program for students with disabilities or written educational program for the pregnant.

G. Individualized Education Program.

As used in this Section, the term "individualized education program" (IEP) means a written statement for a student with a disability that is developed and implemented pursuant to Section .1507 of these Procedures.

H. Least Restrictive Environment.

Least restrictive environment means that, to the maximum extent possible, children with disabilities shall be educated with children who are not disabled. After examining all alternatives for placement within an educational system, children with disabilities shall be placed where they can obtain the appropriate educational services which meet their individual educational/developmental needs as close to and as nearly like a regular classroom setting as possible. For preschool children with disabilities, this shall be interpreted to mean the most natural environment possible.

I. Local Educational Agencies.

For purposes of this Section, the term "local educational agency" (LEA) refers to the following:

- (1) All city and county school administrative units as separate local educational agencies;
- (2) Department of Health and Human Services as one local educational agency. All schools, hospitals and agencies providing educational programs and/or services will be considered schools or programs under this local educational agency;
- (3) Department of Correction as one local educational agency. All prisons

providing educational programs or services will be considered programs under this local educational agency;

- (4) Department of Juvenile Justice and Delinquency Prevention as one local educational agency. All educational programs and services will be considered programs under this local educational agency; and
- (5) All charter schools that have been approved by the State Board of Education.

J. Parent.

The term "parent" means a parent, a guardian, a person acting in the place of the parent, such as a grandparent or stepparent with whom the student lives, a person who is legally responsible for the welfare of the student, or a surrogate parent who has been appointed in accordance with Section .1513.

The term does not include the state if the child is a ward of the state. A foster parent may act as a parent if:

- (1) The natural parents' authority to make educational decisions on the child's behalf has been terminated under State law; and
- (2) The foster parent
 - (a) has a long-term parental relationship with the child;
 - (b) is willing to make educational decisions; and
 - (c) has no interest that would conflict with the interest of the child.

K. Related Services.

"Related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology; orientation and mobility services; psychological services; physical and occupational therapy; recreation including therapeutic recreation; social work services; medical and counseling services, including rehabilitation counseling,) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only. A student who does not require special education is not eligible for a related service funded under this program.

- (1) "Audiology" includes:
 - (a) identification of children with hearing loss and middle ear dysfunction;
 - (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 aid orientation, and speech conservation;

- (d) creation and administration of programs for prevention of hearing loss;
 - (e) counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
 - (f) determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) "Counseling services" means services provided by licensed social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) "Medical services" means services provided by a licensed physician or other appropriately trained and/or supervised health provider to determine a child's medically related disability which results in the child's need for special education and related services.
- (5) "Occupational therapy" is a service provided by a licensed occupational therapist to address the functional needs of an individual as they relate to sensory, motor, postural, and emotional development, adaptive behavior and play, and the performance of self-help skills. These services are designed to develop, improve, restore, or maintain the individual's functional ability to perform tasks in educational settings. In an educational setting, occupational therapy services are provided to enable an identified student to benefit from special education in the least restrictive environment. Occupational therapy services may include:
- (a) identification, screening, evaluation, intervention and consultation;
 - (b) adaptation of environments, both human and physical, and selection, design, and fabrication of assistive and orthotic devices and other assistive technology to facilitate development and promote the acquisition of functional skills so that the child can perform tasks in the least restrictive environment;
 - (c) prevention or minimization of the impact of initial or further impairment, delay in development, or loss of functional ability; and
 - (d) provision of in-service education and information to families, school personnel, and community and state agencies to assist with problem solving, program planning, and priority setting.
- (6) "Orientation and Mobility" means services provided by qualified personnel to enable students who are blind or visually impaired to travel safely and independently and to remain oriented to a wide variety of both familiar and unfamiliar indoor and outdoor environments. For young children, orientation and mobility is teaching concept development as it relates to body movement, spatial awareness, knowledge of the environment, attitude toward independence, and travel skills.

- (7) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development. For preschool children with disabilities, parent counseling and training includes family services which would assist parents in securing support that affect the child's development.
- (8) "Physical therapy" is a service provided by a licensed physical therapist and is concerned with prevention of physical disabilities and with providing rehabilitation services to individuals with disabilities resulting from prenatal causes, birth trauma, illness, or injury. These services are designed to develop or restore neuromuscular and/or sensorimotor functions, control postural deviations to minimize disabilities, and to develop and to maintain maximal performance levels within the individual's physical capabilities. In an educational setting, physical therapy services are provided to enable an identified student to benefit from special education in the least restrictive environment. Physical therapy services may include:
 - (a) development and maintenance of an individual student's physical potential for independence and safety in educationally related activities;
 - (b) modification and adaptation of the student's physical environment so that the student may benefit from special education;
 - (c) provision of in-service training for school personnel;
 - (d) communication with state and community agencies;
 - (e) education for parents or guardians; and
 - (f) involvement in total program planning for exceptional children.
- (9) "Psychological services" include:
 - (a) administering psychological, educational tests, and other procedures such as observations and interviews, in order to determine a student's strengths and educational, social, behavioral and/or developmental needs; for preschool children psychological assessment may include administering psychological tests and/or criterion-referenced, curriculum-based and other educational tests, as well as conducting other assessment procedures such as observations, interviews, structured interactions, and play assessments as deemed appropriate by the psychologist;
 - (b) interpreting assessment results;
 - (c) obtaining, integrating, and interpreting information about a child's behavior and environmental conditions related to learning and development;
 - (d) consulting with parents, teachers, and other school personnel in planning programs and services to meet the identified needs of children, including but not limited to placement, effective learning/teaching strategies, and personal and social skills;
 - (e) planning and managing a program of psychological services including psychological counseling for children and parents;
 - (f) referring children and families to community agencies and services when appropriate;
 - (g) screening and early identification of children with disabilities;
 - (h) developing strategies for the prevention of learning and behavior problems;

- and
 - (i) assisting in developing positive behavioral strategies.
- (10) "Recreation" includes:
- (a) assessment of leisure functions;
 - (b) therapeutic recreation services;
 - (c) recreation programs in schools and community agencies; and
 - (d) leisure education.
- (11) "School health services" are services provided by a qualified school nurse or other qualified person.
- (12) "Social work services in schools" include:
- (a) preparing a social or developmental history for a child with a disability;
 - (b) group and individual counseling with the child and family;
 - (c) working with those problems in a child's living situation (home, school and community) that affect the child's adjustment in school;
 - (d) mobilizing school and community resources to enable the child to receive benefit from his or her educational program; and
 - (e) assisting in developing positive behavioral intervention strategies.
- (13) "Speech-language pathology" includes:
- (a) identification of children with speech-language disorders;
 - (b) diagnosis and appraisal of specific speech-language disorders;
 - (c) referral for medical or other professional attention necessary for the habilitation of speech-language disorders;
 - (d) provision of speech-language services for the habilitation or prevention of communicative disorders; and
 - (e) counseling and guidance of parents, children, and teachers regarding speech-language disorders.
- (14) "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 adaptive buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

L. Screening.

Screening consists of first-step assessment procedures aimed at selecting students who may have special needs. Two separate components of screening may be identified:

- (1) Mass screening or sweep screening is the selection of children who may need services such as special education, related services, special health services, or sensory aids in order to achieve full learning potential. These individuals will need follow-up to identify specific academic and behavioral or developmental

needs by additional evaluation processes. Mass screening or sweep screening may be accomplished through the administration of such programs as:

- (a) school-wide achievement testing;
- (b) school-wide health and sensory testing;
- (c) early childhood and kindergarten testing; and
- (d) class-wide surveys and observations.

For preschool children, screening also may be carried out by the following agencies:

- (a) public health departments;
- (b) children's developmental services agencies;
- (c) mental health centers; and
- (d) developmental programs (e.g., Head Start).

- (2) Individual screening is the identification of children whose specific academic, behavioral, or developmental problem areas may need further in-depth evaluation. Individual screening should more accurately select those students who need further consideration for special school services, which may include special education and related services.

M. Special Education.

Special education is specially designed instruction, at no cost to the parent, to meet the unique needs of the child with a disability, including classroom instruction, instruction in physical education, home instruction, instruction in hospitals and institutions, and instruction in other settings. The term includes speech-language pathology if the service consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, and is considered "special education" rather than a "related service" under State standards. The term also includes vocational education and travel training if it consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability.

- (1) Specially designed instruction means adapting content or delivery of instruction to:
 - (a) address the unique needs of an eligible student that result from the student's disability; and
 - (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 local education agency that apply to all students.
- (2) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
- (3) Travel training means providing instruction as appropriate, to children with

significant cognitive disabilities and to any other children with disabilities who require this instruction to enable them to:

- (a) develop an awareness of the environment in which they live; and
- (b) learn the skills necessary to move effectively and safely from place to place within that environment.

N. Supplementary Aids and Services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the least restrictive environment requirements.

O. Transition.

Transition is a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

P. Preschool Transition.

Transition services for preschool children with a disability include those activities that allow a child to move from the infant-toddler program to the preschool program and/or from the preschool program to kindergarten or first grade without an interruption in services. These activities may include assisting the child and the family through the transition process, coordinating administrative functions to ensure appropriate placement, and working with the interagency council. The person responsible for conducting these activities may be a teacher, a program coordinator, or a related service provider.

History Note: Statutory Authority G. S. 115C-108 through 110; 115C-113;
Eff. October 1, 1978; G. S. 115C-146.1 through 146.4;
Amended Eff. July, 1999; July 11, 1991; December 7, 1989; November 1, 1984;
September 28, 1981; September 30, 1980; July 15, 1979.
IDEA 97 Final Regulations 34 CFR §§ 300.5-300.29.

.1502 IDENTIFICATION, SCREENING, EVALUATION AND PLACEMENT

- A. Local educational agencies including local school administrative units, charter schools, and Department of Health and Human Services, Department of Correction, Department of Juvenile Justice and Delinquency Prevention agencies providing special education to children with disabilities are responsible for ensuring that all children with disabilities within their jurisdiction are identified, located and evaluated, including children in private and religious schools within their jurisdiction, ages birth through twenty-one.
- B. Local educational agencies and private schools shall implement procedures for screening, evaluation, identification, and placement of children with disabilities. These procedures shall be in keeping with Chapter 1293 of 1973 Session Laws as amended by Chapter 151 and 563 of 1975 Session Laws and Subchapter 13, Article 9, Chapter 115-C, Chapter 423, 1981 Session Laws and Education of All Handicapped Children Act, P.L. 94-142 as amended by Individuals with Disabilities Education Act, P.L. 101-476 and 105-17. The local procedures shall be adopted by the governing board of each local education agency and private school and shall include the procedures described in this rule.
- C. Variations from these procedures may occur when sufficient evidence exists to indicate that children can be properly identified and placed within the intent of the procedures. A written plan detailing the variations with reasons listed shall be submitted to the Director, Exceptional Children Division, for approval prior to their implementation.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; Eff. July 15, 1979.
Amended Eff. July, 1999; July 11, 1991; Aug., 1998.
IDEA 97 Final Regulations 34 CFR § 300.125.

.1503 REFERRAL

When a teacher, parent, or other involved person recognizes that a child is exhibiting developmental problems or that a child's educational needs are not being met, he/she will provide in writing the reason for referral, addressing the specific presenting problems and the child's current strengths and weaknesses or needs. This referral shall be given to the principal of the school, the child's teacher or other school professional, or the superintendent or other appointed official of the local educational agency. For preschool children with disabilities, the referral also may be given to the person designated to be in charge of services for preschool children with disabilities.

All children with suspected disabilities ages 3 through 21 who are diagnosed or evaluated by personnel in the Department of Health and Human Services and Children's Developmental Services Agencies shall be referred to the city or county school administrative unit of their residence for local educational agency involvement in determining eligibility and placement.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; Eff. July 15, 1979.
Amended Eff. July, 1999; July 11, 1991.
IDEA 97 Final Regulations 34 CFR §§ 300.503-300.504.

.1504 INDIVIDUALIZED EDUCATION PROGRAM TEAM

- A. The Individualized Education Program Team (IEP Team) is responsible for making decisions about:
- (1) initial evaluations (if appropriate) and reevaluations;
 - (2) the individualized education program (IEP);
 - (3) placement, including alternative education settings;
 - (4) determining the relationship between the disability and behavior in disciplinary action when the behavior will result in a suspension of more than ten consecutive days or a series of suspensions that cumulate to more than ten days that result in a change of placement.
- B. Composition. Members of the IEP Team must include:
- (1) a representative of the local educational agency who
 - (a) is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities,
 - (b) is knowledgeable about the general curriculum,
 - (c) is knowledgeable about the availability of resources of the local educational agency and the placement options;
(Another member of the IEP team may serve as the LEA representative, if the above criteria are met.)
 - (2) at least one special education teacher or, where appropriate, at least one special education provider of such child;
 - (3) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (4) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above;
 - (5) the parent(s) of the child;
 - (6) at the discretion of the parent or the local education agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of knowledge or expertise shall be made by the party who invited the individual(s).
 - (7) the child when transition services needs are discussed and whenever else appropriate. If the student does not attend the IEP meeting, other steps must be taken to ensure that the student's preferences and interests are considered.

- (8) when discussion of transition services will occur, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

Note: At least one member of the IEP Team should be of the same race and gender as the child with a disability.

Refer to Section .1508 for the composition of the Preschool Individualized Education Program Team.

History Note: Statutory Authority IDEA 105-17; Eff. July, 1999.
IDEA 97 Final Regulations 34 CFR § 300.344; § 300.346; §§300.522-300.523.

.1505 EVALUATION. The LEA shall conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability.

A. Evaluation Procedures.

- (1) Parents must be given notice of the pending evaluation which describes any evaluation procedures that the local education agency proposes to use.
- (2) Written consent must be secured from the parent before any evaluations are conducted. Note: If the parents refuse to give consent, the local education agency may continue to pursue an evaluation by using mediation or requesting a due process hearing.
 - (a) Consent for initial evaluation may not be construed as consent for initial placement which is the initial provision of special education and related services to a child with a disability.
 - (b) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation.
 - (c) Parental consent is not required before administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of all parents of all children.
 - (d) Parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent.

B. Evaluation Requirements.

- (1) Test and other evaluation materials used to assess a child:
 - (a) are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (b) are provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so; and
 - (c) materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- (2) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum for a preschool child, to participate in appropriate activities, that may assist in determining:
 - (a) whether the child is a child with a disability who requires special education because of that disability; and
 - (b) the content of the child's IEP.

- (3) Any standardized tests that are administered to a child:
 - (a) shall have been validated for the specific purpose for which they are used; and
 - (b) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
 - (4) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.
 - (5) Tests 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.
 - (6) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test is supposed to measure.
 - (7) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
 - (8) The child is assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
 - (9) In evaluating a child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
 - (10) The local education agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 - (11) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.
- C. Determination of Needed Evaluation Data. As part of the initial evaluation (if appropriate), the IEP Team and other qualified professionals shall review existing data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related service providers. On the basis of that review and input from the

parents they will decide what additional data are needed in order to determine:

- (1) if the student has a particular category of disability;
- (2) whether the student requires special education and related services;
- (3) the present levels of performance and educational needs of the student; and
- (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum

D. Special Identification Procedures. In order to determine eligibility in a category of disability, certain information must be available. In its review the IEP Team and other qualified professionals must determine if the information required in the special identification procedures that follow is available. (This group may conduct its review without a meeting.) If it is not, assessment must be completed in order to satisfy the requirements. Special identification procedures appropriate to particular types of children with disabilities include, but are not limited to, the following:

- (1) Behaviorally-Emotionally Disabled.
 - (a) Screening Procedures. For students the following screening information shall be collected and considered in order to make decisions regarding further educational interventions and/or evaluations:
 - (i) dated and signed documented evidence of at least two interventions attempted in the learning environment in order to make behavioral and academic achievements possible within the regular educational setting; and the effect of each on the student's behavior. Those interventions should be designed in consultation with other staff members and may include but not be limited to changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel and community interventions;
 - (ii) behavioral observation(s) in the learning environment by an appropriate third party which specifically records the incidence and describes the nature of the behavior(s) leading to a referral;
 - (iii) documented and dated evidence that conferences or attempts to conference with the parent and/or guardian concerning the student's specific problems have been conducted;
 - (iv) vision screening;
 - (v) hearing screening;
 - (vi) records review.
 - (b) After reviewing screening data, a screening committee determines that a referral for evaluation is necessary if:
 - (i) specific interventions implemented were not effective;
 - (ii) vision and hearing appear to be within limits;
 - (iii) it is determined that the documented maladaptive behavior appears to

- be longstanding or of such frequency or intensity so as to interfere with the student's own learning process.
- (c) Evaluation Procedures. The evaluation of behaviorally-emotionally disabled students shall include the following areas:
- (i) Behavioral-Emotional Evaluation. The evaluation of behavioral-emotional functioning shall be conducted by a DPI or Board licensed psychologist to document maladaptive behaviors or deficits in coping skills and emotional functioning. A behavioral-emotional evaluation includes information about the unique personal attributes of the student and describes any distinctive patterns of behavior which characterize the student's personal feelings, attitudes, moods, perceptions, thought processes, and significant personality traits. The evaluation shall include:
 - a. interviews with the student, appropriate staff, and others;
 - b. checklists or rating scales; and
 - c. screening data and any other observation data.
 - (ii) Educational Evaluation. A comprehensive evaluation conducted by a licensed school psychologist, special educator, or other trained professional shall include an assessment of:
 - a. the learning environment including curriculum and task demands;
 - b. academic strengths and weaknesses including written and oral language and information from individualized achievement assessment;
 - c. present levels of academic functioning;
 - d. vocational needs (secondary students).
 - (iii) Psychological Evaluation. A psychological evaluation shall be conducted by a DPI or Board licensed psychologist. This evaluation includes interviews with the student, learning history, and behavioral observations with special consideration given to evaluation of disorders of thought, memory, judgment, and/or time-place orientation as appropriate. An individual intellectual evaluation shall be given when academic or learning deficits or giftedness is suspected.
 - (iv) Social History. A social history documents normal and abnormal developmental events and includes a review of information developed during the screening process. The history may be obtained by a DPI or Board licensed social worker, special educator, psychologist, counselor or other appropriate person.
- (d) Eligibility Criteria. In order to determine eligibility for students for behaviorally-emotionally disabled programs, the following are required:
- (i) Evidence that the student, after receiving supportive regular educational assistance, including specific techniques suggested by a screening committee, still exhibits a behavioral-emotional disorder consistent with the definition;
 - (ii) Evidence that the disability is not the result of social maladjustment, a physical, sensory, or intellectual deficit; or lack of appropriate instruction or management of behavior;

- (iii) Evidence that the student's own learning process is consistently and significantly disrupted;
 - (iv) Evidence that the patterns of behavior occur in more than one setting over an extended period of time; and
 - (v) Evidence of a marked deviance from the student's peer group.
- (2) Deaf-Blind. Comprehensive evaluations for students with deaf-blindness must include the following:
 - (a) medical evaluation that includes information on:
 - (i) precautions,
 - (ii) medications,
 - (iii) recommendations for physical and/or occupational therapy;
 - (b) audiological evaluation, followed by an otological evaluation when appropriate;
 - (c) ophthalmological or optometric evaluation or physician's written verification of a continuing visual disability;
 - (d) education evaluation which includes, but is not limited to:
 - (i) self-help skills,
 - (ii) cognitive ability,
 - (iii) social skills,
 - (iv) transition needs;
 - (e) psychoeducational evaluation that includes, but is not limited to:
 - (i) personality,
 - (ii) adaptive behavior;
 - (f) communication evaluation that includes, but is not limited to:
 - (i) expressive and receptive skills,
 - (ii) augmentative communication skills.
- (3) Developmentally Delayed. Children identified in this area are those ages three through seven whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.
 - (a) Delayed/Atypical Development. These children may be defined as having delayed/atypical patterns of development in one or more of the following five areas: physical development, cognitive development, communication development, social/emotional development or adaptive development.
 - (i) The criteria for determining delayed development for ages 3-7 are:
 - a. a 30 percent delay using assessment procedures that yield scores in months, or test performance of 2 standard deviations below the mean on standardized tests in one area of development; or
 - b. a 25 percent delay using assessment procedures that yield scores in months or test performance of 1.5 standard deviations below the mean on standardized tests in two areas of development.
 - (ii) Identification of these children will be based on informed educational/clinical opinion and appropriate assessment measures.
 - (b) Delayed/Atypical Behavior. Children with delayed or atypical behavior are characterized by behaviors that are so significantly inadequate or inappropriate that they interfere with the child's ability to learn and/or cope

with normal environmental or situational demands. There must be evidence that the patterns of behavior occur in more than one setting over an extended period of time.

