



LEXINGTON SCHOOL DISTRICT FOUR

SPECIAL EDUCATION POLICIES AND PROCEDURES

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*Lexington Four Policies and Procedures are based on the South Carolina Special Education Process Guide and are updated regularly to reflect changes in state and federal regulations.

Lexington School District Four will use the State Board of Education regulations format to provide operational procedures for school district staff. Selected sections of the SBE regulations which are directly related to school level requirements are included in this procedures document.

Selected Definitions:

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having Intellectual Disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. ***"Developmental Delay" is the category used in South Carolina for children aged 3 through 9 who are identified in accordance with SBE regulations.***

Free appropriate public education or FAPE means special education and related services that—

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the SEA, including the requirements of this part;
3. Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
4. Are provided in conformity with an individualized education program (IEP).

A ***free appropriate public education*** must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday. An IEP must be in effect for the child by that date.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

1. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
2. Instruction in physical education.

Special education includes each of the following, if the services otherwise meet the requirements of special education of this section—

1. Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
2. Travel training; and
3. Vocational education.

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from regular education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools,

and parent counseling and training. **Exception;** Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of device functioning, maintenance of the device, or the replacement of that device.

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

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

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

Transition services means a coordinated set of activities for a child with a disability that—

1. Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 2. Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes—
 - a. Instruction;
 - b. Related services;
 - c. Community experiences;
 - d. The development of employment and other post-school adult living objectives;
- and
- e. If appropriate, acquisition of daily living skills and functional vocational evaluation.

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

Least Restrictive Environment (LRE) Each district must ensure that—

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with IDEA04.

Consent. Consent means that: The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Special note about consent: While parental consent is no longer required under state regulations for change of placement (after initial placement), staff will attempt to obtain parental consent for these actions.

CHILD FIND/REFERRALS/EVALUATIONS

The district ensures that all children with disabilities who are in need of special education and related services are identified, located, and evaluated consistent with the requirements of the Individuals with Disabilities Education Improvement Act (IDEA 2004) and its implementing regulations. This includes children who attend public or private schools; those who are homeschooled; those who are highly mobile, including migrant and homeless; and those who are wards of the state. The child find requirement for districts applies to children birth through 21. Child find involves referral to Part C for children birth to 3, a screening process for children from age 3 to age 5, and a general education intervention process for children from kindergarten through age 21. District staff, in conjunction with parents, uses these processes to locate, evaluate, and identify children who may need special education and related services. Children in need of special education services should be identified as young as possible, and also as soon as possible after the concern is noted.

Public notice for child find

- A. The district provides information to the public concerning the availability of special education services for children with disabilities, including procedures for accessing these services at least annually. Copies of the information from child find activities are kept on file by the district as documentation for implementing policies and procedures.
- B. The public notice may be provided through a variety of methods. Informational materials may be distributed to private schools, other agencies, and to professionals who would likely encounter children with a possible need for special education. The district may publish yearly notices in local newspapers, provide pamphlets, furnish information on their websites, broadcast announcements on radio or television and provide information at parent-teacher conferences. Suggested methods to accomplish public notice include:
 - 1. Newspaper articles or ads,
 - 2. Radio, TV, or cable announcements,
 - 3. Community newspaper notices
 - 4. School handbook, calendar, and/or district web pages.
 - 5. Letters to all patrons in the District
 - 6. Poster in health departments or doctors offices
 - 7. Poster in grocery stores, department stores and other public places

Screening for children

- A. The district operates a comprehensive system of child find in order to identify, locate, and evaluate children with disabilities who reside within the district. Child find activities involve a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. These screenings usually focus on medical, communication, cognition, motor, adaptive behavior, and/or social and emotional development. Child find activities, including these screenings, are free of charge to parents. If the screening finds a problem in one or more of these areas, then a full, individual evaluation may be conducted at no cost to the parents.
- B. Screening is for any child for whom there is a concern about an area of development including communication, cognitive development, social-emotional development, self-help/adaptive behavior, and/or physical development; and hearing and vision. It is recommended that a child should not have to wait more than 30 calendar days for a screening. Young children's needs must be identified as soon as possible, so that early intervention may be provided. Screening should be equally available to all children in public and private schools within the district's boundaries.
- C. For preschool age children, the district of residence of each preschool child is responsible for child find (locate, evaluate and identify) even though the child may be attending a preschool or other child care program outside the district of residence.
- D. The Part B child find requirements begin at birth and therefore overlap with the Part C child find requirements. The district staff works cooperatively with local Part C BabyNet providers to refer children birth through age 2 for Part C child find activities to ensure that all children have access to screening in a timely manner.
- E. Children who are transitioning from the Part C Infant and Toddler program may, but are not required to, participate in a Part B screening process at age 3 at the district's discretion. For children receiving Part C services who may need an initial evaluation to determine eligibility for Part B special education services, the Part C Infant-Toddler Program may make a referral to the district. The referral should be made at least 90 calendar days prior to the child's third birthday and according to the district's policy for making a referral for an initial evaluation.
- F. School age children residing in the district, Child Find activities are incorporated into the RTI/MTSS process at each school. Additionally, school age children that are homeschooled or placed in private schools in and out of the district also have access to child find activities by contacting the Director of Special Education.

BabyNet Referrals (Part C to Part B)

For children receiving services through BabyNet (Part C) who may need an initial evaluation to determine eligibility for Part B special education services, the early interventionist may make a referral to the district. A Transition Referral Form must be sent to the district no later than six months prior to the child's third birthday, and a transition conference must be held with Part C, the district and the family no later than three months prior to the child's third birthday. If the results of the clinic screening indicate the need for a comprehensive evaluation, the evaluation must be completed in time for services to begin on or before the child's third birthday.

1. All referrals are processed through Special Services. Initial contact is made when the district receives Child Find Notification or a Transition Referral form from the Early Interventionist or Coordinator.

2. For all children receiving services through the BabyNet program, the school district, together with the early intervention agency, must meet with the parent to hold a transition conference. This conference is held no later than 3 months prior to the child's third birthday. This conference is held during Lexington Two's DD screening clinic.
3. The BabyNet office is required to send notification to the school district of all children residing within the district that are between the ages of 24 and 30 months. This is in the form of an encrypted document. The names are filed under the appropriate month in the DD Clinic expandable folder based on the date transition is due. The children's names are added to the DD Referrals List.
4. Early Interventionists and Service Coordinators working with children in the BabyNet system are required to send a Transition Referral Form to the school district no later than 6 months prior to the child's third birthday. If this form is not received, the DD Clerical Assistant contacts the assigned Early Interventionist or Service Coordinator to check on the child's status and to request that form, if appropriate.
5. Upon receipt of the Transition Referral Form, the DD Clerical Assistant or Preschool Psychologist stamps the form with the date received and transition due date. This form is filed and added into Enrich and shared folders for child finds
6. The DD Clerical Assistant or preschool psychologist begins a folder for the child and completes the Child Find Notification Form
7. The DD Clerical Assistant or preschool psychologist contacts the Early Interventionist and the parents of the child to inform them of the proposed clinic/transition date and time.
8. The DD Clerical Assistant or preschool psychologist enters the child's data into Enrich; this includes demographic information from the Child Find Notification Form and any other documentation received.
9. The DD Clerical Assistant or preschool psychologist contacts the parents of the child to inform them of the proposed clinic/transition date and time and sends the following to the parent:
 - Notice of Meeting
 - Informational Letter
 - Permission to invite Outside Agencies
 - Developmental History: DD
 - Notification and Consent for Treatment, Release of Information and Medicaid Reimbursement
10. The DD Clerical Assistant or preschool psychologist sends the Referral for Special Programs and the Notice of Meeting to the Early Interventionist.
11. The DD Clerical Assistant or preschool psychologist notifies all team members

General education interventions for school age students

- A. The purpose of general education intervention is to intervene early for any child who is presenting academic, functional, or behavioral concerns. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during general education intervention assist district personnel in determining which children may be children with disabilities who need to move into initial evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process. Both special education and general education personnel should be involved in this building-level, school-wide activity.
- B. General education intervention may be carried out through a school-wide approach of providing a multi-tiered system of scientifically, research-based interventions for all children or through an individual child problem solving approach. Regardless of the approach used, the focus is on

designing supports for children who need additional assistance in order to be successful in the general education curriculum and environment.

- C. Lexington School District Four relies primarily on an individual problem solving approach. To accomplish this, each school in District Four has established an RtI Team, a school-based, problem solving team of professionals whose primary responsibility is to coordinate strategic and intensive interventions for students who are struggling in the general curriculum/classroom. The role of the RtI team is to assist teachers and other school personnel to:
 - 1. Accommodate for the heterogeneous nature of the regular education classroom;
 - 2. Implement, evaluate, and document the implementation of research-based interventions for students who are struggling prior to determining the need for referral for comprehensive psychoeducational evaluation and consideration for IDEA 04 eligibility (Special Education).
- D. To initiate the RtI process, the classroom teacher may recognize that the student has a problem which is significant enough to warrant a structured look at the student and the learning conditions of the student's environment. The problem may be identified through observation, universal screening measures, work samples, or other indicators of classroom performance. **Note:** Referrals to the RtI team for consideration of an initial evaluation may also come from a variety of sources, such as:
 - 1. Early childhood screening clinics
 - 2. Part C (BabyNet)
 - 3. Parents
 - 4. Self-referral by adult students
 - 5. Child Find activities
- E. The chairperson of the RtI Team convenes a team meeting.
- F. During the meeting, information obtained from a review of the student's cumulative folder is presented. The results of previous administrations of statewide, standardized tests and other tests are presented, along with a summary of the student's grades over time.
- G. Anecdotal information, outcomes of scientific, research-based interventions, results of repeated assessments of achievement at reasonable intervals, and work samples, as appropriate, must be presented during the team meeting.
- H. The RtI Team determines which additional regular education interventions, if any, to implement in further attempts to resolve the problem and documents these interventions and accommodations in the Educational Intervention Documentation . Additionally, charts and graphs depicting results of specific interventions may be attached to the form.
- I. The team establishes a schedule for implementation and sets a date for a follow-up meeting. The date for the follow-up meeting should allow sufficient time for the interventions which are to be implemented to have a reasonable chance of success. However, during the interim, the case manager is working directly with the teacher and parent and can call for a meeting earlier than scheduled if necessary.
- J. The RtI Team Chairperson or other appropriate staff at the principal's discretion serves as an overseer to ensure appropriate implementation and integration of the interventions into the student's daily schedule.

- K. At the follow-up meeting, if the problem persists and the team decides that the resources at the building level have been exhausted or have proven unsuccessful in resolving the problem, the team, which may include the parent, will review the interventions attempted and the results of the interventions and decide whether to refer the student for evaluation to determine if it is possible that a disability is present which is interfering with the student's learning program. If a student is referred for a comprehensive evaluation, all information will be sent to the school psychologist to schedule the evaluation planning meeting. Even when the decision has been made to move from general education intervention into an initial evaluation, the intervention process should not stop. Rather, it becomes part of the evaluation process.
- L. In general, there must always be data-based documentation of intervention in the general education environment that provides a basis for determining that a special education evaluation is warranted. When general education intervention is not appropriate, the data used for documentation that general education intervention would be inadequate to address the needs of the child might come from medical records, previous school records, observations, parent and teacher reports, etc. However, in cases such as this, even though it is appropriate to move directly to evaluation, it is recommended that general education intervention and strategies occur as part of the child's special education evaluation so that the team may collect data to assist in determining the best instructional approach for the child.
- M. For students entering school for the first time, and for whom regular class enrollment appears inappropriate, interventions which were attempted in the regular environment prior to entering school must be described. The "regular environment" for a preschool child may include the home, a child care center, a preschool program, etc., and the attempted interventions may be obtained from the parents, relatives, preschool teacher, child care staff, medical personnel, etc.
- N. Other exceptions to documenting general education interventions may include:
1. The parent is requesting an evaluation,
 2. The parent is providing the district with an evaluation,
 3. The student is transferring from a district or agency, or
 4. The nature and severity of the child's difficulties are so extreme that it is inappropriate to attempt alternative educational strategies prior to evaluation.
- O. The school psychologist will enter student data into Enrich and schedule the evaluation review and planning meeting. Invitation letters will be sent to all members, including parents/guardians, regular education teachers, special education teachers, interventionists, administrators, and other agencies if appropriate. The first activity the evaluation team should conduct is a review of existing data. The evaluation team needs to consider all data that are currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents. However, once the decision has been made to collect additional data, parent consent with prior written notice is required.
- P. The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:
1. if the child is a child with a disability;

2. whether the child needs special education and related services;
3. the educational needs of the child;
4. the present levels of academic achievement and functional performance (related developmental needs) of the child; and
5. whether any additions or modifications to the special education or regular education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

Q. If the team has determined that no additional data are needed to determine whether the child is a child with a disability, and to determine the child's educational needs, the RtI chairperson notifies the parents:

1. Of that determination and the reasons for it; and
2. Of the right of the parents to request an assessment to determine whether the child is a child with a disability, and to determine the educational needs of the child. The district is not required to conduct the assessment described above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the district may refuse to do so, but it must provide the parents with PWN of the refusal to conduct the assessment and the reasons for the refusal. The parents may then request mediation or due process if they want the assessment conducted.

R. If the team has determined that additional data are needed, the team plans who will collect it and ensures all data will be collected within the evaluation timeline. The procedures to be used to collect the data should be described for the initial evaluation and provided to the parents for their consent. The notice does not have to include the name or description of every test to be administered. The team may also decide that additional screening is needed prior to proceeding with an evaluation.

1. If the RtI team has concerns about the student's vision or hearing, the RtI team Chairperson requests a current vision and hearing screening by the school nurse on referrals who have not been included in mass screening during the last twelve (12) months. The school nurse records the results of the current screenings and/or documents that the screening has been completed within one (1) calendar year prior to the date of evaluation on the Vision and Hearing Screening

- a. Visual acuity measures for left, right and both eyes, at far point, should indicate that the student's vision is within normal limits. If the student does not pass the initial screening, a re-screening is conducted.
- b. If the vision evaluation results indicate possible eligibility as Visually Impaired, additionally the referral procedures for Visually Impaired must be implemented. All evaluation procedures must be completed within the sixty (60) day timeline. The results of all the evaluations are considered in making any placement decision.
- c. Hearing screening (audiometric sweep-check) must be conducted by a nurse, teacher of the hearing impaired, speech-language clinician or audiologist. Levels for pure tone screening shall be 20dB HL (re ANSI-1969) at 1000, 2000, and 4000 Hz. If acoustic immittance screening is not a part of the identification program, screening at 20 dB at 500 Hz may be included, provided the ambient noise does not exceed acceptable levels (ANSI-1977). Failure to respond to any frequency in either ear

shall require that a second screening be administered preferably within the same session, or no later than within two weeks. If the student fails to respond to any frequency in either ear on the second screening, the student will be referred for a more in-depth evaluation by an audiologist, otologist, or otolaryngologist. If acoustic immittance screening is part of the identification program, criteria for failure requiring audiological or medical follow-up would be according to ASHA Guidelines. In these instances, written documentation must be on file that the district obtained the appropriate follow-up (either a comprehensive audiological evaluation by a certified audiologist and/or an otological assessment by an otologist or otolaryngologist). If the hearing evaluation results indicate possible eligibility as Hearing Impaired, additionally the referral procedures for Hearing Impaired must be implemented. All evaluation procedures must be completed within the sixty (60) day timeline. The results of all the evaluations are considered in making any placement decision.

- d. If the RtI team has concerns about the student's communication skills, the RtI team Chairperson requests a speech/language screening by the speech/language therapist.
 - (1) This screening must include an observation of articulation, expressive and receptive language, voice, fluency, and examination of the oral peripheral mechanism.
 - (2) Students who fail the initial screening may receive a re-screening at the speech language therapist's recommendation or receive a speech-language assessment as part of the comprehensive evaluation which must be completed within the required sixty (60) day timeline.

(Review of Procedures)

- S. The RtI Chairperson collects and reviews the Educational Intervention Documentation and verifies that all required components of the referral process have been addressed.
- T. The RtI Chairperson or the principal's designee forwards all referral information to the school psychologist and/or speech therapist.
- U. School psychologist and/or speech therapist will schedule an evaluation planning meeting.
- V. School psychologist or designee will enter referral information into Enrich and updates the information at each step of the process.
- W. The School Psychologist/SLP (or other appropriate evaluator)
 - 1. Schedules an evaluation planning meeting review existing data and formulate an evaluation plan.
 - 2. Selects proposed evaluation methods, in conjunction with the multi-disciplinary evaluation team and provides parents with the following information:
 - a. a copy of Parent Handbook to Special Education: Your Rights as Parents Regarding Special Education
 - b. Permission to Evaluate

c. Prior Written Notice

- AA. If the parent does not respond to the request for permission to evaluate within seven (7) calendar days, the School Psychologist/SLP.
1. contacts the parents to determine if they understand the notice, need additional information prior to making a decision about granting permission, or need an interpreter (for parents who are deaf or whose native language is other than English)
 2. keeps documentation of these contacts.
- BB. If an interpreter is needed, the Placement Chairperson contacts the interpreter.
- CC. If the parent refuses permission to evaluate, the School Psychologist/SLP notifies the Placement Chairperson and the Director of Special Services.
- DD. If the parent provides and/or releases psycho-educational reports to the District that have been completed by a qualified individual as indicated in Criteria for Program Entry into Programs of Special Education for Students with Disabilities, the School Psychologist/SLP reviews the reports to verify the contents as consistent with South Carolina requirements.
- EE. The multi-disciplinary evaluation team completes the psycho-educational evaluation/speech-language within sixty 60 calendar days after parent permission to evaluate **is received**, and convenes the multi-disciplinary evaluation team to determine eligibility.
- FF. School psychologist/SLP may use and/or provide to other multi-disciplinary team members in accordance with South Carolina criteria, appropriate observation forms related to the suspected areas of disability. Classroom observations conducted by someone other than the referral source is used to assist in documenting adverse effect on educational performance and/or to collect functional behavior data.
- GG. The School Psychologist in consultation with the teachers of vision, hearing, or orthopedic/other health impaired completes the evaluation procedures for students suspected with visual, hearing, deaf-blind, orthopedic or other health impairments within the sixty (60) day time frame as required under the IDEA04 reauthorization.
- HH. For students with suspected disabilities (VI, HI, OI, OHI) who may need medical reports for eligibility, the School Psychologist in conjunction with the teacher of vision, hearing, orthopedic or other health impaired coordinates evaluation procedures and appointments with the parents. The School Psychologist contacts the Director of Special Services to facilitate a medical appointment as necessary. Parent has signed Permission to Evaluate and Release of Information
1. **Visual Impairment:** For students with suspected visual impairments, the school psychologist, placement chairperson, or school nurse contacts the teacher of the visually impaired to refer the student to the appropriate examiner and to coordinate evaluation procedures. Medical Referral and Vision Screening and Eye Report for Children are included in the referral to the examiner.
 - a. If the student has been examined by an qualified examiner within the last 12 months a Release of Information and Permission to Evaluate are sent to the parent