- (i) The criteria for determining delayed/atypical behavior for ages 3-5 must be documented in one or more of the following areas:
 - a. delayed or abnormalities in achieving milestones and/or difficulties with issues, such as:
 - 1. attachment and/or interaction with other adults, peers, materials, and objects;
 - 2. ability to communicate emotional needs;
 - 3. ability to tolerate frustration and control behavior, or
 - 4. ability to inhibit aggression.
 - b. fearfulness, withdrawal, or other distress that does not respond to comforting or interventions;
 - c. indiscriminate sociability, for example, excessive familiarity with relative strangers; or
 - d. self-injurious or other aggressive behavior.
- (ii) The criteria for determining delayed patterns of behavior and adaptive skills for ages 6-7 must be exhibited in two or more of the following ways:
 - a. the inability to interact appropriately with adults and peers;
 - b. the inability to cope with normal environmental or situational demands;
 - c. the use of aggression or self-injurious behavior, or
 - d. the inability to learn due to social/emotional deficits.
- (iii) Identification of these children will be based on informed educational/clinical opinion and appropriate assessment measures.

- (4) **Hearing Impaired.** Children may be identified as needing audiological and otological evaluations through mass hearing screening efforts and/or referral. The audiological evaluation shall include air conduction testing, bone conduction testing, speech reception testing with and without amplification, and impedance testing to determine the type and extent of any hearing loss that may be present. The otological evaluation provides a diagnosis for middle and inner ear disorders.
- (5) **Mentally Disabled.** For students the assessment process will provide information to indicate whether the child needs a program for the mildly retarded (educable mentally disabled), moderately retarded (trainable mentally disabled), or severely/profoundly mentally disabled. The intelligence quotient range for placement in programs for the educable mentally disabled is 50-69 plus or minus one standard error of measurement. The intelligence quotient range for placement in programs for the trainable mentally disabled is 30-49 plus or minus one standard error of measurement. Children scoring in overlapping areas between the educable mentally disabled, trainable mentally disabled and severely-profoundly disabled ranges shall be provided services in the least restrictive appropriate environment.

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- (6) **Multihandicapped and Severely/Profoundly Mentally Disabled.** Multihandicapped and severely/profoundly mentally disabled children have a wide variety of disabling conditions, and their associated characteristics require diverse and unique evaluation procedures. Comprehensive evaluation data must include:
- (a) medical evaluation with information on precautions, medications and recommendations for physical and occupational therapy;
 - (b) education evaluations that address self-help, cognitive, social and, where appropriate, prevocational skills;
 - (c) psychological evaluation that includes personality, social and adaptive behavior;
 - (d) motor evaluation giving information on the neurological and physiological dysfunctions; and
 - (e) communication evaluation with information on expressive and receptive speech and language skills, with particular attention given to the need for augmentative communication systems.
- (7) **Pregnant Students.** Diagnosis of pregnant students shall be by a physician or by the Health Department. The identification of the special educational needs of pregnant students shall be accomplished by multiple means. These methods shall include, but are not limited to, written recommendations from a licensed practicing physician, school counselor, social worker, teacher, nurse practitioner, parent, the student, or significant others. Such recommendations shall be reviewed by the written education program committee which shall make the final decision on educational placement and programming.
- (8) **Specific Learning Disabled.**
- (a) **Eligibility Criteria.** The following criteria shall be met in identifying students as learning disabled and in need of special education:
 - (i) after at least two intervention strategies have been implemented in regular education or other programs, the student still exhibits learning difficulties;
 - (ii) achievement measured in age standard score units is 15 or more points below intellectual functioning;
 - (iii) the disability is not primarily the result of sensory deficits, motor deficits, mental disability, behavioral/emotional disability or environmental, cultural/linguistic, and/or economic influences. If a student's learning problems can be attributed to any of these exclusionary factors, then the primary disability is not a learning disability;
 - (iv) the student exhibits characteristics of learning disabilities consistent with the definition.
 - (b) **Screening Procedures.** The following screening information shall be collected and considered for students in order to make decisions regarding further educational interventions and/or evaluations:
 - (i) dated documentation of conferences or attempts to conference with
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- parents or guardians concerning the student's specific problem;
- (ii) dated and signed documented evidence of at least two interventions attempted within the regular education setting and the effect of each. Those interventions should be designed in consultation with other staff members and may include, but not be limited to, changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel;
- (iii) behavioral observation(s) by an appropriate third party observer and/or other evidence, such as work samples, which describe and document the student's learning problem within at least one of the areas of learning disabilities;
- (iv) information concerning the student's:
 - a. educational history;
 - b. medical history;
 - c. school attendance record;
 - d. performance in relation to peers (e.g., group or individual screening intelligence and achievement tests, criterion referenced tests and work samples);
 - e. social functioning; and
 - f. environmental and cultural status.
- (v) vision screening for near and far vision acuity;
- (vi) hearing screening.
- (c) Evaluation Procedures for Students. The evaluation of students to determine eligibility for a learning disability program involves four steps: determine the student's current intellectual functioning; determine the student's current level of academic functioning; determine the amount of discrepancy between current intellectual functioning and academic functioning; and, document that the discrepancy is the result of a learning disability including descriptions of learner characteristics and behavior.
 - (i) Psychological Evaluation. The student's cognitive/intellectual functioning must be assessed by using the most recent version of an appropriate standardized and validated intelligence test. This evaluation shall be conducted by a DPI licensed school psychologist or a Board licensed psychologist. Variability or "scatter" within intelligence measures is expected and normal. It is inappropriate to select the higher of subscale, subtest, factor or other scores for use as an estimate of intellectual functioning without considerable supporting evidence including other assessment results. When there are verbal/performance IQ discrepancies of at least 20 points on the Wechsler Scale, the higher scale IQ may be used to determine the achievement-ability discrepancy providing there is evidence that the higher score accurately reflects the student's intellectual functioning. Because of the importance of the intellectual assessment to the identification process, group intelligence tests, unjustified prorated scores or extrapolated scores and abbreviated forms shall not be used.
 - (ii) Educational Evaluation. Evaluation of academic functioning for learning disabilities has two primary purposes:

- a. to define the level of functioning in order to determine a substantial discrepancy; and
- b. to identify learner and environmental characteristics that can be used to document that the discrepancy results from a learning disability and to plan intervention strategies and program development.

Achievement difficulties may be identified in the areas of listening comprehension, oral expression, written expression, basic reading, reading comprehension, mathematics calculation and mathematics reasoning. Individually administered, standardized, norm-referenced achievement tests are required to determine a discrepancy. Other procedures, such as curriculum-based assessment, review of written classwork, observations of performance and expectations, criterion-referenced instruments, and informal tests should also be used to document specific disabilities. Comprehensive assessment of academic functioning should be conducted by professionals specifically trained to administer and interpret norm-referenced, criterion-referenced, and other diagnostic measures of achievement. Such professionals might include school psychologists, specially trained teachers or counselors. Achievement information obtained from more than one source must be integrated for a comprehensive view of academic functioning.

- (iii) Discrepancy Determination. Subtract achievement age standard score from the IQ score, assuming both measures have a mean of 100 and standard deviation of 15. If the test does not have a mean of 100 and standard deviation of 15, statistical procedures shall be implemented. Determine if the discrepancy is 15 points or more between achievement and ability. In cases where the multidisciplinary team determines that assessment measures did not accurately reflect the discrepancy between academic functioning and intellectual functioning, appropriate documentation must be used to verify the discrepancy. If the multidisciplinary team determines that the assessment measures did not accurately reflect the discrepancy between achievement and ability, the team shall state in writing the assessment procedures used, the assessment results, the criteria applied to judge the importance of any difference between expected and current achievement, and whether a substantial discrepancy is present that is not correctable without the provision of special education.
- (iv) Documentation of Specific Learning Disability. This documentation will involve a systematic procedure for comparing information gathered in the evaluation process to identify behavioral and academic patterns of strengths and needs (e.g., standardized tests, informal tests, observations, interviews, work samples, measures of adaptive and/or affective behaviors).
- (d) The LD Eligibility Team. A team of qualified professionals plus the parents shall provide a team framework for evaluating a child suspected of

- having a learning disability. The team shall consist of the usual members and shall ensure that in addition, the following persons are present if not represented by one of the other members:
- (i) the student's regular teacher;
 - (ii) if the child does not have a regular teacher, then a regular classroom teacher qualified to teach a child of his/her age;
 - (iii) at least one person qualified by the State Department of Public Instruction to conduct individual diagnostic examinations of children, such as a:
 - a. school psychologist;
 - b. speech-language pathologist;
 - c. remedial reading teacher; or
 - d. specific learning disability teacher.
- (e) The major responsibilities of the LD eligibility team are:
- (i) to appoint one member of the Team (other than the student's regular teacher) to observe the student's performance in the regular classroom setting and note relevant behaviors;
 - (ii) to make a collective group decision based on all required data as to whether or not the student, has a specific learning disability;
 - (iii) to write a report addressing all of the following areas:
 - a. relevant behaviors noted during observation and the relationship of that behavior to the student's academic functioning;
 - b. educationally relevant medical findings, if any;
 - c. whether there is a significant discrepancy between current achievement and ability, which is not correctable without special educational and related services;
 - d. the basis for making the discrepancy determination;
 - e. the determination of the team that the significant discrepancy is not primarily the result of another disabling condition, environmental, cultural and/or economic influences and/or lack of appropriate school experiences commensurate with age and ability;
 - f. whether the student has a specific learning disability.
 - (iv) to have each team member certify by signing the written report with individuals who dissent providing written and signed statements of dissent from the decision. In case of disagreement among team members, the majority will constitute the decision.
- (f) a child may not be determined to be eligible if the determinant factor for that eligibility determination is:
- (i) lack of instruction in reading or math; or
 - (ii) limited English proficiency; and the child does not otherwise meet the eligibility criteria described in these Procedures.
- (9) Speech-Language Impaired. Children may be identified as needing speech-language evaluations through mass screening efforts and/or referral. Children determined through screening or referral to need evaluations shall be assessed in the areas of articulation, language (form, content and function), voice and

fluency. It is on the basis of such an evaluation that the determination as to the type and intensity of services shall be made.

- (a) Articulation/Phonology. For a student to be considered for articulation/phonology intervention, the student's speech should be determined to have a negative impact on academic, social, and/or vocational functioning, and one or both of the following characteristics must exist:
 - (i) two or more phonemic errors not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech;
 - (ii) two or more phonological processes not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech. For a preschool child to be considered for articulation/phonology therapy, the child's speech should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:
 - a. two or more phonemic errors not expected at the child's current age or developmental level are observed during direct testing and/or conversational speech;
 - b. two or more phonological processes not expected at the child's current age or developmental level are observed during direct testing and/or conversational speech.
- (b) Language. A battery of two diagnostic measures is recommended with at least one assessing comprehension and one assessing production of language. Assessment instruments chosen may include normed tests, criterion referenced tests, and/or a language sample. Scores should be computed in standard scores, language quotients percentiles, and/or stanine scores when possible. For a student to be considered for intervention, the student's language should be determined to have a negative impact on academic, social, and/or vocational functioning, and one or both of the following characteristics must exist:
 - (i) norm referenced language tests which yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviation below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of eight;
 - (ii) non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress. For a preschool child to be considered for language intervention, the child's language should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:
 - a. norm referenced language tests yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations below the mean, and language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of eight;
 - b. non-standardized/informal assessment indicates that the child has difficulty understanding and/or expressing ideas and/or concepts to

such a degree that it interferes with the child's social-educational progress.

Many students, including those with developmental disabilities and, in particular, those classified as mentally disabled, exhibit limitations with expressive and/or receptive communication skills. Not all such students are considered to have a speech-language impairment and in need of therapeutic intervention from the speech-language pathologist. The speech-language pathologist and other members of the IEP team should consider the efficacy of therapeutic intervention for each student and, in determining such, should consider whether or not enrolling a student for speech-language services will significantly change his/her ability to communicate.

- (c) Voice. For a student to be considered for placement in a voice therapy program, he/she must demonstrate consistent deviations in vocal production that are inappropriate for chronological/mental age, gender, and ability. Further, the voice disorder should be determined to have a negative impact on academic, social, and/or vocational functioning.
- (d) Fluency. For a student to be considered for placement in a fluency therapy program, he/she must demonstrate nonfluent speech behavior characterized by repetitions/prolongations as noted on a regular basis. Further, the fluency disorder should be determined to have a negative impact on academic, social, and/or vocational functioning.

(10) Traumatic Brain Injured.

- (a) Screening Procedures: The following screening information shall be collected and considered in making decisions about the need for further interventions or evaluations:
 - (i)* observation(s) in the learning environment, by an appropriate third-party observer, which records the nature and severity of the child's learning and/or behavioral difficulties;
 - (ii) dated documentation of conferences or attempts to conference with parents and/or guardians concerning the specific educational, behavioral, and/or social/emotional needs of the child;
 - (iii) review of educational history and educational records to determine child's educational progress; particular attention should be paid to child's progress prior to and following the injury;
 - (iv) review of medical records;
 - (v)* dated and signed documented evidence of at least two interventions attempted in the learning environment in order to assess behavioral and academic progress. Those interventions should be designed in consultation with school staff and/or community personnel. Interventions may include but not be limited to changes in the child's class schedule, curriculum, teachers, instructional techniques, and/or other interventions typically used with traumatic brain injured students;
 - (vi) vision screening;
 - (vii) hearing screening.

*These screening procedures may be waived for students who have been medically diagnosed as traumatic brain injured and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months. The classroom interventions are not applicable to preschool children.

- (b) Evaluation Procedures. The multidisciplinary evaluation to determine eligibility for traumatic brain injured programs shall include the following:
 - (i) Psychological evaluation for traumatic brain injury. For the purpose of making educational programming and placement decisions, a psychological evaluation for traumatic brain injury includes but is not limited to the evaluations of intellectual and academic functioning, memory, reasoning, behavior, attention/concentration, cognitive processing (e.g., perceptual, auditory, kinesthetic, and tactile), and social/emotional functioning. Psychological evaluation for traumatic brain injury must be conducted by school psychologists licensed by the State Department of Public Instruction, or by psychologists who are appropriately practicing in the speciality of neuropsychology and are licensed by the North Carolina State Board of Examiners of Practicing Psychologists. All psychological evaluations for traumatic brain injury must be current within one year. All psychologists providing assessment of TBI students must meet the guidelines of the Exceptional Children Division for training in the assessment of traumatic brain injury and be listed on the Exceptional Children Division's registry of approved providers (hereafter referred to as the registry.)
 - (ii) Educational evaluation. The evaluation shall include but not be limited to an assessment of the following areas:
 - (a) the learning environment including curriculum and task demands;
 - (b) present levels of academic functioning including strengths and weaknesses;
 - (c) present level of academic functioning compared to academic functioning prior to the traumatic brain injury if available.
 - (iii) Medical history. A medical history shall be obtained by a licensed physician, or other competent professional (e.g., school nurse.) The medical history shall include a review of the student's current health status, as well as documentation of injuries, diseases, or medical conditions which may have resulted in, or contributed to, traumatic brain injury;
 - (iv) Motor evaluation;
 - (v) Speech-language screening;
 - (vi) Evaluation of vision and hearing processes typically affected by traumatic brain injury (e.g. visual field-cuts, neurologically-based hearing impairments, etc.)

If students have been medically diagnosed as traumatic brain injured and have received services in a medical and/or rehabilitation setting and if the above data are available and are recent, this can be used solely or in combination with other data by the IEP Team or the Preschool IEP Team in making educational programming and placement decisions for

traumatic brain injured students.

- (c) Eligibility Criteria: In order to determine initial eligibility for traumatic brain injured services, the following are required:
 - (i) written verification by a licensed physician or a licensed psychologist appropriately practicing in the specialty of neuropsychology that the student has sustained an injury from which brain injury can be inferred. No time limits exist for written verification.
 - (ii) evidence which documents that:
 - a. the child's academic performance behavior, and/or cognitive or social/emotional development has been or may be, significantly impaired by the injury or condition;
 - b. evidence which documents that: special education is needed.

NOTE: Those students with non-traumatic brain injury (e.g., tumor, vascular/circulatory disorders, degenerative diseases, etc.) should be considered for assessment as outlined above.

- (11) Visually Impaired. The identification of preschool children with visual impairments includes but is not limited to:
 - (a) observation of physical, behavioral and environmental characteristics:
 - (i) shutting or covering one eye, tilting head or thrusting head forward, squinting eyelids together;
 - (ii) difficulty with work requiring vision;
 - (iii) avoidance of near work task or irritation when required to do near work;
 - (iv) inability to see distant objects;
 - (v) difficulty with navigation; and
 - (vi) eye appearance (e.g., crossed eyes, nystagmus);
 - (b) vision screening with appropriate instruments (e.g., Tumbling E); and
 - (c) examination by an ophthalmologist or optometrist.

For school age children with visual impairments, the comprehensive evaluation procedures shall include an evaluation to determine the appropriate reading/writing medium for the student. A Braille Skills Inventory shall be administered and shall include consideration of Braille, large print, regular print, or auditory mode. The assessment may lead to the determination that, rather than any one of these media, a combination of any or all is the most appropriate. The IEP Team shall consider this determination in making its decision, and its decision shall be included in the development of the student's IEP. If the IEP Team determines that Braille instruction is appropriate, then the local education agency shall assure that Braille instruction is provided by appropriately trained persons who have demonstrated Braille competency at a level consistent with standards adopted by the Library of Congress.

E. Required and Recommended Screening and Evaluation for Initial Placement.

Specific information is required to determine eligibility for the various categories of disability and for children in hospital or home programs. Some evaluations are required for a particular disability and others are highly recommended. The term developmental refers to preschool programs. Screening shall be followed by

evaluation when appropriate. A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to the initial placement of a child with a disability in a special education program. Required and recommended screening and evaluations to determine eligibility in each area of exceptionality are as follows:

- (1) Autistic
 - (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) speech-language screening;
 - (iii) vision screening;
 - (iv) review of early history;
 - (v) adaptive behavior evaluation;
 - (vi) educational evaluation;
 - (vii) psychological evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) medical/neurological evaluation;
 - (ii) audiological evaluation.
- (2) Behaviorally-Emotionally Disabled
 - (a) required screening and evaluation before placement:
 - (i) social/developmental history;
 - (ii) two interventions in regular setting designed in consultation with other staff members;
 - (iii) observation by an independent observer;
 - (iv) conferences with parents;
 - (v) records review;
 - (vi) hearing screening;
 - (vii) vision screening;
 - (viii) behavioral-emotional evaluation;
 - (ix) educational evaluation;
 - (x) psychological evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) medical evaluation;
 - (ii) speech-language evaluation.
- (3) Deaf-Blind
 - (a) required screening and evaluation before placement:
 - (i) motor screening;
 - (ii) adaptive behavior evaluation;
 - (iii) audiological evaluation;
 - (iv) educational evaluation;
 - (v) medical evaluation;
 - (vi) ophthalmological or optometric evaluation;
 - (vii) psychological evaluation;
 - (viii) communication evaluation.