- for signature. Upon receipt of the signed forms, the teacher of the visually impaired requests the information from the qualified examiner.
- b. If the student has not been examined by a qualified examiner, the school psychologist/teacher of the visually impaired coordinate appointments with the parents and contact the Director of Special Services.
 - c. When the information from the qualified examiner is received by the teacher of the visually impaired, the classroom teacher(s) of the student will be contacted to schedule a functional vision/literacy media assessment, classroom observations, and to obtain information concerning the students academic achievement or developmental level.
 - d. When the functional vision/literacy media assessments have been completed, the teacher of the visually impaired will contact the placement chairperson to schedule an eligibility/IEP team meeting. Information gleaned from the eye report provided by the qualified examiner and the functional vision/literacy media assessment will be used to determine eligibility and need for special education services.
 - (1) For a student all ready placed in special education services and referred for a vision problem, the placement chairperson/school psychologist requests a reevaluation/review meeting and invites the teacher of the visually impaired to attend the meeting.
 - (2) If the IEP team determines that additional data need to be collected to determine if a student has a visual impairment, the teacher of the visually impaired sends a Release of Information and Permission to Evaluate to the parent for signatures.
2. **Orthopedic or Other Health Impairment:** For students suspected of orthopedic or other health impairments, the school psychologist in consultation with the Director of Special Services or designee completes the Medical Referral and sends the Medical Report of Student Referred for Special Education Services to the appropriate qualified examiner.
 3. **Hearing Impairment:** For students with suspected hearing impairments, the school psychologist, placement chairperson, or school nurse contacts the teacher of the hearing impaired to refer students to the audiologist and to coordinate the evaluation procedures. The Medical Referral is completed by the school psychologist/school nurse/or teacher of the hearing impaired. The Medical Referral and the Hearing Screening are included in the referral to the audiologist. The audiologist provides a comprehensive audiological report following the examination.
 4. **Voice Disorder:** For students who need an evaluation by a physician to provide clearance for a voice evaluation by the speech-language therapist, the parent will be provided with the attachment to the evaluation letter, Speech/Language Medical Letter and Medical Report for Speech-Language Service to take to the physician.
 5. **Deaf-Blind:** Referral procedures for both hearing and vision are required.

Parent Request for an Evaluation for Special Education.

- A. Parents may request an evaluation of their child; however, the RtI Team must determine whether or not evaluation is indicated.

- B. RtI Chairperson notifies the parent of the action that will be taken.
- C. RtI Chairperson contacts the student's classroom teacher to document the concern and any attempted interventions prior to the RtI team meeting.
- D. The team will recommend interventions, if appropriate.
- E. If there is reason to suspect that the student is a child with a disability, the team must recommend evaluation.
- F. Documentation of the request and the outcomes will be sent to the School Psychologist and/or Director of Special Services as soon as possible for record keeping and filing.

Adult Student Referral

- A. Students who have reached the age of majority, but are under the age of 21, may initiate this process if they have not graduated with a diploma.
- B. Based on the information available from the social/developmental/educational history, interventions may not be necessary prior to referral for evaluation.

Expedited evaluations are required under certain circumstances.

- A. An expedited evaluation may be requested by a due process hearing officer or by a parent upon recommendation for disciplinary removal.
- B. The Director of Special Services will consult directly with the School Psychologist, Speech/Language Therapist, or other qualified professional to assist with the expedited evaluation.

GENERAL REQUIREMENTS FOR A COMPREHENSIVE EVALUATION

- A. During the evaluation process for any disability, the child must be 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. All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child.
- B. When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. When selecting assessment tools to assist in gathering the evaluation data across any of the six typical sources of data (general education curriculum progress, general education interventions, records review, interviews, observations, and tests). Teams conducting the evaluation must also
 - 1. Use a variety of assessment tools and strategies.
 - 2. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 - 3. Select materials and procedures used to assess a child with limited English proficiency that measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
 - 4. Ensure that assessments and other evaluation materials are:
 - a. selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

- c. used for the purposes for which the assessments or measures are valid and reliable;
- d. administered by trained and knowledgeable personnel;
- e. administered in accordance with instructions provided by the producer of the assessments (Note: if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.)
- f. tailored to assess specific areas of educational need and not merely those designed only to provide a single general intelligence quotient;
- g. selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

C. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category being considered for the child. If the child is found eligible, this information translates into the present levels of academic achievement and functional performance and forms the basis for making all the decisions in the IEP. If the child is not found eligible, this information assists the district in determining other appropriate supports for the child. Ultimately, at the close of an evaluation, the team should have enough information to support the child whether or not the child is found eligible for special education services. The team should be able to describe where the child is currently performing within the general education curriculum and standards as well as able to describe how (or if) the child's unique learning characteristics are impacting his or her ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment should also be described so that the extent of the child's needs may be realized.

D. The evaluation process must be completed within sixty (60) calendar days after permission to evaluate has been obtained and prior to a meeting to determine eligibility has been held. The District requires that all evaluators utilize Enrich to monitor 60-Day Compliance which lists students referred for evaluation and the due dates for completion of the evaluation process. In the rare event that an evaluation is not conducted within 60 days, extensive documentation is required to explain the reasons for the delay. If, in the process of the 60 days, the team is concerned that the timeline may not be met, the evaluator contacts the Director of Special Services for guidance and assistance. Parent will be notified through a prior written notice (PWN) of evaluation procedures by evaluation team prior to conducting the evaluation.

The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the determination of eligibility. The district must begin this timeline the day the first person in the district receives the signed parental consent for evaluation and must maintain documentation to show that there was no delay in the initiation of the evaluation process. School Psychologist and/or Speech Therapist are responsible for entering documentation data into Enrich when consent has been received. When there is a delay in receiving the consent, the district will maintain a record of attempts to obtain the consent. This record could include a description of telephone calls and/or home or work visits made as well as other written correspondence with the parents such as notes or e-mails.

1. For children who transfer from one district to another in the same school year, assessments are coordinated with the child's prior district, as necessary and as expeditiously as feasible, to ensure prompt completion of an evaluation begun by the prior district
 2. There are only three specific instances when an extension of the 60-day timeline may be justified:
 - a. If the parent of the child repeatedly fails or refuses to produce the child for the evaluation;
 - b. If a child enrolls in a new district after the evaluation has begun and before the determination of eligibility; however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the district must agree to a specific timeline for completion; or
 - c. If the parent and the district agree in writing to extend the timeline.
- E. The evaluation team must determine that the disability adversely affects the child's educational performance to the extent that the student requires specialized instruction involving adapted academic content, adapted methodology; or adapted delivery of instruction. The adverse effects of the disability on the child's educational performance may be due to:
1. impaired organizational or work skills;
 2. inability to manage or complete tasks;
 3. difficulty interacting with others;
 4. impaired ability to maintain sustained attention and focus;
 5. lack of academic progress;
 6. difficulty communicating with others;
 7. a learning rate that is substantially different from peers; and/or
 8. lack of achieving adequately for his/her age or to meet grade-level standards
- F. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
1. assistive technology assessment
 2. behavior ratings scales
 3. developmental/social history
 4. school history
 5. individual and group intellectual ability, achievement, and adaptive behavior measures
 6. curriculum based measures
 7. work samples and grades
 8. classroom observations
 9. teacher and parent interviews
 10. progress monitoring data
 11. behavioral data points/frequency counts
- G. The evaluation must include an assessment of the student's current educational needs in the areas of academic achievement and functional behavior which may come from the following sources:
1. review of available historical records such as work samples, standardized group assessments results, report cards, health records, and other educational information contained in the student's cumulative file as well as progress monitoring data and response to intervention/instruction data;
 2. interviews with parents, teachers, and other staff;

3. observations of academic performance and/or behavior in a variety of settings to include information about how the student's disability impacts his/her rate of learning compared to the rate of his/her peers; and
4. direct assessment of skills using diagnostic measures such as standardized achievement tests and curriculum based measures and functional behavior assessment.