- (4) Hearing Impaired
 - (a) required screening and evaluation before placement:
 - (i) vision screening;
 - (ii) Usher Syndrome screening (after age 12)
 - (iii) audiological evaluation;
 - (iv) educational evaluation;
 - (v) otological evaluation;
 - (vi) speech-language evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) health screening;
 - (ii) psychological evaluation;
 - (iii) adaptive behavior evaluation;
 - (iv) ophthalmological or optometric evaluation;
 - (v) social history.
- (5) Educable Mentally Disabled
 - (a) required screening and evaluation before placement:
 - (i) health screening;
 - (ii) hearing screening;
 - (iii) motor screening;
 - (iv) speech-language screening;
 - (v) vision screening;
 - (vi) adaptive behavior evaluation;
 - (vii) educational evaluation;
 - (viii) psychological evaluation which shall include an intellectual evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) audiological evaluation;
 - (ii) vocational evaluation for students age 14 or older;
 - (iii) social history.
- (6) Trainable Mentally Disabled
 - (a) required screening and evaluation before placement:
 - (i) health screening;
 - (ii) hearing screening;
 - (iii) motor screening;
 - (iv) speech-language screening;
 - (v) vision screening;
 - (vi) adaptive behavior evaluation;
 - (vii) educational evaluation;
 - (viii) psychological evaluation which shall include an intellectual evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) audiological evaluation;
 - (ii) vocational evaluation for students age 14 or older;
 - (iii) social/developmental history.

- (7) Severely/Profoundly Mentally Disabled
 - (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) vision screening;
 - (iii) adaptive behavior evaluation;
 - (iv) communication evaluation;
 - (v) educational evaluation;
 - (vi) medical evaluation;
 - (vii) motor evaluation;
 - (viii) psychological evaluation.
- (8) Multihandicapped
 - (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) vision screening;
 - (iii) adaptive behavior evaluation;
 - (iv) communication evaluation;
 - (v) educational evaluation;
 - (vi) medical evaluation;
 - (vii) motor evaluation;
 - (viii) psychological evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) audiological evaluation;
 - (ii) ophthalmological or optometric evaluation.
- (9) Other Health Impaired
 - (a) required screening and evaluation before placement:
 - (i) educational evaluation;
 - (ii) medical evaluation.
 - (b) recommended evaluation before placement:
 - (i) psychological evaluation;
 - (ii) behavioral evaluation.
- (10) Orthopedically Impaired
 - (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) vision screening;
 - (iii) educational evaluation;
 - (iv) medical evaluation;
 - (v) motor evaluation.
 - (b) recommended screening and evaluation before placement:
 - (i) adaptive behavior evaluation;
 - (ii) speech-language screening.
- (11) Developmentally Delayed
 - (a) required screening and evaluation before placement:
 - (i) health screening, including vision and hearing screening;

- (ii) speech-language screening;
- (iii) motor screening;
- (iv) educational evaluation;
- (v) psychological evaluation, including cognitive and social-emotional;
- (vi) adaptive behavior;
- (vii) social history;
- (viii) observation.

(12) Pregnant Students

- (a) required before placement:
 - (i) medical diagnosis;
 - (ii) written recommendation verifying need for special education.

(13) Specific Learning Disabled

- (a) required screening and evaluation before placement:
 - (i) conferences with parents (initial placement only);
 - (ii) observation by an independent observer;
 - (iii) two interventions in regular setting designed in consultation with other staff members;
 - (iv) information concerning the student's educational and medical history, school attendance record, performance in relation to peers, social functioning and environment and cultural status;
 - (v) hearing screening;
 - (vi) vision screening which measures far and near acuity;
 - (vii) educational evaluation;
 - (viii) psychological evaluation which shall include an intellectual evaluation.
- (b) recommended screening and evaluation before placement:
 - (i) health screening;
 - (ii) medical evaluation;
 - (iii) motor screening;
 - (iv) speech-language evaluation.

(14) Speech-Language Impaired

- (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) speech-language screening;
 - (iii) educational evaluation;
 - (iv) speech-language evaluation administered to assess performance in those areas in which the student failed to demonstrate appropriate performance on screening.
- (b) recommended screening and evaluation before placement:
 - (i) health screening;
 - (ii) psychological evaluation;
 - (iii) vision screening.

(15) Traumatic Brain Injured

- (a) required screening and evaluation before placement;
 - (i)* observation(s) in the learning environment;
 - (ii) conferences with parents;
 - (iii) review of educational history and records;
 - (iv) review of medical records;
 - (v)* two interventions in the learning environment;
 - (vi) vision screening;
 - (vii) hearing screening;
 - (viii) speech-language screening;
 - (ix) psychological evaluation for traumatic brain injury;
 - (x) educational evaluation;
 - (xi) medical history;
 - (xii) motor evaluation;
 - (xiii) evaluation of vision and hearing processes.

*These screening procedures may be waived for students who have been medically diagnosed as traumatic brain injured and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months.

(16) Visually Impaired

- (a) required screening and evaluation before placement:
 - (i) hearing screening;
 - (ii) educational evaluation;
 - (iii) ophthalmological or optometric evaluation;
 - (iv) Braille skills inventory for school-age children only.
- (b) recommended screening and evaluation before placement:
 - (i) medical evaluation;
 - (ii) psychological evaluation;
 - (iii) adaptive behavior evaluation;
 - (iv) speech-language evaluation;
 - (v) audiological evaluation.

F. Eligibility. Upon completing the administration of tests and other evaluation materials, a team of qualified persons including the parent shall:

- (1) ensure that information obtained from all these sources is documented and carefully considered;
- (2) make a determination of whether the student is a student with a disability as defined in Section .1501 A;
- (3) provide the parents with a copy of the evaluation report and the documentation of determination of eligibility; and
- (4) ensure that an eligible child with a disability is placed in the appropriate program within 90 calendar days of receipt of a referral, unless parent refuses to give consent to evaluation or placement.

- (5) A child may not be determined to be eligible if the determinant factor for that eligibility determination is:
- (a) lack of instruction in reading or math; or
 - (b) limited English proficiency; and the child does not otherwise meet the eligibility criteria described in these Procedures.

History Note: IDEA 97 Final Regulations 34 CFR § 300.313; §§ 300.320-300.321; § 300.343; § 300.534; § 300.543.

.1506 REEVALUATION.

Reevaluation is the process of examining data to assure that the continuing individual needs of a student are identified and of gathering information that is necessary for appropriate educational programming. Appropriate reevaluation of students with disabilities must be completed at least every three years or more frequently if conditions warrant or if the child's parents or teachers request it in order to determine the appropriateness of current educational status of students and to determine whether or not a student continues in or exits from special education services. Any evaluations must comply with Section .1505.

A. Review existing evaluation data on the student, including:

- (1) evaluations and information provided by the child's parent;
- (2) current classroom-based assessments and observations; and
- (3) observations by teachers and related service providers.

B. Collect additional appropriate assessment data if needed. The method(s) used shall be determined by the individual needs of the student and the pertinent information already available, and may involve observation and testing. Data collection may include individual tests of aptitude and achievement and the use of checklists, interviews, observations, and other measures and procedures. If it is determined by the IEP Team that no additional data are needed, the parents must be notified of the determination that no additional data are needed, the reasons for the determination, and of their rights to request an evaluation that yields new data.

C. Reevaluation. Reevaluation may occur at any time, but no later than three years from the date of the last placement. Any additional information that is required for reevaluation must be completed prior to the committee meeting at which continuing eligibility and the need for special education and related services are determined.

D. Additional Assessment. If additional assessment is required following the review of existing data, written parent consent must be obtained unless the local education agency can demonstrate that it has taken reasonable measures to obtain such consent and the student's parent has failed to respond. (Reasonable measures means that the LEA must use procedures consistent with Section .1507 F (1-6)).

E. No Additional Data. If no additional data are needed, written parent consent is not required, but the IEP Team shall notify the parent in writing of that decision, the reasons for it, and the parent's right to request a reevaluation if he/she disagrees with the eligibility determination. The local education agency shall not be required to conduct an assessment unless the IEP Team determines there is a need for additional data or the parent requests additional assessment(s).

F. Reevaluation of Children Identified As Developmentally Delayed. The reevaluation

of children identified as developmentally delayed shall occur 3 years following placement or prior to turning eight years of age, or prior to entering third grade (whichever comes first).

G. At each reevaluation the IEP must be reviewed and revised as appropriate.

History Note: Statutory Authority G. S. 115C-113; Eff. October 1, 1978;
G. S. 115C-146.1 through 146.4; Eff. July 1, 1991;
Amended Eff. July, 1999; July 11, 1991; December 7, 1989;
January 1, 1985; September 28, 1981; September 30, 1980; July 15, 1979.
IDEA 97 Final Regulations 34 CFR § 300.321; §§ 300.504-300.505; § 300.533;
§ 300.536; § 300.543.

.1507 INDIVIDUALIZED EDUCATION PROGRAM FOR CHILDREN WITH
DISABILITIES AND WRITTEN EDUCATION PROGRAM FOR THE PREGNANT

- A. Educational Placement. Educational placement of a child with a disability must be based on his or her individualized education program, and must be made in conformance with the LRE requirements of Section .1510; and each local educational agency shall conduct a meeting for the purpose of developing, reviewing, or revising an IEP for each child with a disability except as provided in Section .1519. The State Department of Public Instruction shall monitor the effectiveness of these programs.
- B. IEP Accountability. Special education and related services must be provided to a child with a disability in accordance with the child's IEP.
- C. Development, Review, and Revision of the IEP.
- (1) In developing the IEP, the IEP Team shall consider:
 - (a) the strengths of the child and the concerns of the parents for enhancing the education of their child;
 - (b) the results of the initial or most recent evaluation of the child;
 - (c) as appropriate, the results of the child's performance on any general state or district-wide assessment programs; and
 - (d) information about the child provided by the parent.
 - (2) Special considerations which the IEP Team shall consider:
 - (a) in the case of a child whose behavior impedes his or her learning or that of others, appropriate strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
 - (b) in the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
 - (c) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for Braille, that instruction in Braille or the use of Braille is not appropriate;
 - (d) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - (e) whether the child requires assistive technology devices and services. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP Team shall consider the factors described above.
 - (3) Statement in IEP. If the IEP Team determines that a child needs a particular device or service, including an intervention, accommodation, or other program

modification in order for the child to receive a free appropriate public education, the IEP Team must include a statement to that effect in the IEP.

- (4) Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

D. Content of the Individualized Education Program. The IEP for each child must include:

- (1) A statement of the child's present levels of educational performance, including:
 - (a) how the student's disability affects the student's participation and progress in the general curriculum; and
 - (b) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- (2) A statement of measurable annual goals, including short-term objectives and/or benchmarks, related to:
 - (a) meeting the student's needs that result from the student's disability so that the student can be involved in and progress in the general curriculum; and
 - (b) meeting each of the student's other educational needs resulting from the student's disability.
 - (c) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- (3) A statement of the special education and related services and supplementary aids and services 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 for the student to:
 - (a) advance appropriately toward attaining the annual goals;
 - (b) be involved and progress in the general curriculum in accordance with the student's present level of performance and to participate in extracurricular and other nonacademic activities; and
 - (c) be educated and participate with other students with disabilities and nondisabled students.
- (4) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in Section .1507 D(3).
- (5) A statement of any individual accommodations modifications required for the student with a disability to participate in statewide or district-wide assessments.
- (6) A statement of the reasons why a student with a disability will not participate in a particular statewide assessment program, or part of an assessment and how the student will be assessed.

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- (7) The projected date for the beginning of services and modifications described in this section and the anticipated frequency, location, and duration of the services and modification.
 - (8) Beginning at age 14, or younger if determined appropriate, and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP, that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program.)
 - (9) Beginning at age 16, or sooner if applicable, a statement of the needed transition services for the student, including if appropriate, a statement of the interagency responsibilities or any needed linkages.
 - (10) A statement that where a participating agency, other than the public agency responsible for the student's education, fails to provide agreed upon transition services contained in the IEP, in accordance with Section .1507 D(9), the public agency shall, as soon as possible, reconvene a meeting of the participants on the IEP Team to identify alternative strategies to meet the transition objectives that were included in IEP and revise the IEP if necessary; (This does not relieve 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.)
 - (11) The contents of the transition plan must meet the requirements of Section .1501 O;
 - (12) A statement of:
 - (a) how the student's progress toward the annual goals will be measured;
 - (b) how the student's parents will be regularly informed of the student's progress at least as often as parents of nondisabled students; and
 - (c) the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the IEP.
- E. Extended School Year. Extended school year services are special education and related services that:
- (1) are provided to a student with a disability:
 - (a) beyond the normal school year of the LEA;
 - (b) in accordance with the IEP; and
 - (c) at no cost to the parent.
 - (2) are determined to be necessary by the IEP Team on an individual basis for the provision of a FAPE;
 - (3) are not limited to particular categories of disability; and
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- (4) are not unilaterally limited as to type, amount, or duration of services.

F. Parent Participation.

- (1) Steps shall be taken to ensure that one or both of the parents or guardians of the child with a disability are present at each meeting or are afforded the opportunity to participate, including notifying parents early enough to ensure they will have the opportunity to participate, and scheduling the meeting at a mutually agreed upon time and place.
- (2) The notice from the local educational agency informing the parent(s) of the IEP meeting must contain the purpose, the time, the location of the meeting, and the persons who will be in attendance. If the purpose of the meeting is transition, the notice must indicate that fact and show that the student will be invited, as well as identifying any other agency that will be invited to send a representative. The parent must be notified that they and the LEA have the right to invite other individuals who have knowledge or special expertise about the child to attend the meeting.
- (3) If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls.
- (4) A meeting may be conducted and placement decisions may be made without a parent in attendance if the local education agency is unable to convince the parent(s) that they should attend. In this case the local educational agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as:
 - (a) detailed records of telephone calls made or attempted and the result of those calls;
 - (b) copies of correspondence sent to the parent/guardian and any responses received;
 - (c) detailed records of visits made to the home or place of employment of parent/guardian and the results of those visits.
- (5) The local educational agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (6) The local education agency shall provide a copy of the IEP to the parents.

G. Timelines.

- (1) An IEP shall be developed before special education and related services are provided to the child.

- (2) For a child with a disability who is receiving special education, the IEP shall be revised as often as determined necessary but at a minimum annually. As the school year begins, the IEP shall be reviewed by the teacher or teachers responsible for implementation.
- (3) For a child with a disability not receiving special education at the present time, the IEP shall be developed within 30 days of a determination that the child requires special education.
- (4) An IEP shall be implemented as soon as possible following the IEP meeting.
- (5) The IEP is available to each regular education teacher, special education teacher, related service provider and other service providers who are responsible for its implementation.
- (6) Each teacher and provider must be informed of his/her specific responsibility related to implementing the IEP and the specific accommodations, modifications and support that must be provided the student in accordance with the IEP.

H. Review of the Individualized Education Program.

- (1) The IEP shall be reviewed at least annually to determine if the annual goals are being achieved, and are revised as appropriate to address any lack of expected progress toward the annual goal and in the general curriculum. A review shall occur more frequently if warranted, to address the child's anticipated needs or when requested by the teacher or the parent.
- (2) The student's parent(s) or guardian(s) must be invited to participate in the review.
- (3) Recommendations for any change in the student's placement must be made by the IEP Team.
- (4) The student's parent(s) or guardian(s) must be notified in writing of any change in placement, and due process procedures must be followed.
- (5) The same considerations must be addressed at the time of review as at the development of the initial IEP.

I. Maintenance of the Individualized Education Programs. The local educational agency shall maintain a record of the IEP for each child with a disability. The IEP is considered a confidential record.

J. Department of Health and Human Services, Department of Correction, and Department of Juvenile Justice and Delinquency Prevention.

In the facilities and programs of the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention, the IEP shall be planned in collaboration with those other individuals responsible for the design of the total treatment and/or habilitation plans; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent. For purposes of these programs, requirements for parent(s) or guardian(s) involvement are limited to educational matters only in the areas of evaluation/reevaluation, identification, placement and development of the IEP of children with disabilities.

- K. Liability. An agency, teacher or other person shall not be held liable if the child does not reach the growth projected in the annual goals and objectives in the IEP but must make a "good faith effort" to assist the child in achieving the objectives and goals.
- L. Educational Program for the Pregnant. Local education agencies shall develop a written program to meet the special educational needs of pregnant students.
- M. Placement. Each local education agency or state operated program shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. All placement decisions are determined by the IEP Team based on the IEP. The LEA shall ensure that an eligible child with special needs is placed in the appropriate special program within 90 calendar days of receipt of a referral, unless the parent refuses to give consent for evaluation or placement.
- N. Students with Disabilities Convicted as Adults and Incarcerated in Adult Prisons. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons;
 - (1) The inclusion in general state or district-wide assessments;
 - (2) Transition planning and transition services [Section .1507 D(8)(9)] with respect to the students whose eligibility under these Procedures 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.

History Note: Statutory Authority G. S. 115C-110; 115C-113; Eff. July 15, 1979;
G. S. 146.1 through 146, Eff. July 1, 1991
Amended Eff. July, 1999; February 5, 1998, July 11, 1991; May 2, 1991;
December 7, 1989; July 1, 1986; November 1, 1984; September 28, 1981.
IDEA 97 Final Regulations 34 CFR§ 300.128; § 300.300; § 300.309; § 300.311;
§§300.342-300.343; § 300.345; §§300.347-300.348; § 300.350; § 300.501;
§ 300.552.

.1508 PRESCHOOL INDIVIDUALIZED EDUCATION PROGRAM TEAM

- A. Overall Function. The Preschool Individualized Education Program Team (Preschool IEP Team) provides an interagency framework for evaluating data, for making decisions regarding eligibility, and deciding the most appropriate placement for children referred for special education services. It ensures a multi-disciplinary evaluation by a team or group of persons including at least one teacher or other specialist with knowledge in the area of suspected disability. The Preschool IEP team is responsible for receiving referrals; involving parents in the planning and decision-making process; obtaining parental permission for assessment; initiating or reviewing screening and evaluation procedures; evaluating information; and seeing that an individualized education program for preschool children with disabilities is developed and reviewed at least annually, in accordance with Section .1507, beginning no later than the child's third birthday. The local education agency has legal and fiscal responsibility for ensuring the provision of special education and related services to three- and four-year-old children with disabilities and those five-year-old children with disabilities who are not eligible for kindergarten; therefore, decisions concerning the placement process ultimately remain with the local education agency.

Children participating in early intervention programs (Part C) who will participate in preschool programs (Part B) shall experience a smooth and effective transition to those preschool programs.

- B. Composition. Members of the preschool IEP team include the following:

- (1) Parent(s), guardian, or surrogate;
- (2) Referring agency personnel, child service coordinator, or teacher or representative from current service provider if the child is enrolled in an early intervention or preschool program;
- (3) Director of programs for exceptional children or a designee from the local education agency other than the child's teacher who shall be qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of the child, and who is knowledgeable about the financial resources of the local education agency;
- (4) Teacher qualified to provide special education;
- (5) Teacher qualified to provide regular early childhood education or services; and
- (6) A person knowledgeable about evaluation results who may be one of the other members of the team;

These members shall be involved when the IEP is being developed and placement decisions are being made. At least one member of the Preschool IEP Team should be of the same race and gender as the child being referred.