H. The evaluation must indicate that this is not a child who is experiencing a slight or temporary lag in one or more areas of development or a delay which is primarily due to environmental, cultural, or economic disadvantage, lack of experience in age appropriate activities, lack of appropriate instruction in reading or math, or limited English proficiency.

1. **Lack of appropriate instruction in reading**, including the essential components of reading instruction (phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension):
 - a. evidence from an evaluation of the school's core curriculum and supplemental materials showing that the student's instruction addressed all five essential components of reading instruction and
 - b. documentation showing that the student actually received instruction provided by highly qualified teachers using appropriate core curriculum and supplemental materials;
 - c. documentation of consideration of other factors such as frequent absences, frequent moves, incarceration, or substance abuse.
2. **Lack of appropriate instruction in math**:
 - a. evidence from an evaluation of the school's core curriculum and supplemental materials showing that the student's instruction addressed math calculation, problem solving, and conceptual understanding and
 - b. documentation showing that the student actually received instruction provided by highly qualified teachers using appropriate core curriculum and supplemental materials.
 - c. documentation of consideration of other factors such as frequent absences, frequent moves, incarceration, or substance abuse.
3. **Limited English proficiency**:
 - a. evidence that the student who is an English language learner was provided with
 - b. appropriate accommodations and interventions to address his/her language difficulties;
 - c. documentation of consideration of the student's proficiency in English and in his/her native language;
 - d. documentation of consideration amount of time the student has spent in this country;
 - e. documentation of consideration of the level of education in the student's native country;
 - f. evidence that the disability exists in the student's native language as well as in English.
4. **Excessive health related absenteeism from instructional time**

- a. review of health related school absences, including tardies, early dismissals and absenteeism during instructional times.
- b. Medications that affect cognitive functioning, review of observations in various school settings, behavior rating scales, and medical information.

SPECIFIC EVALUATION REQUIREMENTS FOR EACH AREA OF DISABILITY

A. Autism:

1. **Evaluation team members for autism:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include an autism specialist who is knowledgeable and experienced in the education of children with autism. The autism specialist could be a highly qualified teacher in the area of autism, or a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, or a speech-language therapist or pathologist who is knowledgeable and experienced in the education of students with autism.
2. **Definition:** Autism is a developmental disability, generally evident before age three, that adversely affects a child's educational performance and significantly affects developmental rates and sequences, verbal and non-verbal communication and social interaction and participation. Other characteristics often associated with autism are unusual responses to sensory experiences, engagement in repetitive activities and stereotypical movements and resistance to environmental change or change in daily routines. Childs with autism vary widely in their abilities and behavior. The diagnosis of Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disorder. [refer 300.8(c)(1)(i)]

Autism, also referenced as autism spectrum disorders, for the purpose of eligibility, may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), or Asperger's Syndrome provided the child's educational performance is adversely affected and the child meets the eligibility and placement requirements. Autism may exist concurrently with other areas of disability.

3. **Eligibility criteria:** There is evidence that the child has any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder – Not Otherwise Specified as indicated in the following diagnostic references:
 - a. **Asperger's Disorder:**
 - (1) There is evidence that the child demonstrates **impairments in social interaction**, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and
 - (2) **Restricted repetitive and stereotyped patterns of behavior, interests, and activities** such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional

routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.

- (3) The adverse effects of the Asperger's Disorder on the child's educational performance require specialized instruction and/or related services.

b. **Autistic Disorder**

- (1) In addition to the characteristics listed in (a)(1) and (2) of this subsection, There also is evidence that the child demonstrates **impairments in communication**, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.
- (2) The adverse effects of the Autistic Disorder on the child's educational performance require specialized instruction and/or related services.

c. **Pervasive Developmental Disorder - Not Otherwise Specified**

- (1) There is evidence that the child demonstrates any of the characteristics listed in a) or b) of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.
- (2) The adverse effects of the Pervasive Developmental Disorder - Not Otherwise Specified on the child's educational performance require specialized instruction and/or related services.

4. Evaluation components

- a. Impairments in **social interaction** may be evidenced in the following required evaluation components:
 - (1) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
 - (2) A diagnostic interview(s) with parent/teachers;
 - (3) A minimum of three thirty minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.

- (4) A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. Examples might include CARS, ADOS, SCQ, SRS, GARS and etc.
 - (5) A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. Examples of standardized adaptive behavior scales include the Vineland II or ABAS-2 or a behavior rating scale (e.g., BASC-2) with an adaptive component for those not suspected of co-morbid mental disability.
 - (6) Other areas which may yield evidence, but are not required, include fine and gross motor skills assessments, visual-motor skills assessments, sensory processing measures, curriculum based measures, and standardized achievement measures.
- b. **Restricted repetitive** and stereotyped patterns of behavior, interests, and activities may be evidenced in the following required evaluation components:
- (1) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
 - (2) A diagnostic interview(s) with parent/teachers;
 - (3) A minimum of three thirty minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.
 - (4) A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. Examples might include CARS, ADOS, SCQ, SRS, GARS and etc.
 - (5) Other areas which may yield evidence, but are not required, include fine and gross motor skills assessments, visual-motor skills assessments, sensory processing measures, curriculum based measures, and standardized achievement measures.

- c. **Impairments in communication** may be evidenced in the following required evaluation components:
- (1) A current communication evaluation conducted by a speech-language therapist/pathologist. This evaluation should include assessment in the areas of receptive, expressive, pragmatic, and social/functional communication skills;
 - (2) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
 - (3) A diagnostic interview(s) with parent/teachers;
 - (4) A minimum of three thirty minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.
 - (5) A developmental or cognitive assessment that includes both verbal and non-verbal components completed by a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, or a licensed clinical psychologist. Examples include DAS-2, DP-3, WISC-IV, K-ABC, SB-5.
 - (6) A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. Examples of standardized adaptive behavior scales include the Examples of standardized adaptive behavior scales include the Vineland II, Adaptive Behavior Assessment System II, AAMR Adaptive Behavior Scale-School: 2, Scales of Independent Behavior-Revised, and Inventory for Client and Agency Planning. A behavior rating scale (such as the Behavior Assessment Scale for Children-2) that contains an adaptive component might be used for those not suspected of also having a mental disability.
 - (7) Other areas which may yield evidence, but are not required, include sensory processing measures, curriculum based measures, and standardized achievement measures.

B. Emotional Disability

1. **Definition:** Emotional Disability means an emotional disturbance defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:
 - a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. inappropriate types of behavior or feelings in normal circumstances;
 - d. a general pervasive mood of unhappiness or depression; or
 - e. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.

2. **Criteria:** There is evidence that the child exhibits one or more of the following characteristics over a long period of time and to a marked degree:
 - a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. inappropriate types of behavior or feelings in normal circumstances;
 - d. a general pervasive mood of unhappiness or depression; or
 - e. a tendency to develop physical symptoms or fears associated with personal or school problems.
 - f. The adverse effects of the emotional disability on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction

3. **Evaluation components:**
 - a. The student is rated within the highest level of significance on a valid and reliable problem behavior rating scale by both a certified teacher and another adult knowledgeable of the student. The scale(s) must be interpreted in consultation with a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. If the rating scale is a multi-dimension scale then subtest scores may be used. However, if the rating scale is a single-dimension scale then the composite score will be used. In the event of discrepant ratings, additional ratings may be necessary in order to support a trend or pattern regarding a true emotional disability across settings. An explanation must be given for any discrepancies;
 - b. A self-report behavior rating scale completed by the student and interpreted in consultation with a certified school psychologist, a licensed school psychologist, or

a licensed psycho-educational specialist. If the rating scale is a multi-dimension scale then subtest scores may be used. However, if the rating scale is a single-dimension scale then the composite score will be used.

- c. The student's observable school and/or classroom problem behavior is documented as occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others; and
- d. A valid and reliable personality measure, when developmentally appropriate, administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of a valid and reliable personality measure, when developmentally appropriate, that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district. The student's score must fall within the highest level of significance on a valid and reliable personality measure or there exists a significant discrepancy between the observed behavior and the student's performance on the personality measure.
- e. A structured student interview, when developmentally appropriate, to gain insight into the student's perception of the functionality of their behavior.
- f. Evidence that the child exhibits one or more of the characteristics over a long period of time may be found in the following required sources:
 - (1) Documentation that the problem behavior has existed for at least six months or that the behavior seriously endangers the student's life or seriously endangers the safety of others.
 - (2) Anecdotal records collected over a period of at least ten school days within a period of thirty calendar days;
 - (3) Three direct observations in at least two different settings, both of which may be school settings, by a certified school psychologist, a licensed school psychologist or a licensed psycho-educational specialist, and/or an observer with expertise in behavior management that provide evidence that the problem behavior occurs at a significantly different rate, intensity, or duration than in a substantial majority of typical school peers;
 - (4) A structured parent/guardian interview to gain important information regarding not gathered through standardized assessment tools. This may include but is not limited to areas such as family background, functioning in the community, socio-cultural background, developmental history, educational history, special services and supports received, behavior, psychosocial functioning, and other developmental information. This is a person-to-person collection of information, supplemented by paper reporting and records;
 - (5) Discipline referrals;
 - (6) A current behavior intervention plan that has been developed in consultation with a certified staff member such as a special education teacher, guidance counselor or certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist with expertise in behavior management and the classroom teacher(s) and other appropriate staff members; the plan must have been implemented for a

minimum of six weeks. This consultation period may be shortened if the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others;

- (7) Progress monitoring documentation showing that the specifically prescribed and consistently employed interventions in the behavior plan have not resulted in significant improvement in the student's problem behavior.