Other members may be selected from the following:

- (7) Principal or designee;
 - (8) Social worker;
 - (9) Guidance counselor;
 - (10) Speech-language pathologist;
 - (11) Physician or school nurse;
 - (12) Physical therapist;
 - (13) Occupational therapist;
 - (14) Area agency representatives or involved professionals, as appropriate;
 - (15) Potential service providers; and
 - (16) Other individuals at the discretion of the agency or parent;
- C. Responsibilities of the Preschool IEP Team. The Preschool IEP Team shall establish procedures consistent with the infant-toddler program for children transitioning to the preschool program to ensure that:
- (1) Upon notification by the early interventionist or infant-toddler service coordinator, available information on children who may be referred for preschool services is reviewed by the local education agency;
 - (2) There is participation by the local education agency representative at the transition-planning meeting convened by the infant-toddler service coordinator to discuss services;
 - (3) The local education agency assumes responsibility for all referred children on their third birthday;
 - (4) A process is in place to receive referral information for children, either served or unserved by the local education agency;
 - (5) All parent rights are in place after an initial referral is made. All communication with the child's parent or guardian shall be in the native language or dominant mode of communication of the parent or guardian, including an interpreter for parents who are deaf;
 - (6) Children with disabilities receive a diagnosis and evaluation appropriate to meet

educational or developmental needs after receipt of written consent from parent and guardian. If a child is screened or evaluated by staff in programs in the Department of Health and Human Services, the screening/evaluation results shall be presented to the Preschool IEP Team of the local education agency where the child resides;

- (7) Information from appropriate evaluations and sources is documented, reviewed and interpreted with appropriate evaluation personnel to determine eligibility and placement of a child in a special program. If the evaluators cannot be present at the Preschool IEP Team meeting, their written reports are to be made available;
- (8) Compliance with due process procedures concerning the eligibility and placement of a child in a program for children with disabilities and due process procedures in writing to the parent(s) or guardian are ensured;
- (9) An individualized education program is developed within 30 calendar days of the eligibility determination. For children transitioning from an infant-toddler program to the preschool program, the individualized family services plan (IFSP) may be used in place of the IEP if all of the components required on the IEP are present. The IFSP must be developed in accordance with Section .1507 B or for students placed in private school in accordance with Section .1519 B if the individualized family services plan continues to be appropriate, and if the parents agree to its use;
- (10) If the IFSP is used, a detailed explanation of the differences between the IEP and IFSP must be provided to the child's parents, and written informed consent must be obtained from the parents;
- (11) Parents are invited to the meeting or meetings to discuss eligibility and development of the IEP. Assistance will be provided that will enable them to participate to the fullest extent they desire, and all attempts to involve parents in the IEP process will be documented;
- (12) Written notice is given to parents prior to the placement or denial of placement and the provision of a free appropriate public education;
- (13) Written consent for initial placement in a program for children with disabilities is obtained from the parent or guardian and the parents have been involved in the development of the IEP for the preschool child with a disability and have received a copy of their child's IEP;
- (14) The individualized education program for a child with a disability will follow the child from one setting to another;
- (15) The teacher(s) of children with disabilities receive a copy of the IEPs for the child with a disability and pertinent information and technical assistance

necessary to implement the IEPs;

- (16) Twelve months after placement, and at least annually thereafter, a review of progress is conducted for each child placed in a special education program. The Preschool IEP Team must make decisions regarding revised IEPs for children with disabilities and make recommendations concerning continuation of the programs;
- (17) Eligible children with disabilities are placed in appropriate special programs within 90 calendar days of receipt of referrals, unless the parents refuse to give consent for evaluation and/or placement; and
- (18) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

D. Change in Placement/Exit Criteria. When a Preschool IEP Team has evaluated and has documented evidence to show that a child no longer needs the special program or service in which he/she is enrolled or that another placement would be more developmentally appropriate or less restrictive, the committee shall make a recommendation regarding placement in accordance with Section .1512. After the Preschool IEP team has made a decision, the parent(s) or guardian(s) is provided written prior notice pursuant to the procedures set forth in Section .1519. If the parent(s) or guardian(s) objects to the recommended placement, he/she may follow the appeal procedures.

History Note: Statutory Authority G. S. 115C-146.1 – 146.4; Eff. July, 1999; July 11, 1991.
Amended May, 1998
IDEA 97 Final Regulations 34 CFR § 300.128; § 300.132; § 300.300;
§§ 300.342-300.343; § 300.345; § 300.347; § 300.350; § 300.501; § 300.552.

.1509 CONFIDENTIALITY AND ACCESS TO RECORDS**A. Annual Notification of Rights.**

- (1) Each local educational agency shall give annual notices to parents throughout the LEA before any major identification, location, or evaluation activity. The notice must be published or announced in newspapers or other media to notify parents of the following:
 - (a) their rights concerning confidentiality and access to records;
 - (b) the right to file complaints concerning alleged failures by the educational agency to comply with confidentiality requirements;
 - (c) a list of languages in which the notice is available;
 - (d) a summary of the policies and procedures that must be followed regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;
 - (e) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the LEA intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information.
- (2) Agencies shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

B. Access Rights.

- (1) A parent, legal guardian, or eligible student has the right to inspect and review the student's education records that are collected, maintained, or used by the local educational agency and to have a representative of the parent inspect and review the records. Upon request, parents shall be entitled to have these records fully explained, interpreted and analyzed for them by the staff of the agency. Such requests shall be honored within a reasonable period of time, and before any meeting of an IEP Team or any impartial due process hearing or hearing related to disciplinary procedures, but in no case more than 45 days after the request has been made. Eligible student is defined as one who has reached the age of majority, 18 years, unless he/she has been declared incompetent by the court. The term "education records" does not include personal notes of teachers or professionals working with the child. The agency shall comply with a request to inspect the records prior to the meeting regarding an IEP or hearing.
- (2) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.
- (3) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

- (4) A participating educational agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.
- (5) The parent or eligible student has the right to request copies of the records if failure to provide these records would effectively prevent the parent or eligible student from exercising the right to inspect and review the records.
- (6) The participating educational agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

C. Prior Consent for Disclosure Required.

- (1) An educational agency shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student to a third party, other than directory information, except as provided in (D) of this section.
- (2) Whenever written consent is required, an educational agency may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation, or custody, which provides to the contrary.
- (3) The written consent required by paragraph (E) (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
 - (a) a specification of the records to be disclosed;
 - (b) the purpose or purposes of the disclosure; and
 - (c) the party or class of parties to whom the disclosure may be made.
- (4) When a disclosure is made pursuant to paragraph (D) (1) of this section, the educational agency shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

D. Parental Consent.

- (1) Parental consent is required prior to release of education records to a third party, except:
 - (a) school officials, including teachers, within the local educational agency who have legitimate educational interests;
 - (b) officials of another school or local educational agency in which the student intends to enroll or obtain services;

- (c) certain authorized representatives of the state and federal government who are determining eligibility of the child for aid as provided under Public Law 105-17;
 - (d) when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the local educational agency of all such orders or subpoenas in advance of compliance;
 - (e) when the disclosure is in connection with a health or safety emergency. Nothing in this part shall prevent a local education agency from
 - (i) including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
 - (ii) disclosing appropriate information maintained under this section to teachers and school officials within the agency or institution who the local education agency has determined have legitimate educational interests in the behavior of the student;
 - (iii) disclosing appropriate information maintained under this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.
- (2) Consent must be obtained before disclosing personally identifiable information used for any purpose other than meeting the requirements of Section .1509 D(1).
 - (3) All other persons may gain access to a student's record only with the specific written consent of the parent(s) or guardian(s) or student of majority age.
 - (4) Recipients of student records should be cautioned that student information may not be released to third parties without the consent of the parent/legal guardian.
 - (5) When a parent refuses to provide consent and the agency feels that the record must be shared with another party to ensure appropriate education of the child, the agency must use the hearing procedures in order to compel consent which could be ordered by the hearing officer.
 - (6) The participating agency must: keep a record of parties obtaining access to education records (name of party, date of access, and purpose of access); provide parents on request a list of types and locations of education records; and maintain, for public inspection, a current listing of names and positions of those employees within the agency who may have access to personally identifiable information.

E. Amendment of Records at Parent's Request.

- (1) A parent who believes that data which are collected and maintained are inaccurate, misleading or in violation of the privacy or other rights of the child may request the participating agency which maintains the data to make

appropriate amendments to the data.

- (2) The participating agency shall decide whether to amend the data in accordance with the request within a reasonable period of time of receipt of the request.
- (3) If the agency decides to refuse to amend the data in accordance with the request, it shall so inform the parent of the refusal and advise the parent of the right to a hearing.

F. Right to a Hearing.

- (1) A parent, legal guardian or eligible student has a right to a hearing to challenge the contents of the child's record on the grounds that information is inaccurate, misleading or in violation of the student's privacy rights. If the agency refuses to delete such entries, the parents may request a hearing within 30 days of the received notice of the refusal, pursuant to Part 99 of the Family Educational Rights and Privacy Act.
- (2) If, as a result of the hearing, the agency decides that the data are inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the data accordingly and so inform the parent in writing.
- (3) If, as a result of the hearing, the agency decides that the data are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the data and setting forth any reasons for disagreeing with the decision of the agency.
- (4) Any statements or explanations placed in the records of the child under the guidelines of the above paragraph shall be maintained by the agency as long as the record or contested portion thereof is maintained by the agency; and if the records of the child or the contested portion thereof is disclosed by the agency to any party, the explanation shall also be disclosed.
- (5) The public agency shall make its decision in writing within a reasonable period of time after the hearing.
- (6) The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

G. Safeguards.

- (1) Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (2) One official in each agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. This official may

assign personnel in each school to ensure confidentiality.

- (3) All persons collecting or using confidential information must receive training or information regarding State policies and procedures under Section 300.127 (IDEA) and 34 CFR, Part 99 (FERPA).
- (4) Each agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

H. Destruction of Information.

- (1) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The agency should inform the parent that the records may be destroyed but at the parent's request a copy of the record would be sent.
- (2) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.
- (3) Parents should be informed, prior to destruction, that the records may be needed by the child or the parent for social security benefits, legal defense, or other purposes. If the parent still requests that the information be destroyed, the records are to be destroyed, retaining only information in (2) above.

- I. Children's Rights. A student who is eighteen (18) years or older has the same rights, under this section, that his parents or guardian had. Students under the age of 18 are not afforded rights of privacy similar to those afforded to parents.

Note: For further information about the Family Educational Rights and Privacy Act, see 34 CFR Part 99.

History Note: Statutory authority G.S. 115C-114; Eff. July 15, 1979;
Amended Eff. July, 1999; July 11, 1991; November 1, 1984; September 28, 1981; September 30, 1980.
IDEA 97 Final Regulations 34 CFR § 300.529; §§ 300.560-300.574; § 300.576.

.1510 CONTINUUM OF PROGRAMS AND SERVICES -- LEAST RESTRICTIVE ENVIRONMENT

- A. To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are not disabled. Each child with a disability is to participate with children who are not children with disabilities in services and activities to the maximum extent appropriate to the needs of the child in both non-academic and extracurricular services which may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

Each student with a disability is to be placed as close as possible to his/her home. Unless the IEP for children with disabilities or written educational program for the pregnant requires some other arrangement, the child is to be educated in the school which he/she would attend if not disabled or pregnant. When the regular class environment or natural setting does not prove satisfactory in meeting the needs of the children, consultant or supportive services, remedial or advanced instruction and/or special instructional materials should be provided prior to removing them from the regular classroom or the natural preschool environment/setting. Special classes, separate schools, or removal of children requiring special education from the regular educational environment shall occur only when the needs of the children are such that education in regular classes or the natural preschool environments/settings even with the use of supplemental aids and services, cannot be accomplished satisfactorily. Each State agency shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive environment is effectively implemented. Each child with special needs shall have his/her educational placement determined at least annually and this placement is based on the child's IEP. The requirement to educate children with disabilities with children without disabilities shall apply to children with disabilities in public and private institutions or other care facilities. Placement is to be made on the basis of the individual student's educational needs as stated in the IEP. The following conditions are not acceptable reasons for determining placement:

- (1) category of disabling condition,
- (2) configuration of the service delivery system,
- (3) availability of educational or related services,
- (4) availability of space,
- (5) curriculum content or methods of curriculum delivery,
- (6) administrative convenience, or

- (7) to access state funds distributed on the basis of the type of setting where a child is served.
- B. Each local educational agency shall provide access to a facility(s) that will enable each student with special needs to have his/her individual educational needs met. No identified student with special needs shall, because the facilities are inaccessible to or unusable by the student, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that is needed to meet his/her special educational needs.
- C. In order that a child's needs can be met, a number of options shall be made available for the delivery of programs and services. The principal determinants in selecting the program or service for each child shall be goals of the child's IEP for children with disabilities or written education program for the pregnant. In providing services to a child with special educational needs, the first factor should be the degree to which the child will benefit from such an arrangement rather than administrative considerations. In selecting the least restrictive environment for the child, the local educational agency shall give consideration to any potentially harmful effect on the child and quality of service. The principal determinants of the number of children served in each program will be the age of the children, the nature and severity of their disabling characteristics, and the degree of intervention necessary to meet the individual needs. When serving students with disabilities in regular classes, consideration should be given to the pupil-teacher ratio to allow for maximum benefits to regular and special students. A child with a disability may not be removed from education in age-appropriate classrooms solely because of needed modifications to the general curriculum.
- D. If there is evidence that a LEA makes placements that are inconsistent with the requirements of this section, the SEA shall review the LEA's justification for its action; and assist in planning and implementing any necessary corrective action.
- E. The Continuum of Programs and Services: Each public agency shall ensure that the continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The following is a list available to students.
- (1) Regular Setting. Students with disabilities who receive the majority of their education program with nondisabled children, outside the regular classroom for less than 21 percent of the school day. This may include students with disabilities placed in:
- (a) regular class with special education/related services provided in a regular class,
 - (b) regular class with instruction within the regular class and with special education/related services provided outside regular classes; i.e., a resource room.

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- (2) **Resource Setting.** Students with disabilities who receive special education outside the regular classroom for 60 percent or less of the school day and at least 21 percent of the school day. This may include children placed in:
 - (a) resource rooms with special education/related services provided within the resource room, or
 - (b) resource rooms with additional part-time special education in a regular class.
 - (3) **Separate Setting.** Children with disabilities who receive special education outside the regular classroom for more than 60 percent of the school day. This does not include students who receive education programs in public or private separate day or residential facilities. This may include children placed in:
 - (a) self-contained special classes with part-time instruction in a regular class, or
 - (b) self-contained full-time special classes on a regular school campus.
 - (4) **Public Separate School Facility.** Children with disabilities who receive special education and related services for greater than 50 percent of the school day in separate facilities. This may include children and youth placed in:
 - (a) public day schools for students with disabilities (This includes those children who are day students at a facility such as the Governor Morehead School.), or
 - (b) public day schools for students with disabilities for a portion of the school day that is greater than 50 percent, and in regular school buildings for the remainder of the school day.
 - (5) **Private Separate School Facility.** Children with disabilities who receive special education programs in private separate day school facilities at public expense, for greater than 50 percent of the school day. This may include children and youth placed in:
 - (a) private day schools for students with disabilities, or
 - (b) private day schools for students with disabilities for a portion of the school day that is greater than 50 percent, and in regular school buildings for the remainder of the school day.
 - (6) **Public/Residential Facility.** Children with disabilities who receive special education programs in public residential facilities for a period of time greater than 50 percent of the school day. This may include children placed in:
 - (a) public residential schools for students with disabilities, or
 - (b) public residential schools for students with disabilities for a portion of the school day that is greater than 50 percent and in separate day schools or regular school buildings for the remainder of the school day.
 - (7) **Private Residential Facility.** Children with disabilities who receive special education programs in private residential facilities, at public expense, for a period of time greater than 50 percent of the school day. This may include children placed in:
 - (a) private residential schools for students with disabilities, or
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- (b) private residential schools for students with disabilities for a portion of the school day that is greater than 50 percent and in separate day schools or regular school buildings for the remainder of the school day.
 - (8) Hospital/Homebound Setting. Children with disabilities who receive special education in homebound or hospital placements:
 - (a) hospital programs, including children who are served as:
 - (i) in-patients,
 - (ii) out-patients,
 - (iii) out-patients served in clinics;
 - (b) homebound programs.

Homebound placement shall be temporary with a goal in the IEP for returning the child to a less restrictive environment within the school year unless there is medical information which would require extended homebound instruction. The LEA must follow the requirements of Section .1516 with regard to required special education and related services for students with disabilities who are placed in a homebound setting for disciplinary reasons.
- F. The regular school program traditionally does not serve preschool children. Preschool children with disabilities will be served in a variety of settings and natural environments which may include the home, child care centers, private child care homes, Head Start, area mental health operated programs, private preschool programs, or other specialty programs. These settings have been selected at the preference of the parent or caregiver and represent the child's natural environment. The local education agency may offer special education and related services to children who are located in these environments, as well as in other environments determined appropriate by the local education agency.

The following is a description of programs and services available to preschool children with disabilities and does not reflect a continuum from least to most restrictive.

 - (1) Early Childhood Setting. Preschool children with disabilities who receive all of their special education and related services in educational programs designed primarily for children without disabilities. No education or related services are provided in separate special education settings. This setting may include, but is not limited to:
 - (a) public or private preschools,
 - (b) Head Start Centers,
 - (c) child care facilities, or
 - (d) preschool classes offered by the public school system such as fee for service or Title I.
 - (2) Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting. Preschool children with disabilities who receive services in multiple settings, such that: (1) general and/or special education and related services are provided at home or in educational programs designed primarily for children

without disabilities, and (2) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to:

- (a) home with special education provided in an early childhood special education classroom;
 - (b) Head Start, child care, or other community-based settings with special education in an early childhood special education classroom; or
 - (c) separate school/regular early childhood combinations.
- (3) Early Childhood Special Education Setting. Preschool children with disabilities who receive all of their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No education or related services are provided in early childhood settings. This may include, but is not limited to:
- (a) special education classrooms in regular school buildings (full day services); or
 - (b) special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based facilities; or
 - (c) special education classrooms in trailers or portables outside regular school buildings.
- (4) Separate Setting. Preschool children with disabilities who receive all of their special education and related services in educational programs in public or private day school designed specifically for children with disabilities. Classes may also include children without disabilities such as a Developmental Day Program.
- (5) Residential Setting. Preschool children with disabilities who receive all of their special education and related services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis.
- (6) Home. Preschool children with disabilities who receive their special education and related services in the principal residence of the child's family or caregivers.
- (7) Itinerant Service Outside the Home. Preschool children with disabilities who receive all of their special education and related services at a school, hospital facility on an outpatient basis, or other location for a short period of time; i.e., no more than 3 hours per week. These services may be provided individually or to a small group of children. This may include, but is not limited to: speech instruction up to 3 hours per week in a school, hospital, or other community-based setting.
- (8) Reverse Mainstream Setting. Preschool children with disabilities who receive all of their special education and related services in educational programs designed primarily for children with disabilities but that include 50 percent or more children without disabilities.

Instruction to children in preschool settings may be provided by direct instruction, consultation, or a combination of direct instruction and consultation. Direct instruction and/or consultation to children must occur a minimum of once per week for special education. Direct instruction and/or consultation for related services shall be based on the child's needs as documented in the IEP. When consultation is the only special education service provided to the child, the regular classroom teacher must be a licensed teacher or, if not, he/she must be under the supervision of a licensed teacher.

Speech-language and hearing services may appear at any level of the continuum and offer program or service alternatives. A continuum of program and service models for children with speech, language and hearing impairments includes a communication development program, a communication deviations program and a communication disorders program.

History Note: Statutory Authority G. S. 115-110; Eff. July 15, 1979;
Amended Eff. July, 1999; July 11, 1991;
December 7, 1989, September 28, 1981.
IDEA 97 Final Regulations 34 CFR § 300.130; § 300.193; § 300.551;
§§ 300.553-300.556.

.1511 MAXIMUM CLASS SIZE: PUPIL-TEACHER RATIO

The class size or case load of a special education teacher, speech-language therapist, and related services provider shall be limited in number to allow the implementation of each assigned student's IEP and shall be determined by the nature and severity of the student's disabilities, the type and intensity of services required by the IEP, and the chronological ages of the students.

Local educational agencies must assure that all levels of the continuum of programs and services as defined in Section .1510 are available, considered and utilized for all categories of children with disabilities. Additionally, the maximum class size in the settings referenced below shall not be exceeded. Deviation is only allowable with the written approval of the Exceptional Children Division upon request by a local educational agency. Such a request for a waiver from the pupil/teacher ratio must be submitted within 5 school days of the student's placement in the class. Local educational agencies are encouraged to lower the maximum class sizes, if needed, to meet the needs of their particular students.

- A. See Appendix A for pupil/teacher class size
- B. See Appendix B for preschool pupil/teacher ratio

.1512 DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

- A. The parents of a student with a disability shall be afforded, in accordance with the procedures in Section .1509, an opportunity to inspect, and review all the child's education records and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child. Parents must be given notice, consistent with Section .1507 F, to participate in these meetings. (A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal to respond to a parent proposal that will be discussed at a later meeting.)
- B. An independent educational evaluation is available as follows:
- (1) The parents of a student with a disability have the right under this paragraph to obtain an independent educational evaluation of the child, subject to subparagraphs (4) through (7) of this paragraph.
 - (2) Each local educational agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained and the criteria applicable for an independent educational evaluation.
 - (3) For the purposes of this rule:
 - (a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the local educational agency responsible for the education of the child in question.
 - (b) "Public expense" means that the local educational agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.
 - (4) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. The local education agency must respond without unnecessary delay to the parents' request. However, the local educational agency may initiate a hearing under this rule to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
 - (5) Parent right to evaluation at public expense. If a parent requests an independent educational evaluation, the LEA may ask for the parent's reasons 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 initiating a due process hearing to defend the public evaluation.

- (6) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:
 - (a) must be considered by the local educational agency if it meets LEA criteria in any decision made with respect to the provision of a free appropriate public education to the child; and
 - (b) may be presented as evidence at a hearing under this rule regarding that child.
- (7) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- (8) Agency criteria. Whenever an independent 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 which the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- (9) Except for the criteria described in Section .1512(B)(8), a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

C. Prior Notice; Written Consent.

- (1) Notice. Written notice which meets the requirements of paragraph D of this rule must be given to the parents of a child with a disability a reasonable time before the local educational agency:
 - (a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or
 - (b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
- (2) Consent. 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.
 - (a) Written informed parental consent must be obtained before:
 - (i) conducting a preplacement evaluation or reevaluation; and
 - (ii) initially placing a student with a disability in a program providing special education and related services.
 - (b) Informed parental consent need not be obtained for reevaluation if the

public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. (Reasonable measures are consistent with the requirements of Section .1507 (F)(4).)

- (c) Consent for initial evaluation may not be construed as consent for initial placement.
- (d) Consent may not be required as a condition of any other benefit to the parent or child.
- (3) If the notice described in this section relates to an action proposed by the LEA that also requires consent, the LEA may give notice at the same time it requests consent.
- (4) The granting of consent is voluntary on the part of parents and may be revoked at any time.
- (5) 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 consent was revoked.)
- (6) Parent consent is required for the initial provision of special education and related services, and a public agency may not use IDEA due process procedures to override parent refusal to consent to the initial provision of special education and related services.

D. Content of prior written notice.

- (1) The notice under this subpart must include:
 - (a) a description of the action proposed or refused by the local educational agency;
 - (b) an explanation of why the agency proposes or refuses to take the action;
 - (c) a description of any other options the agency considered, and the reasons why those options were rejected;
 - (d) a description of each evaluation procedure, test, record or report the local educational agency uses as a basis for the proposal or refusal;
 - (e) a description of any other factors which are relevant to the agency's proposal or refusal; and
 - (f) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained, and sources for parents to contact to obtain assistance in understanding the provisions of this part.
- (2) 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.
- (3) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:
 - (a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (b) that the parent understands the content of the notice; and
 - (c) that there is written evidence that the requirements of this subparagraph have been met.

E. Procedural Safeguards Notice.

- (1) A copy of the procedural safeguards (Handbook on Parents' Rights) shall be given to the parents, at a minimum
 - (a) upon initial referral for evaluation;
 - (b) upon reevaluation;
 - (c) upon each notification of an IEP meeting; and
 - (d) upon request for a due process hearing.
- (2) Contents. The procedural safeguards notice shall include a full explanation of the procedural safeguards relating to:
 - (a) independent educational evaluation;
 - (b) prior written notice;
 - (c) parental consent;
 - (d) access to educational records;
 - (e) opportunity to file a due process hearing;
 - (f) opportunity to file a formal written complaint (state complaint procedure), including a description of how to file a complaint and the applicable timeline;
 - (g) the child's placement during pendency of due process proceedings;
 - (h) procedures for students who are subject to placement in an interim alternative educational setting;
 - (i) requirements for unilateral placement by parents of children in private schools at public expense;
 - (j) mediation;
 - (k) due process hearings, including requirements for disclosure of evaluation results and recommendations;
 - (l) state-level reviews;
 - (m) civil action; and
 - (n) attorney's fees
- (3) The local education agency shall document that the notice has been sent to and received by parent(s), guardian(s) or surrogate parent(s).

F. Mediation.

- (1) Mediation of disputes or disagreements regarding the identification of students with disabilities and the provision of special education for students with disabilities prior to formal administrative review is encouraged.
- (2) Mediation shall be voluntary and available to parties in dispute when a petition for a due process hearing is filed with the Office of Administrative Hearings. In such cases the Department of Public Instruction will appoint a certified trained impartial mediator who is knowledgeable in laws and regulations relating to the provision of special education and related services.
 - (a) An individual who serves as a mediator may not be an employee of:
 - (i) any LEA or agency that meets the conditions that apply to LEAs;
 - (ii) a state agency that is providing direct services to a child who is the
 - (iii) subject of the mediation process; and
 - (iv) must not have a personal or professional conflict of interest.
 - (b) A person who otherwise qualifies as a mediator is not an employee of an LEA or State Agency solely because he or she is paid by the agency to serve as a mediator.
 - (c) Mediation may not be used to deny or delay a parent's rights to a due process hearing.
- (3) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party;
 - (a) Who is under the contract with a parent training and information center or community parent resource center in the State or an appropriate alternative dispute resolution entity; and
 - (b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.
- (4) A public agency may not deny or delay a parent's rights to a due process hearing if the parent fails to participate in the meeting.
- (5) Under North Carolina statute 115C-116(b), if a request for formal administrative review has not been filed, mediation shall commence upon the request of either party, so long as the other party consents.
 - (a) The parties shall agree to the assignment of the mediator. The Exceptional Children Division of the Department of Public Instruction shall assign the mediator and maintain a list of mediators who are certified or trained in resolving disputes and are knowledgeable in laws and regulations relating to the provision of special education and related services.
 - (b) The mediation shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

- (c) An agreement reached by the parties to the dispute shall be set forth in a written mediation agreement.
- (d) The meeting shall be informal and the General Assembly intends that the meeting shall be non adversarial, as required by G.S. 150B-22.
- (e) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of mediation
- (f) The public agency shall bear the cost of the mediation process, including the cost of meetings held for parents who elect not to use the mediation process to explain the benefits of the mediation process.

G. Impartial Due Process Hearing

- (1) The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:
 - (a) the child has not been identified and evaluated or has been incorrectly identified and evaluated as a child with a disability;
 - (b) the child's IEP is not appropriate to meet his needs or is not being implemented;
 - (c) the child's placement is not appropriate to meet his needs; or
 - (d) the child is otherwise being denied a free, appropriate public education.
- (2) A local education agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation or reevaluation of the child for the purpose of determining whether the child is a child with a disability or for the provision of a free appropriate public education for the child.
- (3) Upon filing a petition for a due process hearing, the parties must be informed of the opportunity for mediation.
- (4) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedures Act.
- (5) Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in G (1) above.
- (6) When a parent or a local education agency requests a due process hearing, a petition for a contested case shall be filed in the Office of Administrative Hearings within 60 days of notice of the contested action, and that office shall send a copy to the Director, Exceptional Children Division in accordance with

G.S. 150B-23.

- (7) The parent of a child with a disability, or the attorney representing the child, shall provide notice (which shall remain confidential) in the filing of a due process petition which shall include:
 - (a) the name of the child, the address of the residence of the child, and the name of the school the child is attending;
 - (b) a description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and
 - (c) a proposed resolution of the problem to the extent known and available to the parents at the time.
- (8) A local education agency may not deny or delay a parent's rights for a due process hearing for failure to provide notice required in Section .1512 G(7) or deny any other rights afforded under these Procedures.
- (9) The Chief Administrative Law Judge shall appoint an administrative law judge to preside over the hearing as provided in G.S.150-32.
- (10) The local education agency shall 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 agency initiates a hearing under this section.

H. Qualifications of Administrative Law Judges or Review Officers.

- (1) A hearing may not be conducted:
 - (a) by a person who is an employee of a public agency which is involved in the education or care of the child (including employees or officials of the State Department of Public Instruction or the State Board of Education); or
 - (b) by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing; or
 - (c) a person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
- (2) Each local education agency shall keep a list of the administrative law judges who preside at the hearings. The list must include a statement of the qualifications of each of those persons.

I. Hearing Rights.

- (1) Any party to a hearing 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 children with special needs;
 - (b) at least 5 business days prior to a hearing, each party shall disclose to all

other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing;

- (c) present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - (d) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
 - (e) obtain a written or at the option of the parents, an electronic verbatim record of the hearing. (The transcript is to be provided to the parent without charge);
- (2) Additional disclosure of information.
- (a) A hearing officer may bar any party that fails to comply with paragraph (1)(b) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
 - (b) The parent has the right to open the hearing to the public.

(The state education agency shall transmit those findings and decisions, after deleting any personally identifiable information to the State advisory panel, Council on Educational Services for Exceptional Children.) The state education agency must also make the findings and decisions available to the general public after it has deleted any personally identifiable information.

- (3) Parents involved in hearings must be given the right to have the child who is the subject of the hearing present.

J. Final Decision and Appeal.

- (1) Following the hearing, the administrative law judge shall serve the final decision. The administrative law judge shall give a copy of written findings and the decision to the parties and Director, Exceptional Children Division.
- (2) Any party aggrieved by the decision of the administrative law judge may appeal that decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the Director, Exceptional Children Division.

K. Administrative Review by Review Officer.

- (1) When there is an appeal by either party of the decision of the administrative law judge, the Director, Exceptional Children Division shall appoint an impartial review officer for the review.
 - (a) The review officer shall be selected from a pool of review officers who have been approved by the State Board of Education.
 - (b) The review officer shall be an educator or other professional who has a background in or knowledge about educating children with special needs.
 - (c) The state education agency shall keep a list of approved review officers and their qualifications and shall provide the list upon request.

- (2) In conducting the administrative review the impartial review officer shall:
 - (a) examine the entire hearing record;
 - (b) ensure that the procedures at the hearing conducted by the administrative law judge were consistent with the requirements of due process;
 - (c) seek new evidence, if it is determined that the evidence is material to the issue, is not merely cumulative, and could not reasonably have been presented at the contested case hearing. If a hearing is held to receive additional evidence, the rights in Section J apply;
 - (d) afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (e) make an independent decision on completion of the review; and
 - (f) give a copy of written, or, at the option of the parents, electronic findings of fact and the decision to the parties.
 - (g) The decision made by the reviewing official is final, unless a party brings a civil action.
- (3) Any findings and decisions, after deleting any personally identifiable information, shall be transmitted to the State Advisory Council and made available to the public.
- (4) All parties have the right to continue to be represented by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, during the administrative appeal whether or not the hearing officer determines that a further hearing is necessary.
- (5) If the review officer decides to hold a hearing to receive additional evidence, the other rights in Section J also apply.

L. Timelines and Convenience of Hearings and State Reviews.

- (1) Due Process Hearings
 - (a) The Office of Administrative/Hearings shall ensure that not later than 45 days after the receipt of a request for a due process hearing;
 - (i) a final decision is reached in the hearing; and
 - (ii) a copy of the decision is mailed to each of the parties.
 - (b) The administrative law judge may grant specific extensions of time beyond the periods set out in paragraph (1)(a) of this section at the request of either party.
 - (c) Each hearing involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.
- (2) Appeal to the Director, Exceptional Children Division.
 - (a) The review officer appointed by the Director, Exceptional Children Division shall render and mail a final decision within 30 days of receipt of an appeal.
 - (b) The review officer may grant specific extensions of time beyond the periods

- set out in paragraph (2)(a) of this section at the request of either party.
- (c) The review officer shall make written findings of fact and conclusions of law. This is the final decision unless an aggrieved party brings a civil action pursuant to Section N.
 - (d) A copy of the decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations for filing a civil action pursuant to Section N.
 - (e) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably located to the parents and child involved.

M. Enforcing Decision.

The State Board shall have the power to enforce the final decision of the administrative law judge, if not appealed pursuant to Section L, or the final decision of the review officer, by ordering the local education agency:

- (1) to provide a child with appropriate education;
- (2) to place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
- (3) to reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 when it is determined that the local educational agency did not offer or provide the child with an appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

N. Right to File Civil Action.

Any party aggrieved by the decision of the review officer may file a petition for judicial review under Chapter 150 B in state court within 30 days after receipt of notice of the decision or file an action in federal court as provided in 20 U.S.C. Section 1415.

- (1) The court shall receive the records of the administrative proceedings.
- (2) The court shall hear additional evidence at the request of a party.
- (3) The court will base its decision on a preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

O. Child's Status During Proceedings.

- (1) During the pendency of any administrative or judicial proceeding regarding a

complaint, unless the local education agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

- (2) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in a public school until the completion of all the proceedings.
- (3) If the decision of a hearing officer in a due process hearing or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (1) of this section.

P. Attorneys' Fees.

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy. Funds under Part B of the Act may not be used to pay attorney's fees or costs of a party related to an action or proceeding under Section .1512 of these Procedures.

- (1) Award of Attorneys' Fees. In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who are the prevailing party. Fees are based on prevailing rates in the community where the dispute arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this part.
- (2) Prohibition of Attorneys' Fees and Related Costs for Certain Services.
 - (a) Attorneys' fees may not be awarded and related costs may not be reimbursed under this section for services performed subsequent to the time of a written offer of settlement to a parent if:
 - (i) the offer is made within the time prescribed by Rule 68 of the Federal Rules and Civil Procedure or, in the case of an administrative proceeding, at any time ten days before the proceeding begins;
 - (ii) the offer is not accepted within ten days;
 - (iii) the administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
 - (b) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for mediation described in Section G (3) of this part.
 - (c) Notwithstanding paragraph (2)(a), 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.

- (3) Reduction in Amount of Attorneys' Fees. The court shall reduce accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:
 - (a) the parent, during the course of the action or proceeding, unreasonably delayed 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 local education agency the appropriate information in the due process complaint described in section G7.
- (4) The provision of paragraph P(3) of this section 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 these Procedures.

Q. Right to File a Formal Written Complaint.

Any individual, organization or public agency may file a signed written complaint about the provision of a free appropriate public education of a child with a disability. A complaint is an official allegation that a special education law or procedure is not being carried out by a local education agency or by the Department of Public Instruction, pursuant to the Individuals with Disabilities Education Act (PL 105-17) and Article 9 of Chapter 115C of the North Carolina General Statutes.

- (1) Upon receipt of a complaint, Staff of the Exceptional Children Division will conduct an investigation of the complaint using whatever techniques the Director deems appropriate, including on-site investigation.
- (2) On-site investigation will be considered when:
 - (a) documentation is insufficient to determine a finding;
 - (b) observation of physical facilities is necessary to determine a finding;
 - (c) an audit of original records is necessary to determine a finding; or
 - (d) the presence of investigators on site may reduce any undue influence on the process or the outcome of the investigation by the media or other outside factors.
- (3) The complainant may submit, either orally or in writing, additional information about the allegations any time during the 60-day investigation period.
- (4) A written letter of findings based on findings of fact and conclusions of law will be issued within 60 days of the filing of the complaint.

- (5) A corrective action plan will be required when allegations of non-compliance are substantiated through the complaint investigation process.
- (6) Failure to develop or submit an appropriate corrective action plan may result in the withholding of approval of the local education agency's Title VI, Part B Local Plan.
- (7) If a written complaint is received that is also the subject of a due process hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

R. Transfer of Parental Rights at Age of Majority.

When a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law), which is age 18:

- (1) The public agency shall provide written notice to the student and the parents of the transfer of rights;
- (2) All rights accorded to parents under these Procedures shall transfer to the student;
- (3) All rights accorded to parents under IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution;
- (4) In the event the student has not been determined incompetent under State law, but does not have the ability to provide informed consent with respect to his or her educational program, the LEA shall appoint the parent or, if the parent is not available, another appropriate person to represent the educational interests of the student throughout the student's eligibility.
- (5) Whenever a state transfers rights, the student and parent must be notified of the transfer.
- (6) The IEP must, beginning at least one year before the student reaches the age of majority under state law, include a statement that the parents and the student have been informed of the transfer of rights.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116; P. L. 105-17; Eff. June 21, 1989; July 8, 1988; July 15, 1979; July, 1999.
Amended Eff. July, 1999; July 11, 1991; December 7, 1989;
September 28, 1981.
IDEA 97 Final Regulations 34 CFR §§ 300.500-300.517; § 300.519;
§§ 300.660-300.662.

.1513 SELECTION OF SURROGATE PARENTS

- A. Each public agency including charter schools shall appoint a surrogate when no parent as defined in Section .1501 J can be identified; the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the State under the laws of the State.
- B. The State Superintendent of Public Instruction, shall fulfill any obligations to appoint and approve persons as surrogate parents by ensuring that local educational agencies and charter schools have on file a list of trained persons who are available for appointment as surrogate parents when one is required. The LEA must have a method for determining whether a child needs a surrogate parent and assurances should be provided that appropriate training has been provided prior to appointment as a surrogate parent. The Superintendent of the local educational agency shall select surrogate parents from the approved list when the local education agency requires a surrogate parent.
- C. Surrogate parents shall have no interest that conflicts with the interests of the child represented and shall possess knowledge and skills that ensure adequate representation of the child. A surrogate parent must not be an employee of the State or any local government, educational or any other agency responsible for or involved in the education or care of the child; however, a person is not to be considered an employee of the State or other agency solely because he or she is paid by the agency to serve as a surrogate parent, where volunteers are unavailable. The State Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent. An LEA may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the other requirements. (See Section .1501 J - Definition of Parent)
- D. The following factors may also be considered in the selection of a surrogate parent, but are not mandatory:
 - (1) relationship to the child; and
 - (2) whether the prospective surrogate parent is of the same race as the child.
- E. The Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, and the Director of the Department of Juvenile Justice and Delinquency Prevention shall appoint and approve appropriately trained persons to act as surrogate parents for students who are enrolled in special education programs operated by the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention and who require a surrogate parent.
- F. The Secretaries of the Departments of Health and Human Services and Correction, and the Director of the Department of Juvenile Justice and Delinquency Prevention

may assign a surrogate parent for persons seventeen years old or younger committed to the Department when, after appropriate notice to parents or guardians as provided for in Section .1517, there has been no response or acknowledgment by the parent within 20 calendar days.

- G. The surrogate parent shall represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 15, 1979. September 28, 1981.
Eff. June 21, 1989; July 8, 1988; July 15, 1979;
Amended Eff. July, 1999; July 11, 1991; December 7, 1989.
IDEA 97 Final Regulations 34 CFR § 300.20; § 300.370; § 300.515.

.1514 AGENCIES RESPONSIBLE FOR ADMINISTRATION OF PROCEDURES

Implementation of the procedures is the responsibility of the local educational agencies. All agencies not associated with city and county school administrative units, including charter schools, Department of Health and Human Services, Children's Developmental Services Agencies, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention must also meet the standards described in this section if they provide education services to children with disabilities. Local educational agencies shall ensure that the standards are met prior to contracting for services from such programs.

History Note: Statutory Authority G. S. 115C-106(b); 115C-110; Eff. July 15, 1979.
Amended: July, 1999.
IDEA 97 Final Regulations 34 CFR § 300.500; § 300.600.

.1515 FREE AND APPROPRIATE SERVICES

It is declared the policy of the State Board of Education in reaffirming action of the General Assembly in Article 9, Special Education, to provide a free appropriate publicly supported education to every child with a disability ages three through twenty. The State Board reaffirms the finding of the General Assembly "that all children with disabilities are capable of benefiting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop." No children with disabilities ages three through twenty shall be denied a free appropriate public education or be prevented from attending the schools of the local educational agency from which he/she receives services or in which he/she or his/her parents or (guardians) reside or from attending a program in a city or county school administrative unit or charter school because he/she is a child with a disability. A student who becomes twenty-one years of age during the school year may continue to receive a free appropriate public education during that school year. The State Board of Education supports special education and related services for children with disabilities on a permissive basis birth through two, and through age twenty-one. A free appropriate public education is available to any child with a disability (age 3-20) who needs special education and related services, even though the child is advancing grade to grade. This also includes youth with disabilities who were eligible prior to incarceration in local jails.