C. Intellectual Disability

1. **Definition:** Intellectual Disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

2. **Criteria:** There is evidence that the child has:

- a. Significant limitations in intellectual functioning must be evidenced by scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measurement) on an individually administered intelligence test.
- b. Significant deficits in adaptive behavior must be evidenced by a score at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains.
- c. Significant deficits in educational performance (pre-academic, academic and/or functional academic skills) must be evidenced by significant delays in functioning when compared to the child's same aged peers.
- d. the adverse effects of the Intellectual Disability on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction

3. **Evaluation components:**

- a. A current, individually administered, norm-referenced full scale measure of intelligence with appropriate reliability, validity, and standardization characteristics with scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measurement).
- b. If, due to sensory, motor, language, communication, or other physical or cognitive conditions of the student, verbal measures are determined to be inappropriate, alternative procedures for obtaining a measure of verbal intellectual functioning must be used, in addition to the nonverbal measures. Conversely, if nonverbal measures are determined to be inappropriate, alternative procedures for obtaining a measure of nonverbal intellectual functioning must be used, in addition to the verbal measures. If both verbal and nonverbal measures are determined to be inappropriate, alternative procedures for obtaining a measure of intellectual functioning must be used. These might include records, interviews, observations, and other relevant and appropriate data, and must address the child's skill levels and educational performance when compared to his/her peers, and skill development over an extended time period. The team must provide, through a written report, the nature of any substitutions made, and a clear rationale for not using a verbal and/or nonverbal measure.

- c. An accepted, comprehensive and standardized adaptive behavior measure completed by the child's parent or primary caregiver with scores at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains. Examples of standardized adaptive behavior scales include the Vineland II, Adaptive Behavior Assessment System II, AAMR Adaptive Behavior Scale-School: 2, Scales of Independent Behavior-Revised, and Inventory for Client and Agency Planning.
- d. A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the child's learning difficulties and to help determine onset of the disability.
- e. If additional information is needed concerning the child's adaptive skills in an educational setting, an additional adaptive behavior measure may be completed by the child's teacher and/or another person who has significant knowledge of the child's behavior and skills in that setting.
- f. Norm-referenced and/or curriculum-based measures showing significant delays in functioning in the core academic areas when compared to the child's same aged peers.

D. Speech-language impairment

1. **Definition:** Speech or Language Impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.
2. **Criteria:** There is evidence that the child has one or more of the following:
 - a. FLUENCY - interruption in the flow of speech characterized by an atypical rate, or rhythm in sounds, syllables, words, and phrases that significantly reduces the child's ability to participate within the learning environment with or without his or her awareness of the dysfluencies or stuttering
 - b. ARTICULATION - atypical production of phonemes characterized by substitutions, omissions, additions or distortions that impairs intelligibility in conversational speech and adversely affects academic achievement and/or functional performance in the educational setting
 - c. LANGUAGE – impaired comprehension and/or use of spoken language which adversely affects written and/or other symbol systems and the child's ability to participate in the classroom environment
 - d. VOICE –interruption in one or more processes of pitch, quality, intensity, resonance, or a disruption in vocal cord function that significantly reduces the child's ability to communicate effectively
 - e. The adverse effects of the speech-language impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction.

3. **Evaluation team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must include a certified speech-language therapist or speech-language pathologist.
4. **Evaluation components**
- a. **Fluency**
 - (1) Information to be reviewed includes, but is not limited to the following:
 - (a) Record review, interview, observations, and assessments document the frequency, type, and duration of dysfluencies, describe the student's fluency patterns in at least two settings by two different observers, and document the student's secondary characteristics, if appropriate.
 - (b) Assessments may include standardized test(s), connected speech sample, informal assessments.
 - (c) Record review and/or interviews document a history of academic and functional difficulty relative to fluency skills.
 - (d) Information from multiple sources of data document that the student exhibits a fluency impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.
 - b. **Articulation**
 - (1) Record review, interview, observations, and assessments document that the student's articulation skills are not commensurate with age appropriate expectations.
 - (2) Assessments may include norm-based or standardized tests, connected speech samples, a phonetic inventory, an oral peripheral exam, a phonological analysis, stimulability testing,
 - (3) Record review and/or interviews document a history of academic and functional difficulty relative to articulation skills.
 - (4) Information from multiple sources of data documents that the student exhibits an articulation impairment which adversely affects pre-academic/academic, social-emotional, and/or vocational performance.
 - c. **Language**
 - (1) Language assessments may include a combination of screening, norm-based, standardized, curriculum-based, functional communication (augmentative communication), informal, and language sampling measures.
 - (2) Standardized test results should be at least 1.5 standard deviations below the mean.
 - (3) The language assessment profile documents evidence of the student's receptive and expressive language skills in the areas of semantics, syntax, morphology, phonology, and social/pragmatic language functioning.
 - (4) Record review and/or interviews document a history of academic and functional difficulty relative to language skills.
 - (5) Information from multiple sources of data documents that the student exhibits a language impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.
 - d. **Voice**
 - (1) Clearance from a medical doctor as well as a description of the student's vocal quality, intensity, resonance, and pitch are required

- (2) Assessments may include standardized test(s), connected speech samples, and informal assessments.
- (3) Record review and/or interviews document a history of academic and functional difficulty relative to voice skills.
- (4) Information from multiple sources of data documents that the student exhibits a voice impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.
- (5) Students with voice impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g. vocal nodules, polyps) or a prescription for voice therapy from a medical doctor does not necessitate the provision of voice therapy as special education or related service. If the student has a hearing loss documented in an audiological report as determined by a licensed audiologist and or otolaryngologist, the medical evaluation is not required.

5. Additional Information:

- a. A delay in the rate of acquisition of language or speech skills is not, in and of itself, a communication disorder. 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 an impairment of speech or language.
- b. A written prescription from a medical practitioner is a medical opinion regarding the medical evaluation or treatment that a patient should receive. When directed to a school, these medical orders should be considered by the team as part of the information gathering process. The team determines the need for an evaluation for special education services.
- c. **Fluency:** Excessive tension, struggling behaviors and secondary characteristics may accompany fluency impairments. Secondary characteristics are defined as specific behaviors or movements that accompany disfluencies, including avoidance behaviors. Fluency impairment includes disorders such as stuttering and cluttering.
- d. **Articulation:** Atypical production of speech sounds may result from phonology, motor, or other issues. The term articulation impairment does not include the following:
 - (1) Regional, dialectic, and/or cultural differences;
 - (2) Articulation errors at or above age level according to established research-based developmental norms, speech that is intelligible and without documented evidence of adverse effect on educational performance;
 - (3) Articulation errors as a result of oral structures such as missing teeth, un-repaired cleft lip and/or palate.
- e. **Language:** The impairment may involve, in any combination, the form of language (phonology, morphology, and syntax), the content of language (semantics), and/or use of language in communication (pragmatics) that is

adversely affecting the student's educational performance. The term language impairment does not include:

- (1) Normal stages of second language acquisition/learning and communication problems which result from English being a secondary language unless it is also determined there is a speech-language impairment in the native/primary language;
- (2) Regional, dialectic, and/or cultural differences;
- (3) Anxiety disorders, unless it is also determined that the student has a speech-language impairment.

f. **Voice:** Voice impairment includes aphonia or the abnormal production of vocal quality, pitch, loudness, resonance, and/or duration, which is inappropriate for an individual's age and/or gender. The term voice impairment does not refer to the following:

- (1) anxiety disorders, e.g. selective mutism;
- (2) differences that are the direct result of regional, dialectic, and/or cultural differences;
- (3) differences related to medical issues not directly related to the vocal mechanism, e.g. laryngitis, allergies, asthma, laryngopharyngeal reflux, colds, abnormal tonsils or adenoids, short-term vocal abuse or misuse;
- (4) vocal impairments that are found to be the direct result or symptom of a medical condition unless the impairment impacts the student's performance in the educational environment and is amenable to improvement with therapeutic intervention.
- (5) Students with voice impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g. vocal nodules, polyps) or a prescription for voice therapy from a medical doctor does not necessitate the provision of voice therapy as special education or related service. If the student has a hearing loss documented in an audiological report as determined by a licensed audiologist and or otolaryngologist, the medical evaluation is not required

E. **Traumatic Brain Injury**

1. **Definition:** Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
2. **Criteria:** There is evidence that the child had a traumatic brain injury and the adverse effects of the traumatic brain injury on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - a. adapted academic content;
 - b. adapted methodology; or
 - c. adapted delivery of instruction.

3. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a traumatic brain specialist who is knowledgeable and experienced in the education of children with traumatic brain injuries. The traumatic brain injury specialist could be a highly qualified teacher, a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, a neuropsychologist, or a speech-language therapist or pathologist who is knowledgeable and experienced in the education of students with traumatic brain injuries.
4. **Evaluation components:** A medical diagnosis of a traumatic brain injury by a licensed physician.
 - a. In the absence of an existing medical diagnosis or a prior diagnosis of a brain injury, both of the following are furnished:
 - (1) documented history (e.g. parent /caregiver interview, medical history, brain injury screening) that evidences trauma to the head resulting in impairments according to the definition of the term “traumatic brain injury” and
 - (2) a cognitive profile that is consistent with the brain injury to include assessment of the student’s language processing and use (not receptive or expressive vocabulary tests), memory, attention, reasoning, abstract thinking, judgment, problem-solving skills, academic achievement, adaptive behavior, auditory perception, and visual perception.

F. **Developmental Delay**

1. **Definition:** A child with developmental delay is a child age 3-9 who has been identified before the age of 7 as experiencing significant developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive behavior development: and who, by reason thereof, needs special education and related services. The term significant developmental delay refers to a delay in a child’s development in adaptive behavior, cognition, communication, motor development or social development to the extent that, if not provided with special intervention, it may adversely affect his/her educational performance in age-appropriate activities. The term does not apply to children who are experiencing a slight or temporary lag in one or more areas of development, or a delay which is primarily due to environmental, cultural, or economic disadvantage, lack of experience in age appropriate activities, lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency or to children ages six through seven who meet the eligibility criteria for another disability category.
2. **Criteria:** There is evidence that child is exhibiting a significant developmental delay in one or more of the following areas:
 - a. physical development
 - b. cognitive development
 - c. communication development
 - d. social or emotional development
 - e. adaptive behavior development.

The delay is not due to the presence of any other disability for children ages six through seven.

- f. The adverse effects of the developmental delay on the child’s educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;

- (2) adapted methodology; or
- (3) adapted delivery of instruction.

3. **Evaluation components:**

- a. A comprehensive norm-referenced or criterion-referenced developmental evaluation that assesses all five areas (physical, cognitive, communication, social/emotional, and adaptive behavior development) and that yields scores that are at least two standard deviations below the mean (+/- the standard error of measurement) in one area or at least one and a half standard deviations below the mean (+/- the standard error of measurement) in two or more areas;
- b. A developmental history of the child that includes a summary of his/her demographic, developmental, educational and medical history obtained from a parent or primary caregiver through an interview process; and
- c. a structured observation of the child in a typical or otherwise appropriate setting (wherever the child spends the majority of his/her day) by a member(s) of the multidisciplinary evaluation team. The setting might include the home, a day care, or classroom.
- d. For children ages six through seven, the category of developmental delay may be used only if the child does not meet one of the other categories of disability (autism, Intellectual Disability, traumatic brain injury, emotional disability, learning disability, orthopedic impairment, other health impairment, vision impairment, deaf or hard of hearing impairment, or speech-language impairment) and if the child meets the criteria for developmental delay.
- e. **Additional Information:**
 - (1) A child age three through five may be identified as having a developmental delay even if he/she meets eligibility criteria under another disability category at the discretion of the IEP team. A child age six through seven may only be identified as having a developmental delay if he/she does not meet criteria under another category of disability and meets criteria under developmental delay.
 - (2) If a child has been identified initially as having a development delay prior to his/her eighth birthday, he/she may continue to receive services under this category through age nine. Prior to his/her tenth birthday, the IEP team must reevaluate the child to determine continued eligibility under another category of disability and need for continued special education and related services. A child may not be identified initially as having a developmental delay between the ages of eight and nine.
 - (3) Students entering special education programs between the ages of 3 and 5 must be evaluated by at least 3 members of the team in the areas of (1) positive social-emotional skills including social relationships; (2) acquiring knowledge and skills; and (3) taking appropriate action to meet needs. The students must also be evaluated on the same performance indicators when they exit the program (move out of district, dismissal, revocation, etc.) or reach the age 6 years.

G. **Learning Disabilities**

1. **Definition:** Specific Learning disability means a disorder in one of more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

2. **Criteria:** There is evidence that the child does not achieve adequately for his/her age or to meet state-approved grade level standards in one or more of the following areas:
 - a. Basic reading skills,
 - b. Reading fluency,
 - c. Reading comprehension,
 - d. Mathematics calculation,
 - e. Mathematics problem-solving,
 - f. Written expression,
 - g. Oral expression, or
 - h. Listening comprehension:
 - and either**
 - i. does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention
 - OR**
 - j. the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.
 - k. The child's underachievement is not due to:
 - (1) Visual, hearing, or motor disability;
 - (2) Intellectual Disability;
 - (3) Emotional disability;
 - (4) Cultural factors;
 - (5) Environmental or economic disadvantage;
 - (6) Limited English proficiency; or
 - (7) Lack of appropriate instruction in reading or math
 - l. All students determined eligible to receive services under the category of learning disabilities must meet the following three requirements:
 - (1) Severe underachievement in one or more of the eight academic areas;
 - (2) The severe underachievement must not be due to the "rule outs"; and
 - (3) The learning disability's adverse effects on the child's educational performance creates the need for specialized instruction and related services.

3. **Additional requirements** for eligibility apply to determining the presence of a learning disability. The severe underachievement must be documented using one of the following two approaches:
 - a. Documentation of the child's lack of sufficient progress/response to evidence-based instruction/intervention to meet age-level standards or state-approved grade-level standards. When using this approach, the documentation must include
 - b.

- (1) progress monitoring data that reflect the child's response to intensive, scientifically-based instruction delivered over an adequate period of time by appropriately trained, certified personnel;
- (2) evidence that the child's level of achievement is significantly below that of his same-age or same-grade peers and his rate of learning is significantly below that of same-age or same-grade peers; and
- (3) evidence that the progress monitoring data were communicated to the child's parents during this period of intensive intervention.

OR

- c. Documentation of a pattern of strength and weaknesses in the child's performance, achievement, and/or intellectual ability relative to age- or state-approved grade-level standards. The severe underachievement is evidenced by a severe discrepancy between the child's current educational performance and his predicted achievement levels. The predicted achievement levels must be based on a measure of cognitive ability; the severe underachievement must be at least 1.5 standard deviations.
4. The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child his/her age; for a child age three through four, the team must include an individual qualified to teach a child his/her age. The team must also include at least one person qualified to conduct individual diagnostic assessments of child such as a school psychologist, speech-language pathologist, or remedial reading teacher.
 5. **Evaluation components:** The evaluation team must collect evidence from multiple sources of data which indicate that the student does not achieve adequately for his/her age or to meet state-approved grade level standards. These sources include the following requirements:
 - a. documentation of prereferral, or as part of the referral process, instruction based on scientifically-validated instruction in reading and math in general education settings; the interventions must be matched to the documentation should include a description of the type, intensity, and duration of the intervention provided;
 - b. data-based documentation of severe academic skill deficits when compared to peers gathered using data from multiple sources including:
 - (1) measures of achievement showing significantly lower performance than peers;
 - (2) progress monitoring data from curriculum-based and/or criterion-referenced measures showing slow rate of growth in at least one academic domain despite intensive instruction/intervention in the area(s);
 - (3) individual, standardized achievement measures, and
 - (4) state and district achievement assessments
 - c. at least one observation of the child's academic performance in the area(s) of difficulty in his/her learning environment and information concerning how the child's suspected disability impacts his/her performance in this area.
 - d. If the team is using a process based on the child's response to scientific, research-based interventions, then there must be evidence that the child does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention. This includes the following requirements from multiple sources:

- (1) data-based documentation of lack of sufficient progress gathered through repeated formal assessments administered over reasonable intervals; best practice would dictate this to typically be weekly data points gathered over an intervention period of at least six weeks; rate of progress Documentation may come from the following sources:
 - (2) progress monitoring data from curriculum-based measures showing slow rate of growth compared to peers;
 - (3) individual, standardized achievement measures showing significant subaverage performance when compared to peers,
 - (4) a comparison of the child's rate of progress to peers.
 - (5) documentation that the results of the repeated formal assessments were shared with the child's parents.
- e. If the team is using a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development that is relevant to the identification of a learning disability, the following evidence is required:
- (1) severe discrepancy between ability and achievement as evidenced through standardized, individually administered measures of intellectual ability and academic achievement; the discrepancy must be at least 1.5 standard deviations.
 - (2) corroborating evidence of significantly low academic performance as evidenced through progress monitoring data from curriculum-based and/or criterion-referenced measures, through a documented history of poor performance, and through state and district achievement assessments;
 - (3) measures of academic achievement showing average or above average performance in some domains and significantly low performance in others.

H. Deaf or Hard of Hearing

1. **Definition:** *Deaf* means a hearing loss that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's academic or functional performance. *Hard of Hearing* means a hearing loss, whether permanent or fluctuating, that adversely affects a child's academic or functional performance with or without amplification, but that is not included under the definition of deaf in this section.
2. **Criteria:** There is evidence that the child
 - a. has a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally, or
 - b. has a fluctuating hearing loss, either unilaterally or bilaterally.
3. **The adverse effects** of the deafness or hard of hearing impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - a. adapted academic content;
 - b. adapted methodology; or
 - c. adapted delivery of instruction.

4. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a certified teacher of deaf and hard of hearing students and other professionals skilled and experienced in the impact of hearing loss and the assessment of deaf and hard of hearing students, which may include a licensed audiologist, speech-language pathologist, school psychologist, etc.
5. **Evaluation components:** The evaluation must include:
- a. A written report of a current audiological evaluation conducted by a licensed audiologist/ otolaryngologist that shows a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally and that includes:
 - (1) frequency-specific hearing threshold levels determined by pure tone air & bone conduction testing, or electrophysiological assessment when developmentally appropriate.
 - (2) speech reception thresholds or speech detection thresholds,
 - (3) word recognition testing in quiet and in noise, when developmentally appropriate.
 - (4) tympanometry, including reflex testing when appropriate, and
 - (5) aided speech and frequency-specific soundfield results, when developmentally appropriate.
 - b. If the student does not respond to all aspects of the audiological evaluation listed above, other appropriate measures – in consultation with an audiologist/otolaryngologist must be utilized.
 - c. A fluctuating hearing loss may be documented by a medical history documenting etiology and prognosis of condition, either unilaterally or bilaterally obtained from a licensed physician (preferably an otolaryngologist).
 - d. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
 - (1) a comprehensive assessment of communication skills (augmentative, signed or spoken) that results in a written communication plan and includes functional, expressive and receptive communication in the student's present mode of communication by a certified teacher of the deaf and hard of hearing or licensed speech-language pathologist skilled and experienced in the impact of hearing loss and the assessment of deaf and hard of hearing students. (required). The communication plan must include information on the following components:
 - (a) primary language,
 - (b) communication mode (expressive & receptive),
 - (c) opportunities for direct instruction in communication mode, and
 - (d) supports necessary to access education environment.
 - (2) a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment administered in the child's present method of communication
 - (3) auditory/behavioral/developmental checklists completed by a certified teacher of the deaf and hard of hearing, school psychologist, or other individual skilled and experienced in the assessment and the impact of hearing loss
 - (4) assistive technology assessment
 - (5) behavior ratings scales
 - (6) developmental/social history

- (7) school history
- (8) individual and group intellectual ability, achievement, and adaptive behavior measures
- (9) curriculum based measures
- (10) work samples and grades
- (11) classroom observations
- (12) teacher and parent interviews
- (13) progress monitoring data
- (14) behavioral data points/frequency counts

I. Visual Impairment

1. **Definition:** Visual impairment, including blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
2. **Criteria:** There is evidence that the child has one of the following:
 - a. The visual acuity with correction is 20/70 or worse in the better eye; or
 - b. The visual acuity is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision or a visual field of 40 degrees or less; or
 - c. The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings; or
 - d. There is evidence of cortical visual impairment and
 - e. The adverse effects of the visual impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction.
3. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a certified teacher of students with visual impairments and other professionals knowledgeable of the educational needs of students with visual impairments.
4. **Evaluation components:** Evidence of the visual impairment may be found in the following required evaluation components:
 - a. A written report of a current visual examination conducted by a licensed ophthalmologist or optometrist.
 - b. For a diagnosed cortical visual impairment, the examination may be conducted by a neurologist.
 - c. A functional vision assessment conducted by a certified teacher of students with visual impairments (required)
 - d. An assessment conducted by a certified teacher of students with visual impairments to determine appropriate learning media and to evaluate Braille skills (required)
 - e. An assessment of the expanded core curriculum (ECC) by a certified teacher of students with visual impairments (required). For a student with multiple disabilities, alternative assessments may be considered in lieu of the ECC assessment

- f. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
- (1) vision/behavioral/developmental checklists completed by a certified teacher of students with visual impairments, school psychologist, or other individual skilled and experienced in the assessment and the impact of vision impairment
 - (2) assistive technology assessment
 - (3) behavior ratings scales
 - (4) developmental/social history
 - (5) school history
 - (6) individual and group intellectual ability, achievement, and adaptive behavior measures
 - (7) curriculum based measures
 - (8) work samples and grades
 - (9) classroom observations
 - (10) teacher and parent interviews
 - (11) progress monitoring data
 - (12) behavioral data points/frequency counts

J. Orthopedic Impairment

1. **Definition:** Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
2. **Criteria:** There is evidence that the child has a severe orthopedic impairment and the adverse effects of the orthopedic impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - a. adapted academic content;
 - b. adapted methodology; or
 - c. adapted delivery of instruction
3. **Evaluation component:** A comprehensive written report from a licensed physician documenting a diagnosis of an orthopedic impairment caused by disease such as poliomyelitis or bone tuberculosis and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

K Other Health Impairment

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

- a. There is evidence that the child has a chronic or acute health problem.
- b. There is evidence that the diagnosed chronic or acute health problem results in limited alertness to the educational environment due to limited strength, limited vitality, limited or heightened alertness to the surrounding environment.
- c. The adverse effects of the other health impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction

3. Evaluation components:

- a. A comprehensive written report from a licensed physician documenting a diagnosis of the chronic or acute health problem;
- b. In the case of a child with ADD/ADHD, the diagnosis may be made by a licensed physician, a licensed school psychologist, a licensed psycho-educational specialist, or licensed clinical psychologist.

L. Deafblindness

1. **Definition:** Deafblindness means concomitant hearing loss and visual impairment, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children who are deaf or hard of hearing or children who are blind or visually impaired.
2. **Criteria:** There is evidence that the child meets the criteria specified above for both the Deaf or Hard of Hearing category and the Visual Impairment category.
3. **Evaluation team** and evaluation components are the same as for visual impairment and Deaf or Hard of Hearing.

ELIGIBILITY DETERMINATION AND DOCUMENTATION

After receiving input and reports from all members of the evaluation team, including the professional(s) who completed the hearing, vision or other medical evaluations, the Placement Chairperson convenes the multidisciplinary team to determine eligibility. The eligibility determination meeting may also be combined with a meeting to develop an initial IEP for those studently likely to be determined eligible. The Letter of Invitation - IEP (Enrich) and Prior Written Notice (Enrich) will be used to schedule the meeting.

A. The Letter of Invitation - IEP must be in the primary language of the home and must include:

1. Specific purpose of the IEP/Staffing meeting;
2. Time (hour), date and specific location (school or building) of the IEP/Staffing meeting;
3. Specific positions of participants who will be in attendance at the IEP/Staffing meeting;
4. Statement that their child will be invited to be a participant in the meeting if transition services are to be discussed;
5. Statement of their right to bring other participants who have knowledge or special expertise regarding the child
6. Statement of their right to participate as an equal member of the student multidisciplinary team;

7. Statement of their right to obtain a copy of their child's IEP;
8. Statement of their right to be provided with an interpreter when there is a communication barrier;
9. Statement that if the student is thirteen years of age or older (or will turn thirteen during the effective dates of the IEP), the IEP/Staffing Committee will discuss transition services and incorporate the plan, as appropriate, into the IEP. Transition services will also be discussed for younger students if the IEP/Staffing Committee or the parents determine it is appropriate. If transition services are to be discussed, the specific agencies that are likely to be responsible for providing or paying for transition services and which will be invited to send representatives to the meetings will be identified;
10. If transition is to be discussed at the IEP/Staffing meeting, the special education teacher invites the student to attend.
 - a. If the student chooses not to attend the IEP/Staffing meeting, the following procedure is used to ensure that the student's preferences and interests are considered in developing a transition services plan:
 - (1) The teacher meets with the student prior to the meeting to discuss available options such as:
 - (a) Employment opportunities;
 - (b) Post-secondary education;
 - (c) Community living arrangements;
 - (d) Recreation, etc.
11. A checklist for the parents to sign and return to their child's teacher stating their:
 - a. Intention to participate in the meeting as scheduled;
 - b. In person;
 - c. Via telephone conference;
 - d. Intention not to participate in the meeting;
 - e. Need to reschedule the meeting for a different time, date, or location;
 - f. Desire to discuss transition services, even though their child is not yet 13 years of age.

B. The Prior Written Notice (Enrich) must include:

1. description of the action proposed or refused;
2. an explanation of why the district proposes or refuses to take the action;
3. a description of each evaluation procedure, assessment, record, or report the district used as basis for proposed or refused action;
4. a description of the other options the IEP team considered and reasons why they were rejected;
5. a description of any other factors relevant to the proposal or refusal;
6. a statement that the parents have parental rights under the law;
7. sources for parents to contact to assist in understanding their rights.

C. To ensure parent participation in the eligibility/IEP staffing process, the following steps are followed:

1. If after two documented attempts to gain the parents' participation in a meeting on two different dates are not successful, the meeting will be conducted as scheduled. An eligibility/ IEP staffing meeting will be conducted without a parent in attendance only when the parents cannot be convinced that they should attend.
2. When parents are not in attendance at the meeting, a copy of the IEP is provided to the parents following the meeting. For initial placements the Consent for Placement (Enrich) must be signed by the parent before the placement can occur.