A student's right to a free, appropriate public education under these Procedures shall terminate upon the receipt of a regular high school diploma or for a student who exceeds the eligibility for free appropriate public education under state law.

- The receipt of a regular high school diploma constitutes a change in placement. Local education agencies must provide prior notice before proposing to graduate a student.
- Reevaluation is not required to determine termination of service eligibility for a student graduating with a regular high school diploma.

History Note: Statutory Authority G. S. 115C-106(b); 115C-107; 115C-110;
Eff. July 15, 1979;
Amended Eff. July, 1999; July 11, 1991; July 1, 1986;
November 1, 1984.
IDEA 97 Final Regulations 34 CFR § 300.13; §§ 300.121-300.122; § 300.125.

.1516 DISCIPLINARY SUSPENSIONS

- A. A local education agency is not required to provide educational services to a student with a disability during periods of suspension when the student has been removed from his/her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
- B. When a student with a disability has been removed from his/her current placement for more than 10 school days in that school year, the local education agency, for the remainder of the removals must:
 - (1) provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the student's IEP; and
 - (2) school personnel, in consultation with the student's special education teacher, shall determine the necessary services that the student needs to appropriately progress in the general curriculum and toward the achievement of the IEP goals.
- C. For purposes of disciplinary removal, a change of placement occurs if:
 - (1) the removal is for more than 10 consecutive school days; or
 - (2) The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- D. Authority of School Personnel:
 - (1) To the extent removal would be applied to children without disabilities, school personnel may order the removal of a student with a disability:
 - (a) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement; and
 - (b) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if:
 - (i) the student has a weapon at school or at a school function under the jurisdiction of a State or a local education agency; or
 - (ii) the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local education agency.

- (2) The appropriate interim alternative educational setting must be determined by the IEP Team.
- (3) Either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement, including the action described in D(1)(b) of this section:
 - (a) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student with a disability before the behavior that resulted in the suspension, the local educational agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or
 - (b) if the student already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior; and
 - (c) as soon as practicable after developing the plan and completing any required assessments, the IEP Team shall convene to develop appropriate behavioral interventions to address the behavior and shall implement those interventions;
 - (d) if subsequently a student with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change in placement, the IEP Team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more team members believe modifications are necessary, the team shall meet to modify the plan and its implementation as necessary.

E. Authority of Hearing Officer.

A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing:

- (1) determines that the local education agency has demonstrated by substantial evidence that maintaining the current placement of a child with a disability is substantially likely to result in injury to the student or to others;
- (2) considers the appropriateness of the child's current placement;
- (3) considers whether the local education agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- (4) determines that the interim alternative educational setting that is proposed by school who have consulted with the child's special education teacher, meets the following requirements:
 - (a) the interim alternative educational setting is selected to enable the student

to continue to progress in the general curriculum, although in another setting, and to continue to receive services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and

- (b) include services and modifications designed to address the behavior that resulted in the removal to an interim alternative educational setting and are designed to prevent the behavior from recurring.

F. Manifestation Determination Review.

A student may be moved to an appropriate interim alternative education setting if the student has a weapon at school or at a school function, or if the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at a school or a school function (Section .1516 D(1)(b)), or if a hearing officer has ordered a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days (Section .1516 E). If a discipline action is contemplated to an appropriate interim alternative education setting for the same amount of time that a student without a disability would be subject to discipline, but not more than 45 days, or involving a removal that constitutes a change of placement (Section .1516 C) for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children -

- (1) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and
- (2) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.
- (3) The review shall be conducted in a meeting by the IEP Team and other qualified persons; this review may be conducted as a part of the meeting conducted in carrying out the activities of Section .1516 D(3).
- (4) The IEP Team and other qualified persons may determine that the behavior of the student was not a manifestation of the student's disability only if the IEP Team and other qualified persons
 - (a) first consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - (i) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the student;
 - (ii) observations of the student;
 - (iii) the student's IEP and placement,
 - (b) then determine that in relationship to the behavior:

- (i) the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
 - (ii) the student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and
 - (iii) the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.
- (5) If any of the standards of (4)(b) are not met, the behavior must be considered a manifestation of the student's disability.
- (6) If during the Manifestation Determination Review, deficiencies in the student's IEP placement or implementation of the IEP are identified, the educational agency must take immediate steps to remedy these deficiencies.

G. Determination That the Behavior Was Not a Manifestation Of the Disability.

If the manifestation review determines that the behavior was not a manifestation of the disability, the local education agency may proceed with the same disciplinary procedures that are used with nondisabled students except the student with a disability must continue to receive a free appropriate public education, including special education and related services and access to the general curriculum as determined by the IEP Team and other qualified persons. If the local education agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the student with a disability shall be given to the person making the final decision regarding the disciplinary action for consideration.

H. Parent Appeal.

- (1) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement, the parent may request an expedited hearing.
- (2) Review of decision. The hearing officer:
 - (a) shall determine if the local education agency has determined whether the student's behavior was not a result of the disability consistent with the requirements of Part F of this section; and
 - (b) shall determine if the alternative education setting meets the appropriate standards according to Part E of this section.

I. Placement During Appeals.

- (1) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the

hearing officer shall apply the standards in Part E of this section.

- (2) When a parent requests a hearing regarding a disciplinary action to challenge the 45 day interim alternative educational setting or to challenge the determination that the behavior of the student was not a manifestation of the student's disability, the child shall remain in the alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day period, whichever comes first, unless the parent and the local education agency agree otherwise.
- (3) Current placement. If a student is placed in a 45 day interim educational setting and school propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the placement prior to the interim alternative educational setting.
- (4) Expedited Hearing. If the local agency maintains that the student is too dangerous to remain in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the hearing, it may request an expedited hearing to place the student in another setting ordered by the hearing officer. This procedure may be repeated as necessary.

J. Protection for Students Not Yet Eligible For Special Education and Related Services.

A child who has not been found eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the local educational agency, including any behavior that could result in suspension of more than 10 consecutive days or more than 10 cumulative days that constitute a change in placement in a given school year, may claim any of the protections provided for in this part if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A local educational agency shall be deemed to have knowledge if:

- (1) the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- (2) the behavior or performance of the child demonstrates the need for such services;
- (3) the parent of the student has requested an evaluation of the student for suspected disabilities;
- (4) the teacher of the student, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education or to other personnel of the agency in accordance

with the agency's established child find or special education referral system.

K. Conditions That Apply If There Is No Basis of Knowledge.

- (1) If a local educational agency 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 same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors.
- (2) Limitations. 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 shall be conducted in an expedited manner. If the student is determined to be a student with a disability, taking into consideration information from the evaluation and information provided by the parents, the agency shall provide special education and related services in accordance with these Procedures including the provisions of Section .1516, except that, pending the results of the evaluation, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (3) A local education agency would not be deemed to have knowledge under paragraph (J) of this section, if, as a result of receiving the information specified in that paragraph, the agency either:
 - (a) conducted an evaluation and determined that the child was not a child with a disability under this part, or
 - (b) determined that an evaluation was not necessary; and provided notice to the child's parent of its determination consistent with Section .1512 C(1)(b).

L. Definitions. For purposes of this section, the following definitions apply:

- (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (2) Illegal drug means a controlled substance that is not legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Act or under any other provision of Federal law.
- (3) Substantial evidence means beyond a preponderance of the evidence.
- (4) Weapon has the meaning given the term dangerous weapon under paragraph (2) of the first subsection (g) Section 930 of Title 18, United States Code.

M. In all actions involving suspension of a child with a disability whose behavior is determined to be caused by his/her disabling condition or lack of proper medication, the parties have available all due process rights of G.S. 115C-116 and 20 USC 1415.

N. Nothing in this rule shall prohibit a local education agency from seeking a court order or expedited hearing from a due process hearing officer (administrative law judge) under IDEA to remove a student with a disability from school if maintaining the student in his current placement is substantially likely to result in injury to himself or to others.

O. Expedited Due Process Hearings under Section .1516 must:

- (1) meet the requirements of Section .1512, and
- (2) be conducted by a due process hearing officer who satisfies the requirements of Section .1512(H).
 - (a) A written decision must be mailed to the parties within 45 days of the LEAs' receipt of the request for the hearing without exceptions or extensions.
 - (b) The timeline established under paragraph (2)(a) of the section must be the same for hearings requested by parents or LEAs.
 - (c) The decisions on expedited due process hearings are appealable consistent with Section .1512 J.

P. Referral to and Action by Law Enforcement and Judicial Authorities.

- (1) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (2) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.
- (3) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

History Note: Statutory Authority G. S. 115C-112; Eff. October 1, 1978;
Amended Eff. July, 1999; March 12, 1997; February 1, 1996; Amended Eff.
November 1, 1984; January 1, 1983; September 28, 1981; July 15, 1979.
IDEA 97 Final Regulations 34 CFR §§ 300.519-300.529.

 .1517 CHILD FIND

- A. Each local educational agency shall conduct an annual child find of children with disabilities, including children with disabilities attending private schools, or school children in religious schools regardless of the severity of their disability, and who are in need of special education and related services. These children shall be subdivided for "identified" and "suspected", and include their age, the nature of their exceptionality, their county and city of residence, their school administrative unit residence, whether they are being provided special educational or related services and if so by which department or agency. In taking a census, the city or county school administrative units shall collect the census information with the cooperation, participation, and assistance of all other State and local governmental departments and agencies providing or required to provide special education services to children with disabilities. This includes highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of having a disability and requiring special education even though they are progressing from grade to grade. The census shall be of children with disabilities ages birth through twenty-one inclusive. The collection and use of data to meet child find requirements are subject to the confidentiality requirements of Section .1509 C. When the SEA and Lead Agency for Part C Program are different, the SEA is ultimately responsible for ensuring LEA compliance with the Child Find requirement.
- B. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools. Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.
- C. Each city or county school administrative unit shall make and keep current a list of all children evaluated and diagnosed who are found to have special needs and who reside in that city or county. This shall include all children who are receiving home, hospital, institutional, or other special education services, including those being educated within the regular classroom setting or in other special education programs including programs under the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention.
- D. When a newly identified child with a disability has been diagnosed or evaluated by personnel under the Department of Health and Human Services or the Children's Developmental Services Agencies, appropriate personnel from the Department shall contact the city or county school administrative unit of the child's residence and inform them in writing of the evaluation and results. Exemptions from the Department of Health and Human Services will be considered by the Department of Public Instruction upon written request by the Secretary of the Department of Health and Human Services.

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979. Amended July, 1999.

IDEA 97 Final Regulations 34 CFR § 300.125; § 300.260; § 300.300;
§ 300.451; § 300.527; § 300.716.

.1518 JOINT PLANNING

Local educational agencies should work together in planning and implementing programs and services for children with disabilities. This includes city and county school administrative units and the programs and agencies of the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention.

History Note: Statutory Authority G. S. 115C-110; 115C-113; Eff. July 15, 1979.
IDEA 97 Final Regulations 34 CFR § 300.190; § 300.192.

.1519 CHILDREN ENROLLED IN PRIVATE SCHOOLS**A. Private Schools - Standards and State Board Approval.**

Local educational agencies shall determine whether private schools and facilities meet the standards that apply to State and local educational agencies and that children placed there by a local education agency have all the rights they would have if served by such agencies. Local school administrative units may place children with disabilities out-of-LEA only in approved private programs. The Exceptional Children Division, Department of Public Instruction, shall disseminate copies of applicable standards to each private school and facility to which an LEA has referred or placed a child with a disability; provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them and shall maintain a list of private schools in North Carolina that have approved special education programs.

B. Students Placed in Private or Religious Schools by a Local Education Agency, Charter School, or Other State Agency.

State departments, agencies and divisions and local educational agencies furnishing special education and related services to students with disabilities may contract with approved private special education facilities or service providers to furnish such services as the public providers are unable to furnish. Students with disabilities in private schools and facilities shall be provided special education and related services in conformance with an IEP that meets the requirements of Section .1507, at no cost to their parent(s) or guardian(s), provided such children have been placed in or referred to such schools or facilities by an appropriate local educational agency. A copy of all contracts between school administrative units and private schools shall be filed with the Exceptional Children Division.

- (1) Before a local educational agency places a child with a disability in or refers a child to a private or religious school or facility, the local educational agency shall initiate and conduct with a representative of the private school in attendance a meeting to develop an IEP in accordance with Section .1507. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- (2) After a child is placed in a private or religious school, any meeting to review or revise the IEP may be initiated and conducted by the private school at the discretion of the public agency.
- (3) If the private school initiates and conducts an IEP meeting, the public agency shall assure that the parent(s) and an agency representative are involved in any decision about the IEP and agree to any proposed change in the program before the changes are implemented.
- (4) An IEP shall be developed by the local educational agency for any child who is enrolled in a private or religious school but who receives special education or

related services from a local educational agency.

- (5) If a child with a disability is enrolled in a private or religious school and receives special education or a related service from a public agency, the public agency shall:
 - (a) initiate and conduct meetings to develop, review, and revise an IEP for the student; and
 - (b) ensure that a representative of the private school attends each IEP meeting or uses other methods to ensure participation such as individual or conference phone calls.
- (6) Even if a private school implements a student's IEP, responsibility for compliance with this part remains with the local educational agency.
- (7) The student has all the rights of a student with a disability who is served by the local education agency or state operated program.

C. Placement of a Student with a Disability by Parent Without the Consent of the Local Education Agency or State Operated Program when FAPE is an Issue.

A local education agency or other state agency is not responsible for the cost of education, including special education and related services of a child with a disability at a private school or facility if that agency made a free appropriate public education available and the parent elected to place the student at a private facility. However, disagreements regarding the availability of an appropriate program and financial responsibility are subject to the due process procedures at Section .1512.

- (1) Reimbursement for private school placement.
 - (a) A hearing officer or court may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency did not make 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 SEA and LEAs.
 - (b) Limitation on reimbursement. The cost of reimbursement may be reduced or denied if:
 - (i) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - (ii) at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of information contained in (b)(i) of this section; or
 - (iii) if, prior to the parents' removal of the student from school, the public agency informed the parents, through prior written notice, of its intent

- to evaluate the children (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent failed to make the child available; or
 - (iv) upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (2) Exception. Notwithstanding the notice requirement in paragraph (b) (i) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if;
- (a) the parent is illiterate or cannot write in English;
 - (b) compliance with paragraph (b)(i)-(iv) of this section would likely result in physical or serious emotional harm to the child;
 - (c) the school prevented the parent from providing the notice; or
 - (d) the parents had not received notice of the notice requirement in paragraph (b)(i)-(iv) of this section.

D. Students with Disabilities Enrolled by their Parents in Private Schools.

Private school students with disabilities are students with disabilities who are enrolled by their parents in private schools or facilities when there is no disagreement between the local education agency or state operated program and the parents about the provision of FAPE.

- (1) Basic requirement - To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B by providing them with special education and related services.
- (2) Expenditures - Each local education agency must spend for special education and related services to private school children with disabilities an amount that is the same proportion of the local education agency's total Part B subgrant as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21. For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under Section .1522(I) of these Procedures as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5. Expenditures for child find activities may not be considered in determining whether the LEA has met the requirements of this paragraph.
- (3) Services Determined.
 - (a) No individual right to special education and related services. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. However, the LEA shall include that child in the population whose needs are addressed consistent with this section.
 - (b) Consultation with representatives of private school children with disabilities. Each local education agency shall consult regarding how to

conduct the annual child count of the number of private school children with disabilities, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding available, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide-

- (i) which children will receive services,
 - (ii) what services will be delivered,
 - (iii) how and where the services will be provided,
 - (iv) how the services will be evaluated.
 - (c) Representatives of private school children with disabilities shall have a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements.
 - (d) Timing. The consultation required by the above must occur before the local education agency makes any decision that affects the opportunities of private school children with disabilities to participate in services.
 - (e) Decisions. The local education agency shall make the final decisions with respect to the services to be provided to eligible private school children.
- (4) Services Provided.
- (a) Services provided must be provided by personnel meeting the same standards as personnel providing services in the public schools;
 - (b) Private school students with disabilities may receive a different amount of service than children with disabilities in public schools;
 - (c) No private school child with disabilities is entitled to any service or to any amount of a service the child would receive if enrolled in a public school;
 - (d) Services to a student with disabilities in a private school will be provided in accordance with a services plan;
 - (i) the services plan describes the specific special and related services that the LEA has determined the student will receive;
 - (ii) the services plan must, to the extent appropriate, meet the content requirements of an IEP with respect to the services provided; and
 - (iii) be developed, reviewed, and revised consistent with the requirements of when an IEP must be in effect.
 - (e) Services in excess of these requirements may be provided.
- (5) Location of Service.
- (a) On-site. Services to private school children with disabilities may be provided on-site at a child's private school, including a religious school.
 - (b) Transportation. Transportation of private school children with disabilities to a site other than a child's private school must be provided if necessary for a child to benefit from or participate in the other services offered.
 - (c) The cost of transportation may be included in calculating whether the local education agency has met the required level of support to children with disabilities in private schools.
 - (i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be

- provided transportation
 - a. from the child's school or the child's home to a site other than the private school; and
 - b. from the service site to the private school, or to the child's home, depending on the timing of the services.
 - (ii) LEAs are not required to provide transportation from the child's home to the private school.
- (6) An LEA may not use funds available under Section 611 or 619 of the Individuals with Disabilities Education Act 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.
- (7) Complaints.
- (a) The due process procedures available in Section .1512 do not apply to complaints that a local education agency has failed to meet the requirements of D 3 (above), including the provision of services indicated on the child's services plan.
 - (b) State complaints as described in Section .1512 may be filed under the procedures described in Section .1512.
 - (c) Child find, identification and evaluation complaints may be filed.
- (8) Requirements that funds not benefit a private school.
- (a) An LEA may not use funds provided under Section 611 or 619 of the Individuals with Disabilities Education Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
 - (b) The LEA shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for
 - (i) the needs of a private school; or
 - (ii) the general needs of the students enrolled in the private school.
- (9) Use of public school personnel.
- An LEA may use funds under Sections 611 and 619 of the Individuals with Disabilities Education Act to make public school personnel available in other than public facilities
- (a) to the extent necessary to provide services under Section .1519 D for private school children with disabilities,
 - (b) if those services are not normally provided by the private school.
- (10) Requirements concerning property, equipment and supplies for the benefit of private school children with disabilities.
- (a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under Section 611 or 619 of the Act for the benefit of

private school children with disabilities.

- (b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.
- (c) The public agency shall ensure that the equipment and supplies placed in a private school:
 - (i) are used only for education of children with disabilities identified under IDEA and
 - (ii) can be removed from the private school without remodeling the private school facility.
- (d) The public agency shall remove equipment and supplies from a private school if:
 - (i) the equipment and supplies are no longer needed for Part B purposes; or
 - (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for other than identified children with disabilities.

History Note: Statutory Authority G. S. 115C-115; Eff. October 1, 1978;
Amended Eff. July, 1999; November 1, 1984; September 30, 1980; July 15, 1979.
IDEA 97 Final Regulations 34 CFR § 300.2; § 300.133; §§ 300.401-300.402;
§ 300.450; §§ 300.452-300.453; §§ 300.456-300.462; § 300.714.

.1520 RESPONSIBILITIES OF THE EXCEPTIONAL CHILDREN DIVISION

- A. The Services of the Exceptional Children Division are available to all local educational agencies, including charter schools, and parents/consumers.
- B. The Division provides consultative services to local educational agencies in planning, establishing, and maintaining programs/services for the instruction of children with disabilities in the least restrictive environment.
- C. The Division is responsible for developing a plan for a statewide child count, collecting information and reporting to the State Board of Education. All local educational agencies must participate in the child count.
- D. The Division provides consultative services in developing and implementing the IEP for children with disabilities or written educational program for the pregnant to local educational agencies. The Division also monitors these programs.
- E. The Division cooperates with other divisions in the Department of Public Instruction and other departments, agencies, and institutions of higher education to foster a collaborative effort on behalf of all children with disabilities.
- F. The Division disseminates information needed by parents, laypersons, legislators, organizations, and agencies upon request to keep them properly informed and to assist their understanding of programs for children with disabilities.
- G. The Division provides consultative services and technical assistance in the areas of curriculum development, instructional materials, adaptive devices, and use of technology for children with disabilities.
- H. The Division provides and supports staff development activities to improve and upgrade competencies of regular and special education teachers, administrators and support personnel as they impact on children with disabilities.
- I. The Division coordinates and administers the activities of the Individuals with Disabilities Education Act.
- J. The Division shall monitor local education agencies, charter schools, and state-operated programs for compliance with state and federal laws.

History Note: Statutory Authority G.S. 115C-110; Eff. July 15, 1979
Amended: July, 1999.
IDEA 97 Final Regulations 34 CFR § 300.141; § 300.349; §§ 300.600-300.662.

.1521 QUALIFICATIONS AND LICENSURE OF EDUCATIONAL PERSONNEL

A. Personnel in City and County School Administrative Units Including Charter Schools.

- (1) Teachers of children with disabilities shall hold as a minimum a regular class "A" teaching license.
- (2) All teachers of children with disabilities regardless of sources of funds must meet "in-field" teacher license requirements. Teachers of school-age students with disabilities must hold licensure for each category of students who comprise fifty or more percent of each special class they teach. Excluded from this requirement are regular teachers with heterogeneous classes which may include one or more children with disabilities and teachers of preschool children with disabilities who are required to hold preschool disabilities licensure, preschool add-on or Birth-K licensure. Personnel employed to provide services to exceptional children on a provisional license must work at a rate of six semester hours each year to be employed in these positions.
- (3) Speech-language pathologists shall be licensed at the master's degree level. Speech-language pathologists who were licensed by the Department of Public Instruction prior to 1984 must meet the highest standard, which is a master's in speech-language pathology, by the year 2005. When a local education agency contracts for speech-language services, the contractor must hold a license from the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.
- (4) Teacher assistants shall have training which meets the standards of the State Board of Education.
- (5) Psychologists who are employed by the school administrative units shall be licensed by the State Department of Public Instruction. All school psychologists must meet Level II licensure requirements to function independently. Psychologists in private practice contracted by the local school administrative units shall be licensed.
- (6) Individuals designated as Directors, Exceptional Children Programs, shall hold master's level licensure in special education, administration, or supervision. Individuals holding master's level licensure in special education or a related area, but not licensure in administration and/or supervision, shall complete nine semester hours of course work in supervision and/or administration. Individuals holding master's level licensure in administration and/or supervision, but not master's level licensure in special education or a related area, shall complete nine semester hours of graduate level course work in special education. Provisional licenses may be granted to persons working on their Director's license.
- (7) Occupational therapists shall have graduated from an accredited program of

occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.

- (8) Physical therapists shall have graduated from an accredited program of physical therapy. They must be licensed by the State of North Carolina as physical therapists.
- (9) Persons providing orientation and mobility services must be appropriately qualified.

B. Personnel in Department of Health and Human Services and Department of Correction and Department of Juvenile Justice and Delinquency Prevention.

- (1) All teachers employed by the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention to provide special educational services to children with disabilities, ages 3 through 21, shall follow the same regulations that apply to public school teachers.
- (2) In the Department of Health and Human Services, speech-language pathologists employed or contracted with shall have the appropriate license in order to provide services for communicatively impaired children and youth. Speech-language pathologists employed by schools for the deaf or blind must hold a valid license in speech-language pathology issued by the Department of Public Instruction. When a school for the deaf or blind contracts for speech-language pathology services, the speech-language pathologist must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists. Speech-language pathologists working in other Department of Health and Human Services programs must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.
- (3) In the Department of Correction and the Department of Juvenile Justice and Delinquency Prevention, speech-language pathologists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.
- (4) Teacher assistants shall have training which meets the standards of the State Board of Education.
- (5) Psychologists shall either be licensed by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.
- (6) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.
- (7) Physical therapists shall have graduated from an accredited program of physical

therapy. They shall be licensed by the State of North Carolina as physical therapists.

C. Personnel in Private Schools.

- (1) All teachers employed in private schools to provide educational services to children with disabilities shall follow the same regulations that apply to public school teachers.
- (2) Speech-language pathologists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.
- (3) Teacher assistants shall have training which meets the standards of the State Board of Education.
- (4) Psychologists shall either be licensed by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.
- (5) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.
- (6) Physical therapists shall have graduated from an accredited program of physical therapy. They shall be licensed by the State of North Carolina as physical therapists.

History Note: Statutory Authority G. S. 115C-110; Eff. October 1, 1978;
Amended Eff. July 11, 1991; November 1, 1984;
September 28, 1981; September 30, 1980; July 15, 1979.
IDEA 97 Final Regulations 34 CFR § 300.26; § 300.136.

.1522 CATEGORICAL EXCEPTIONAL CHILDREN FUNDS FOR LOCAL EDUCATION AGENCIES AND CHARTER SCHOOLS

- A. In the administration of these programs, the State Superintendent, the Associate State Superintendent for Financial Services and the State Board of Education shall deal solely with county and city superintendents and their local boards of education, and charter schools and their governing boards.
- B. It is the policy of the State Board of Education that school-age exceptional children be counted in the average daily membership (ADM) used to compute all state ADM allocations. Central office and school-based costs of administration, clerical support, instruction (for mainstreamed children), instructional support services, plant operations, textbooks, supplies and materials, and other general costs are expected to be funded from "regular allotments" intended for the benefit of all children. In addition, to the extent that children with disabilities in self-contained settings earn teaching positions in the regular allotment, it is the intent of the State Board of Education that these positions be used for the benefit of children with disabilities. The state categorical funds allocated to serve children with disabilities are intended to provide the additional costs of these programs beyond the regular program costs described in paragraph (b) of this Rule.

C. Eligibility and Age of Children with Disabilities.

- (1) All children with disabilities ages 3 through 20 shall be provided a free and appropriate education.
- (2) Funds for children with disabilities may be used on a permissive basis birth through age 2 and for all children with disabilities through age 21.
- (3) Evaluations of children with disabilities for placement or for special services shall be performed by qualified personnel and in accordance with the placement procedures outlined in Procedures Governing Programs and Services for Children with Disabilities.

D. Suspension and Expulsion Rates.

If significant discrepancies are occurring in the long term suspensions and expulsions of children with disabilities, the LEA is required to revise its policies, procedures, and practices relating to the development and implementation of the IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures and practices comply with these Procedures.

E. Counting Procedures.

- (1) Eligible child counts shall include only those pupils identified according to State Board of Education criteria and having an approved IEP for children with

disabilities or written education program for the pregnant on file as of the reporting date.

- (2) December 1 - Individuals with Disabilities Education Act (IDEA), P.L. 105-17 child count report. The December 1 child count is used to generate federal funds for children with disabilities ages 3-21 under the Individuals with Disabilities Act, P.L. 91-230, as amended by P.L. 94-142, P.L. 99-457, P.L. 101-476 and 105-17. Preschool grant funds are not generated by child count but are based upon 75% of the 1997 grant award allocated to states and the remaining 25% being split as follows: 85% of the remaining funds based upon the number of 3 - 5 year olds (census) and 15% of the remaining funds based upon the number of 3 - 5 year olds living in poverty. Although pregnant school girls are reported for child count purposes in the collection of December 1 data, funding for pregnant school girls is made based on the April 1 child count only. (State funding is based on a combined count of all categories for children ages 5-20 in the December child counts and adjusted in the April 1 child count.) Preschool children with disabilities are included in the April 1 child count for state funding purposes. State funding for preschool children with disabilities is determined by the April 1 child count, plus a base-funding amount for each local education agency.
- (3) To be eligible for counting on December 1 under Individuals with Disabilities Education Act, Part B, a child must:
 - (a) be enrolled in a special education program in a school or program which is operated/supported by a public agency which meets State Board of Education standards in Procedures Governing Programs and Services for Children with Disabilities;
 - (b) be receiving special education (free appropriate public education) and related services (when appropriate) on December 1;
 - (c) be properly identified as a child with a disability been placed in a class/program by the IEP Team or Preschool IEP Team; attained the third birthday and be no older than age 21;
 - (d) have an IEP for children with disabilities or an education program for the pregnant.

F. Counting of Children with Disabilities Who Are Placed in a Public or Private School Facility.

- (1) The local educational agency of legal residence is eligible to count the child in special education child counts only if the local educational agency provides special education and related services either directly or contractually.
Exception: When a preschool child with a disability is enrolled in Head Start and Head Start is providing special education and related services by qualified personnel the local education agency of legal residence may offer rights and count the child in the December 1 child count.

- (2) When a child with a disability is placed to receive his/her special education in a public or private school or facility other than the one in which he/she maintains legal residence, the local educational agency of legal residence for the child shall count the child in the December and April special education child counts but not in average daily membership.
 - (3) When a child is placed by the local educational agency of legal residence in another local education agency, the serving local education agency shall count the child in average daily membership but not in the December and April special education child counts.
 - (4) When a child is in residence in a group home, foster home or similar facility, the local school administrative unit where the group home, foster home or similar facility is located shall count the child in the December and April special education child counts and in average daily membership.
 - (5) When a school-aged child is placed in a developmental day program, the local education agency of legal residence shall count the child in the December and April special education headcounts but shall not count the child in average daily membership. When a preschool child is placed in a developmental day program, the local education agency of legal residence shall count the child in the December and April special education child counts.
 - (6) If the local education agency operates a developmental day program, the child shall be counted in the December special education child count for children 3 through 21; in the April special education child count for children 3 through 20; and in average daily membership for school-aged children.
- G. Contractual Agreements for Cooperative Programs in a Public or Private School or Facility.
- (1) The local educational agency has the ultimate responsibility for special education of children with disabilities who reside within the school system and are served by the educational agency either directly or contractually.
 - (2) When a local board of education places the child in another local educational agency or public or private school or facility, the local educational agency of legal residence of the child shall enter into a contractual agreement with the local educational agency or public or private school or facility.
 - (a) the contractual agreement shall specify the special education service(s) to be provided and the duration of that service during the school year;
 - (b) all contracts shall be negotiated prior to or at the beginning of each school year; and
 - (c) contracts shall be written for all such children whether or not any additional financial assistance is required for the child.
 - (3) When a local board of education releases the child to another local educational

agency, the accepting agency has the responsibility for the special education of the child for that school year.

H. Allocation of State Exceptional Children Funds for School-Aged Children.

- (1) Allocations shall be made on a child count basis and will be "in addition to" or "add-on" allocations to the average daily membership base allocation for all children.
- (2) Add-on allocations for children with disabilities will be determined by the State Board of Education.
- (3) State funds will be allotted based on the annual April 1 child count of children with disabilities and pregnant students ages 5 through 20.
- (4) Allotments for children with disabilities are calculated by multiplying the lesser of the April 1 child count or an overall 12.5% cap of the best one of the first two months total projected ADM for the current year or the higher of the first two months total actual prior year ADM by the funding factor established for that particular year.

I. Allocation of State Funds for the Preschool Program for Children with Disabilities.

State preschool children with disabilities program funds will be distributed according to the following formula:

- (1) each local education agency will receive a base funding amount equal to the average salary of a classroom teacher plus benefits; and
- (2) the remainder of the funds will be distributed to each local education agency based on the April 1 child count of children ages 3, 4, and pre-K 5.

J. Allocation of Federal Funds to Children with Disabilities (Section 619).

For federal preschool grant funds, the allocation to each local education agency is based on 75% of the 1997 grant award allocated to the state with the remaining funds to be allocated by the following formula:

- (1) 85% based upon the number of children enrolled in public and private elementary and secondary schools; and
- (2) 15% based upon the number of children living in poverty.

K. Allocation of Federal Funds to Children With Disabilities (Section 611).

Allocation of federal funds to children with disabilities (Section 611) to each local education agency, charter school and state operated program is based on 75% of the

1998 grant award amount with the remaining funds to be allocated by the following formula:

- (1) 85% based upon the number of children enrolled in public and private elementary and secondary schools, and
- (2) 15% based upon the number of children living in poverty.

L. Utilization of Federal Funds for Children with Disabilities. Federal funds:

- (1) Shall be used only to pay the excess cost of providing special education and related services to children with disabilities;
- (2) Shall be used to supplement state and local and other federal funds and not to supplant such funds;
- (3) May be used under this part for any fiscal year to carry out a school wide program under Section 1114 of the Elementary and Secondary Act of 1965 (Title I) except that the amount used in any such program shall not exceed:
 - (a) the number of children with disabilities participating in the schoolwide program; multiplied by
 - (b) the amount per child received by the local education agency; and
 - (c) children must receive special education and related services as contained in the IEP.

M. Ineligibility of Local Education Agency or State Operated Program.

In the event the state educational agency determines that a local education agency, a charter school, or a program operated by the Department of Health and Human Services, the Department of Correction, or Department of Juvenile Justice and Delinquency Prevention (state operated program) is not eligible to receive funds under the Individuals with Disabilities Education Act, the state education agency shall notify in writing the local educational agency or other state agency, as the case may be, of that determination.

- (1) Reasonable written notice must be given to the local education agency or the state operated program prior to withholding funds or disapproving an application and must specify the rights of the local education agency or state operated program to a hearing.
- (2) The local education agency or the state operated program must request in writing a hearing within 30 days of the receipt of the notice from the Department of Public Instruction.
- (3) Within 30 days after it receives the request for a hearing, the Department of Public Instruction shall hold a hearing on the record and shall review its action.
- (4) No later than 10 days after the hearing, the Department of Public Instruction

shall issue its written ruling, including findings of fact and reasons for the ruling.

- (5) If the Department of Public Instruction does not rescind its final action after a review, the local education agency or state operated program may file a notice of appeal with the Secretary of the U. S. Department of Education within 20 days after the local education agency or the state operated program has been notified by the Department of Public Instruction of the results of the review. If supported by substantial evidence, findings of fact of the Department of Public Instruction are final and binding.
- (6) If the Secretary determines that the action of the Department of Public Instruction is contrary to Federal statutes or regulations, the Secretary will issue an order that requires the Department of Public Instruction to take action deemed appropriate by the Secretary.

N. Utilization of State Exceptional Children Funds.

- (1) Exceptional children funds may be used for the following:
 - (a) to employ a half-time coordinator or to pay up to a half-time supervisor or director on a supervisor's salary schedule if that person meets the requirements of the State Board of Education for programs for preschool children with disabilities;
 - (b) to provide clerical assistance to support programs for children with disabilities;
 - (c) to employ teachers and speech-language pathologists who shall be used exclusively to provide special education and/or related services to children with disabilities in one or more of the following categories: autistic, deaf-blind, hearing impaired, mentally disabled, multihandicapped, orthopedically impaired, other health impaired, behaviorally-emotionally disabled, specific learning disabled, speech-language impaired, traumatic brain injured, visually impaired, developmentally delayed, and pregnant. Adapted physical education teachers may be employed as long as they work exclusively with children with disabilities. Teachers in bona fide team teaching situations are exempt from these requirements. Bona fide team teaching is instruction provided in a regular classroom that involves a general education teacher and a teacher of a child with a disability who are jointly responsible for planning, instructing, and evaluating a given group of students at any instructional level or in a selected subject matter or combination of subject matter areas;
 - (d) to provide supportive personnel limited to psychologists, audiologists, teacher assistants, transportation safety assistants, adaptive physical education specialists, Braillists, case managers, data managers, diagnostic-prescriptive specialists, interpreters for the deaf, occupational therapists, occupational therapist assistants, orientation and mobility specialists, parent counselors-trainers, physical therapists, physical therapist assistants, therapeutic recreation specialists, school health assistants, speech-language

pathologists, speech-language assistants, transition coordinators, and rehabilitation counselors. Other specific supportive personnel necessary to support programs and related services for children with disabilities must have written approval from the Exceptional Children Division prior to employment;

- (e) to provide contracted services limited to medical evaluations, related services, educational services including educational services in sheltered workshops, developmental day centers, and community residential centers;
- (f) to purchase equipment including personal computers for identified exceptional children. Equipment purchased from these funds must be used for programs for children with disabilities and/or administrative support for exceptional children programs;
- (g) to conduct annual child find activities;
- (h) to extend the employment period for school personnel employed to provide services for identified special needs students;
- (i) to provide travel for itinerant teachers and related services personnel employed from Exceptional Children funds;
- (j) to provide staff development for special education personnel to support the following:
 - (i) to grant license endorsement to teachers of children with disabilities;
 - (ii) to improve competencies, knowledge, and skills of licensed teachers and support personnel who work with children with disabilities; and
 - (iii) to provide competencies for teachers moving into new roles (program areas) serving children with disabilities.
- (k) to provide staff development for parents of children with disabilities;
- (l) to provide staff development activities that are designed to achieve specific training objectives;
- (m) to develop and conduct in-service training for regular educators in developing techniques and strategies for working with exceptional children in the regular classroom. Standards and regulations adopted by the State Board must be followed;
- (n) to provide services for a child placed in a program not operated by the local board of education. The program must:
 - (i) offer an instructional program which will meet the special educational needs of the child; and
 - (ii) be approved as a program for children with disabilities for the school year in question by the appropriate public agency in the state where the school is located.
- (o) to provide services to children who are categorized as children with disabilities in a hospital or home program;
- (p) to purchase minibuses for programs for preschool children with disabilities. (Prior written approval must be secured from the Exceptional Children Division.)

Note: All contracts must meet the requirements of state and federal regulations.

- (2) Exceptional children funds may not be used for the following:
 - (a) construction or renovation;

- (b) to supplant locally funded programs and other state funds for materials and service positions;
- (c) to supplant existing programs and services for children with disabilities;
- (d) local travel of directors or other central office personnel;
- (e) student travel to and from school with the exception of preschool children with disabilities;
- (f) to pay supplements;
- (g) to provide medical services;
- (h) to provide custodial services or child care;
- (i) to serve students who exit from special education programs;
- (j) to provide services to non-exceptional children; or
- (k) to pay legal fees that are incurred during a due process hearing, review or appeal for either the local education agency or the parents when they are the prevailing party, or for expenses of attorneys who are invited to IEP meetings or mediation sessions.

O. Set-Aside Funds for Children Ages 3-20.

The State Board of Education shall establish set-aside funds for special allocations prior to the determination of per pupil allocations with the maximum amount per set-aside to be justified and approved annually by the Board and reported to local education agencies. The Continuation Budget will contain a statement that gives the amount of set-aside funds approved by the State Board of Education.

- (1) **Out-Of-District Placements.** The State Board of Education (or its designee) may approve the use of the reserve fund toward the payment of the excess cost of the placement of a child in a program not operated by the local board of education within funds available and subject to the following conditions:

- (a) State Board of Education review reveals that the local education agency has approved alternative placement and the education agency finds it is necessary for the child to be placed in a program not operated by the local board of education in order to receive an educational program or service which will appropriately meet the child's special educational needs;
- (b) the local education agency must fund an amount equal to the sum of the following per pupil allocations:
 - (i) the state's regular per pupil allocation for school-aged children;
 - (ii) the state's add-on per pupil allocation for exceptional children; plus
 - (iii) the federal per pupil allocation for exceptional children.

If the sum of those per pupil allocations does not cover the cost of the alternative placement, then the reserve fund may be approved, but in no case will the reserve fund pay more than fifty percent of the total cost of the alternative placement. Any cost then remaining must be assumed by the local education agency, using any local, state or federal funds approvable for such expenditure. Financial Services, State Department of Public Instruction, shall reimburse the local board of education for any reserve funds approved by the State Board of Education.

- (c) Funds must be used only to provide special education and related services costs; residential costs; and extended school year when it has been determined by the IEP committee that extended year is required as part of the IEP. Funds must not be used for medical, custodial, or day care services.
 - (d) When a private residential placement has been determined to be the most appropriate placement for a child with a disability, all in-state residential programs should be the first consideration of placement. The local education agency should exhaust all possible in-state residential placements before placing a child out-of-state. All children placed in out-of-district school settings are entitled to the same rights and procedural safeguards as provided to those children whose IEPs are implemented in the local education agency.
 - (e) Any application for a special reserve fund allocation must be submitted prior to enrolling the child in the program.
 - (f) Each out-of-district placement must be reviewed annually (Continued placement must be based on the least restrictive educational placement).
 - (g) All withdrawals from out-of-district placements must be reported no later than 10 days after the withdrawal has occurred. The withdrawal notification must include the child's name, date of birth, disabling condition, and date of withdrawal. Additional children cannot be placed in programs of children who have withdrawn from enrollment. A complete application for placement must be submitted to the Exceptional Children Division.
- (2) Developmental Day Centers.
- (a) State categorically appropriated funds will be allocated to local education agencies at a per month per child rate determined annually by the Exceptional Children Division and Financial and Personnel Services. Special developmental day center funds are based on the actual months of service up to 180 school days and shall provide for educational services, including personnel, supplies, materials and educational equipment.
 - (b) Local education agencies whose developmental day center expenditures per child exceed the rate approved by the State Board may provide for the additional cost from other available funds.
 - (c) Once a child is transferred from the developmental day center and is to be served in the local education agency by agreement between the two governing bodies, the local education agency will then be eligible for an allocation at a per month per child rate established by the Exceptional Children Division under two conditions:
 - (i) a school age child (5-21) who was placed in a developmental day center and is now being served by the local education agency. These funds are for the initial year of the transfer only. This provision is not for disabled preschool children placed in developmental day centers for preschool disability services who are now entering the local education agency at age five for kindergarten; and
 - (ii) local education agencies that have developmental day programs that have closed and there are no other developmental day programs

available. The local education agency is entitled only to the amount of funding received the previous year. The allocation is for preschool and school age children with disabilities served in the center that closed.

- (d) Children served in developmental day centers may be counted for federal funds.
 - (e) Developmental day center child counts, external to local education agencies, are not included in the projected regular average daily membership.
 - (f) If the decision is to place the child in the developmental day center(s), the local education agency must submit the following information to the Exceptional Children Division:
 - (i) name of center;
 - (ii) number of children;
 - (iii) name and date of birth of each child;
 - (iv) type of disabling condition of each child;
 - (v) rate per month per child (including a breakdown of center's educational costs per month for teachers' salaries, fringe benefits, support services such as occupational therapists, physical therapists, speech, etc.);
 - (vi) copy of contract/agreement with center;
 - (vii) all required information (i-vi) must be submitted to Director, Exceptional Children Division, for review and approval. Following review and approval by the Exceptional Children Division, Financial Services will be notified to allocate funds to the requesting local education agency.
 - (g) Personnel employed by local boards of education and/or independently operated developmental day centers may be employed for ten months.
 - (h) These funds are for children ages three through twenty to provide special education and related services for no more than 180 school days.
 - (i) All withdrawals of children from developmental day centers must be reported monthly to the Exceptional Children Division. If another child is approved for placement in a developmental day center, the child's name, date of birth, disabling condition, and date withdrawn must be reported no later than 10 days after withdrawal.
 - (j) Funding is based upon availability of funds.
 - (k) May 15th of each year is the deadline for submission of these applications.
- (3) Funds for Community Residential Centers.
- (a) State categorical funds will be allocated to the LEA based on a child count of eligible children with disabilities receiving their special education and related service in a community residential center. The child count(s) will be done by the local education agency where the community residential center is located. Funding for special education and related services in the community residential center will be approved only after the IEP Team in the local education agency where the community residential center is located has determined that the least restrictive environment is the

- community residential center. If it is determined that the least restrictive environment is the local education agency, the community residential center will be ineligible for educational funding.
- (b) The local education agency may request the per child allocation for one year for any child served in the community residential school program prior to entering the local education agency. These funds are allocated only when funds are available.
 - (c) Transportation for all children served in the local education agency residing in a community residential center shall be borne by the local education agency.
 - (d) The rate of funds per child shall be determined jointly by the Exceptional Children Division and appropriate personnel from the community residential center. The rate of funds will be allocated at a per child rate determined annually by the Exceptional Children Division and School Financial Services. Special Community Residential Center funds are based on the actual months of service up to 180 school days and may include extended school year when it is deemed appropriate by the IEP Team and written into the child's IEP. Funds shall be used to provide for educational and related services, including personnel, supplies, materials and educational equipment.
 - (e) The amount of funds allocated to the community residential centers per child and per month will be based on a recommendation to the Associate Superintendent for Financial Services by the Director of the Exceptional Children Division.
 - (f) The local education agency where the community residential center is located shall certify to the State Board of Education that the educational placement has been approved by the IEP Team.
 - (g) The residential placement in a community residential center must be approved by one of the area mental health centers before a special education placement can be considered.
 - (h) All children approved for residential services in the community residential center must have the least restrictive environment determined by the IEP Team in the local education agency where the community residential center is located.
 - (i) All withdrawals of children served in community residential centers must be submitted monthly (no later than 10 days after withdrawal has occurred) to the Director of the Exceptional Children Division. If another child is approved for placement in a community residential center the child's name, date of birth, disabling condition, and date added to roster must accompany the withdrawal notification which lists the child's name, date of birth, disabling condition, local education agency where parents/guardians have legal residence, and date of withdrawal.
 - (j) May 15th of each year is the deadline for submission of these applications.
- (4) Group Home Placements.
- (a) The Director of the Exceptional Children Division shall reserve an amount annually to provide special education and related services for the first-year

- placement of children with disabilities in residential group homes.
- (b) A local education agency is eligible for group home funds for the initial year of group home placement only if the child has not been counted in either the December 1 or revised April 1 child counts or projected regular average daily membership. After the initial placement, the local education agency serving the child will count the child and will be eligible for the state and federal add-ons approved on a prorated annual basis.
 - (c) Special allotments for children who have not been counted by local education agencies for educational allocations will be made on a prorata annual basis according to the following formula:
 - (i) regular allocation;
 - (ii) state add-on (children with disabilities);
 - (iii) federal add-on (Title VI-B only); plus
 - (d) upon application for funds for initial year of placement, each local education agency shall submit to the Director of the Exceptional Children Division:
 - (i) name of child;
 - (ii) name and location of group home;
 - (iii) date of birth of each child;
 - (iv) category of disability; and
 - (v) type of program to be provided.
 - (e) Children with disabilities and accompanying chronic and acute behavioral/emotional needs are eligible for Behavioral Support Services funds or group home funds, not both.
 - (f) Without regard to the place of domicile of a parent or guardian, the cost of free appropriate public education for a student with a disability who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal laws, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a student with a disability in a group home, foster home and similar facility. Funding is based on availability.
 - (g) May 15th of each year is the deadline for submission of these applications.
- (5) Special Small Schools.
- (a) Provision is made for a separate allotment of teachers to be used in programs serving children with disabilities from more than one local school administrative unit;
 - (b) Special allotments may be made to selected local boards of education for teachers to serve children with disabilities for the following purposes:
 - (i) large general or special hospitals; or
 - (ii) special regional programs for children with disabilities.
- (6) Special State Reserve
- (a) The North Carolina Department of Public Instruction will provide Special State Reserve funds for emergency situations for children and youth with

disabilities.

- (b) These funds are available to local education agencies and charter schools who have high cost students with disabilities entering school after all budgets are set and funds are committed. These funds are for educational services and personnel.
- (c) Each child should be submitted on an application developed by the Exceptional Children Division and disseminated annually. The Exceptional Children Division reviews each application. The application includes student information, narrative description of services, funds needed, end-of-year update and certification of application. Notification of approval and/or disapproval is forwarded to appropriate agencies.
- (d) May 15th of each year is the deadline for submission of these applications.

History Note: Statutory Authority G. S. 115C-110; 115C-122; Eff. October 1, 1978; Amended Eff. July, 1999; July 11, 1991; December 7, 1989; July 1, 1986; November 1, 1984; November 1, 1983; April 1, 1982; September 28, 1981; September 30, 1980; July 15, 1979. IDEA 97 Final Regulations 34 CFR § 300.230; §§ 300.620-300.623; §§ 300.700-300.756.

.1523 TRANSPORTATION

- A. Local boards of education are responsible for providing or paying the costs of transportation for children with disabilities enrolled in schools or programs in their local school systems and are responsible for providing or paying the costs of transportation to any private residential or non-residential program, if the student has been placed in or assigned to that private program by the local board of education. Transportation funds for this purpose may be provided through local boards of education annual transportation budget allotments which are administered by the School Support Division, North Carolina Department of Public Instruction. These funds are incorporated in the general transportation plan of each local board. For preschool children with disabilities, payment of such transportation costs must be made from either federal or state preschool program funds.
- B. If a child with disabilities is assigned to or enrolled in any residential or non-residential program operated by or under the jurisdiction or control of the Department of Health and Human Services, the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, the Department operating the program or having the program under its jurisdiction or control is responsible for providing or paying the costs of transportation. This is applicable for programs for school age students with disabilities as well as programs for preschool children with disabilities. The only exception is when a child is enrolled in a local school system and is counted for funding purposes by the school system, but attends a class or classes at a Department of Health and Human Services program. In this case, the local school system is responsible for providing the transportation to the Department of Health and Human Services program and return to the local school system or home.
- C. If a local area mental health center places a child with disabilities in an educational program, the local area mental health center shall pay for the transportation of the child to/from the program.
- D. The costs of transportation for a child with disabilities placed in or assigned to a school or program outside the state shall be paid by the local educational agency or state operated agency placing or assigning the child in that school or program.
- E. In no event shall reimbursement for the costs of transportation paid for any one child exceed the School Support Division allowance per mile unless it is demonstrated by the child or his/her parent that such limitation will work a hardship or is unreasonable. This justification must be approved by the local educational agency and appropriate state agency.

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979;
Amended Eff. July, 1999, to become effective July 1, 1998;
July 11, 1991; November 1, 1984.
IDEA 97 Final Regulations 34 CFR § 300.24; § 300.306; § 300.456.

.1524 MATERIALS, SUPPLIES AND EQUIPMENT

Local boards of education shall determine and make necessary arrangements for providing the materials, supplies and equipment essential to the instructional programs for children with disabilities.

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979
IDEA 97 Final Regulations 34 CFR §§ 300.234-300.235.

.1525 FUNDS TO DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DEPARTMENT OF CORRECTION, AND THE DEPARTMENT OF JUVENILE
JUSTICE AND DELINQUENCY PREVENTION.

Funds appropriated to the State Board of Education from either state or federal resources for special education and related services to children with disabilities within the Department of Health and Human Services, Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention will be distributed on formulas adopted by the State Board based on state and federal guidelines regarding the distribution of these funds.

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979.
IDEA 97 Final Regulations 34 CFR §§ 300.711-300.712.

.1526 PROGRAM COMPLIANCE AUDIT

The Department of Public Instruction shall monitor all local education agencies, charter schools and state operated programs to determine compliance with appropriate state and federal laws and State Board of Education Procedures Governing Programs and Services for Children with Disabilities.

History Note: Statutory Authority G. S. 115C-113; Eff. September 30, 1980;
Amended Eff. July, 1999; July 11, 1991; September 28, 1981.
IDEA 97 Final Regulations 34 CFR § 300.125; § 300.128; § 300.370;
§ 300.402; § 300.556; § 300.589; § 300.621; § 300.652.

.1527 BEHAVIORAL SUPPORT SERVICES**A. Funding.**

- (1) Behavioral Support Service Funds (PRC 29) are allotted on a needs basis. All requests for funds must include a completed Behavioral Support Service Funding Request form (with appropriate signatures) and a copy of the student's IEP. The IEP shall address all the required components as delineated in Section .1507 C(1-12).
- (2) Funds are designated as add-on funds. They are to be used to make the "critical difference" in the successful development and implementation of the IEP. These funds may not be used to supplant or replace other funding sources (e.g., state aid exceptional children funds). They are to be used only to provide services to children with disabilities and accompanying chronic and acute behavioral/emotional needs including students previously served by Department of Health and Human Services as Willie M class members. Requests for funds are evaluated according to the following criteria.
 - (a) Prioritization will be given to: innovative and creative grant proposals that are designed to make the critical difference to ensure successful IEP implementation and positions and services previously funded through state aid to local administrative units (PRC 29) that have been effective in providing behavioral support services essential to enhance educational performance of children with disabilities and accompanying chronic and acute behavioral/emotional needs. Examples of innovative programming include, but are not limited to:
 - (i) parent outreach efforts;
 - (ii) efforts to return dropouts to school;
 - (iii) extended school day programming;
 - (iv) job skill acquisition linked to academic success
 - (v) interagency programming designed to implement a "24-hour" plan;
 - (vi) involvement of community/business agencies and personnel;
 - (vii) staff development;
 - (viii) alternative programming that addresses both academics and pro-social behavior;
 - (ix) direct, systematic instruction that increases instructional time;
 - (x) preventive and proactive efforts to decrease the use of out-of-school suspensions for students with disabilities;
 - (xi) peer involvement and positive role modeling;
 - (xii) crisis intervention/liaison specialist;
 - (xiii) assessment/prescriptive specialist to assist in programming.
 - (b) The following variables will be given priority consideration when determining justification for LEA grant allocations:
 - (i) Specified group home(s), residential treatment center(s), therapeutic home(s), and Individual Residential Treatment (IRT);
 - (ii) number of children with disabilities and accompanying chronic and

acute special behavioral/emotional needs whose domicile and enrollment in the LEA is attributable to the provision of residential treatment services;

- (iii) presence of day treatment program;
- (iv) presence of a student(s) with a low incidence, high cost disability;
- (v) presence of a student with disabilities and accompanying chronic and acute special behavioral/emotional needs;
- (vi) utilization of previous funds;
- (vii) other unique situations not described above.

- (3) Funds not utilized as approved must be returned as soon as it is determined that the needs stipulated and funded by the original grant proposal no longer exist or have been modified.

B. In case of cooperative treatment and education programs in which the program is located in a facility other than a public school building, the following procedures will apply:

- (1) any student who attends the program for his/her full educational services will be counted in the ADM of the local school administrative unit which is supervising the program until the student returns to full-time status in his/her sending school administrative unit;
- (2) any student who attends the day treatment and educational program on a part-time basis will remain in the ADM of the sending school administrative unit.

C. Monitoring. The Department of Public Instruction through the Exceptional Children Division will monitor all local school administrative units and/or other facilities that are providing educational services to determine if the program is appropriate to meet the needs of the child.

History Note: Statutory Authority G. S. 115C-106(b); Eff. September 28, 1981
Amended Eff. July, 1999; July 11, 1991; November 1, 1984; January 1, 1983.

.1528 METHODS OF ENSURING SERVICES

A. Children with Disabilities Who are Covered by Public Insurance.

- (1) A local education agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (2) of this section. Disclosure of personally identifiable information must be consistent with the requirements of Section .1509 C and D.
- (2) With regard to services required to provide FAPE to an eligible child under this part, the local education agency:
 - (a) may not require parents to sign up or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (b) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph C(2) of this section, may pay the cost that the parent otherwise would be required to pay; and
 - (c) may not use a child's benefits under a public insurance program if that use would:
 - (i) decrease available lifetime coverage or any other insured benefit;
 - (ii) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
 - (iii) increase premiums or lead to the discontinuation of insurance; or
 - (iv) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. Children with Disabilities Who are Covered by Private Insurance.

- (1) With regard to services required to provide FAPE to an eligible child under this part, the local education agency may access a parent's private insurance proceeds only if the parent provides informed consent.
- (2) Each time the local education agency proposes to access the parent's private insurance proceeds, it must:
 - (a) obtain parent consent;
 - (b) inform the parents that their refusal to permit the local education agency to access their private insurance does not relieve the local education agency of its responsibility to ensure that all required services are provided at no cost to the parents.

C. Use of Part B Funds.

- (1) If the local education agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a

cost for a specified service required under this part to ensure FAPE, the local education agency may use its Part B funds to pay for the service.

- (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the local education agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

D. Proceeds from Public or Private Insurance.

- (1) Proceeds from public or private insurance will not be treated as program income.
- (2) If a local education agency spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions.

History Note: IDEA 97 Final Regulations 34 CFR § 300.142.

APPENDIX A

PUPIL/TEACHER RATIO

A. Class Size: Pupil-Teacher Ratio – School Age Total Class Load (TCL) for Middle and High School subject area teachers (e.g., Math, English) Can be based on Resource class size multiplied by five periods.				
Category	Level of Continuum	Maximum Class Size Number of Assistants		
		0	1	2
Autistic	Regular Class			
	Resource Class	12 No More Than 35 TCL		16
	Separate Class		6	8
Behaviorally-Emotionally Disabled	Regular Class	20 TCL		
	Resource Class	6	8 No more than 20 TCL	
	Separate Class		8	
Hearing Impaired	Regular Class	20 TCL		
	Resource Class	20 TCL		
	Separate Class...P-K-6		7	
	Separate Class...7-12		9	
	Separate Class...Severely Handicapped		4	
Deaf-Blind	Regular Class			
	Resource Class	12 No More Than 35 TCL		16
	Separate Class		6	8
Educable Mentally Disabled	Regular Class (Elementary)	35 TCL		
	Regular Class (Middle-Secondary)	60 TCL		
	Resource Class	12 No More Than 35 TCL		16
	Separate Class...P-12	12	16	18
Trainable Mentally Disabled	Regular Class			
	Resource Class	12 No More Than 35 TCL		16
	Separate Class		12	14
Severely/Profoundly Disabled	Regular Class			
	Resource Class	12 No More Than 35 TCL		16
	Separate Class		6	8
Orthopedically Impaired	Regular Class...Resource	15 TCL		
	Separate Class		12	
Multihandicapped	Regular Class			
	Resource Class	12 No More Than 35 TCL		16
	Separate Class		6	8

A. Class Size: Pupil-Teacher Ratio – School Age Total Class Load (TCL) for Middle and High School subject area teachers (e.g., Math, English) Can be based on Resource class size multiplied by five periods.				
Category	Level of Continuum	Maximum Class Size Number of Assistants		
		0	1	2
Specific Learning Disabled	Regular Class (Elementary)	35 TCL		
	Regular Class (Middle-Secondary)	50 TCL		
	Resource	10/35 TCL		
	Separate Class	10	16	
Speech-Language Impaired	Regular Class...Resource			
	Separate Class	6	12	
Visually Impaired	Regular Class...Resource	20 TCL		
	Resource Class	8 No More Than 20 TCL		
	Residential	8		
Multi-Categorical Class	Regular Class (Elementary)	35 TCL		
	Regular Class (Middle-Secondary)	50 TCL		
	Resource Class	10 No More Than 35 TCL	16	
	Separate Class (Maximum 4 B-ED)	8	12	

Appendix B

Pupil/Teacher Ratio for Preschool Children with Disabilities

Early childhood, part time early childhood/special education or early childhood special education settings: Caseload requirements must be flexible enough to provide for appropriate services in direct accord with the children's diagnosed needs. Consideration should be given to types of severity of the children's problems; nature and level of services required by the children to allow them to progress at optimum learning rates in accomplishing specific objectives; and intellectual abilities and emotional behaviors of the children to be served. Settings that serve preschool children with disabilities should not exceed a ratio of 6 children with disabilities to 1 adult (teacher and/or assistant). For more severely involved children, such as autistic, additional assistants may be needed and/or a lower adult-child ratio may be necessary to serve children more appropriately.

Residential setting: up to 5 children, 1 teacher; 6 to 8 children, 1 teacher, 1 assistant; 9 to 12 children, 1 teacher, 2 assistants.

Itinerant services: Services to preschool children with disabilities are often provided by itinerant teachers at Head Start, childcare programs, in homes, etc. Although no minimum or maximum caseload is defined, it must be flexible enough to provide for appropriate services as described in the child's individualized education program.

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