3. When parents are in attendance at the IEP/Staffing meeting, oral explanations are provided and questions are asked of the parents to ensure that they understand the proceedings.
4. If a parent arrives at the school or district office unexpectedly and requests an IEP meeting, the meeting will be held if the required participants are available and agree to proceed with the IEP meeting.

D. Appropriate members include:

1. District representative who
 - a. is qualified to provide or supervise provision of special education services
 - b. has knowledge of the general education curriculum, and
 - c. is knowledgeable of the availability of the district's resources
2. Psychologist
3. Special education teacher (or speech therapist for speech only)
4. General education teacher
5. Student, when deemed appropriate by parent or when transition services are to be discussed
6. Adult service provider representatives for students thirteen or older for linkages to transition services with parental consent
7. Student's parent, legal guardian, or surrogate parent
8. The school nurse, when nursing services may be required as a related service
9. Other individuals who have knowledge or special expertise regarding the child
10. Other participants at discretion of parent or district.

E. To ensure appropriate agency participation in the IEP/Staffing process, the steps specified below are followed:

1. If transition is to be discussed at the staffing meeting, representatives of agencies likely to be responsible for providing or paying for transition services are invited by the placement chairperson with parent consent.
 - a. If the invited agency is unable to send a representative, the placement chairperson school psychologist, or special education teacher elicits information from that agency to be used in developing the transition services.
 - b. Each agency may be asked to send relevant information regarding their services including referral information, eligibility requirements, and possible funding assistance. Documentation is maintained in the student's IEP regarding the extent that each agency will participate and the amount/types of services that will be provided.
2. When conducting an initial eligibility/IEP team meeting for a child who was previously served by BabyNet, the placement chairperson, at the request of the parent, must invite a BabyNet representative to attend the IEP meeting to assist with the smooth transition of services.

F. The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered. The parents and other qualified professionals review the results of the initial evaluation to determine:

1. whether the child is a child with a disability as defined in federal and state laws and regulations and
2. the educational needs of the child.

G. When interpreting evaluation data for the purpose of making determinations about eligibility, the team must draw upon information from a variety of sources, such as aptitude and achievement

tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior.

- H. The Placement chairperson
 1. Chairs the IEP/Staffing meeting unless other arrangements have been made.
 2. Asks committee members to introduce themselves by name and position.
 3. States the purpose of the IEP/Staffing.
 4. Obtains input from members of the team with a summary of the evaluation results.
 5. Records the minutes and facilitates the IEP meeting.
- I. Based on the information presented, the IEP/Staffing Committee determines whether the student qualifies as a student with a disability under IDEA 04 criteria and in need of special education services.
- J. The team must ensure that the child meets the definition of one of the categories of disability and that the evaluation procedures and required documentation are consistent with state regulations 43.243.1 and, as a result of that disability, needs special education and related services (i.e., the two-pronged test). If a child meets the definition of a disability category but does not need special education and related services, she or he can not be determined eligible under the IDEA. If the child has a need for special education and related services but does not meet the definition of a disability category, she or he can not be determined eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a 504 evaluation may be considered.

1. Prong 1 - Determining Whether the Child is a Child with a Disability

- a. The team reviews the data to determine whether or not the child is a child with a disability. To do this, team members compare the data about the child to see if there is a match to one of the disability categories defined in SBE regulation 43-243.1. However, even when the data point to a particular area of disability, there are exclusionary factors that must be examined before determining the child is a child with a disability.
- b. Federal and state regulations are very clear with regard to the fact that a child must **NOT** be determined to be a child with a disability if:
 - (1) the determinant factor is:
 - (a) Lack of appropriate instruction in reading, including the essential components of reading instruction including phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies);
 - (b) Lack of appropriate instruction in math; or
 - (c) Limited English proficiency; and
 - (2) the child does not otherwise meet the eligibility criteria as a child with a disability.
- c. **There are additional unique issues that must be examined before a child may be determined to have a specific learning disability.** It is important that the team attend to collecting the data needed to examine these issues prior to and/or as part of the initial evaluation. The team evaluating a child for a specific learning disability collects the following:
 - (1) Data to determine that the child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the

following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- (a) oral expression;
- (b) listening comprehension;
- (c) written expression;
- (d) basic reading skill;
- (e) reading fluency skills;
- (f) reading comprehension;
- (g) mathematics calculation; or
- (h) mathematics problem solving.

- (2) Additionally, in order for a child to be eligible as a child with a specific learning disability, the evaluation and eligibility report must document that the child meets the following conditions:

- (a) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards,

AND

- (b) The child does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;

OR

- (c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development.

- (3) The determining factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or state-approved grade-level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:

- (a) a visual, hearing or motor disability;
- (b) Intellectual Disability;
- (c) emotional disturbance;
- (d) cultural factors;
- (e) environmental or economic disadvantage; or
- (f) limited English proficiency.

- (4) If the evaluation data indicate there is a match with a particular category of disability and the team has ruled out the presence of any exclusionary factors, the team may determine that the child meets one of the requirements of eligibility as a child with a disability (Prong 1 of the test of eligibility). If there is not a match or exclusionary factors are present, the team must determine that the child **does not** meet the eligibility of a child with a disability.

2. Prong 2 - Determining Whether the Child Needs Special Education and Related Services

- a. The second prong of the test of eligibility is to determine whether or not the child needs special education and related services. It is helpful for teams to remember that by definition special education means specially-designed instruction and, that

specially-designed instruction means adapting the content, methodology or delivery of instruction to address the unique needs of a child that result from the child's disability to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children. This implies that in order to have a need for special education services, the child has specific needs which are so unique that they require specially designed instruction in order to access the general education curriculum.

- b. Federal and state regulations require that prior to referral for an initial evaluation the district must have data-based documentation of having provided appropriate instruction to the child and having implemented educational interventions and strategies for the child, along with repeated assessments of achievement at reasonable intervals, which reflect formal assessment of the child's progress during instruction. The results of which indicate that the child is suspected of having a disability and may require special education and related services. If the district is implementing a multi-tiered model of intervention, it will have data regarding the child's needs related to the intensity of instruction and supports required for the child to be successful.
 - c. The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. Teams should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it can not be provided without the support of special education.
 - d. If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it can not be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). If the data suggests the child's needs for instruction can be provided within the regular education setting without the support of special education and related services, the team must determine that the child is not in need of special education and related services.
- K. The evaluation team shall ensure that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team then must document their findings.
- L. There are specific requirements for reporting the eligibility determination. The evaluation report must include the following statements:
- 1. whether the child is a child with a disability;
 - 2. the basis for making the determination, including an assurance that the determination was made in accordance with applicable laws and regulations;
 - 3. the relevant behavior noted during the observation of the child; and for LD the relationship of that behavior to the child's academic functioning;
 - 4. the educationally relevant medical findings, if any;
 - 5. For a child determined to have a **learning disability**, the report must also include documentation of the following:

- a. the child does not achieve adequately for the child's age or to meet State approved grade- level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards;

AND

the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;
 - OR**
 - b. the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.
 - c. the team determines the reason the child does not achieve adequately for the child's age, does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
 - (1) visual, hearing or motor disability;
 - (2) Intellectual Disability;
 - (3) emotional disturbance;
 - (4) cultural factors;
 - (5) environmental or economic disadvantage; or
 - (6) limited English proficiency.
 - d. if the child has participated in a process that assesses the child's response to scientific, research-based intervention, the report must also document
 - (1) the instructional strategies used; and
 - (2) the student-centered data collected.
 - e. Documentation that the child's parents were notified about the process, including the following information:
 - (1) the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (2) strategies for increasing the child's rate of learning; and
 - (3) the parent's right to request an evaluation
- M. Signatures of each team member indicating whether the report reflects their conclusion. If it does not reflect the team member's conclusion, the team member must submit a separate statement presenting his or her conclusion and attach it to the IEP.
- N. Prior Written Notice is required.
- 1. After the eligibility determination is made, the district must provide PWN to the parents that the district proposes to initially identify the child as a child with a disability and that the child requires special education and related services. If an IEP is developed, the PWN must also reflect the IEP.
 - 2. Likewise, district personnel must give PWN to the parents if they determine that a child is not eligible for special education services or related services.
- O. If the committee is unanimous in its recommended classification, the placement is finalized at this meeting following the development of the IEP. If there is disagreement among committee members, the evaluation results and concerns of the team members will be reviewed by the Director of special services. A subsequent IEP/staffing will be scheduled by the Director of special services.

- P. After the IEP is developed, the parent is asked to sign the Consent for Placement . If the parent is not at the meeting, the Follow-up Letter to the IEP Meeting (Enrich) for initial placement is sent.

INDEPENDENT EVALUATION

Parents are provided with information on independent educational evaluations through the Parent Handbook which describes parent rights and information about where an independent evaluation may be obtained.

Parents who disagree with the district's evaluation of their child have the right to submit a written request to the Director of special services for an independent educational evaluation. An independent educational evaluation is one which is done by a qualified evaluator who is not employed by the district.

The district must provide the evaluation at no cost to the parents with one exception. The Director of special services may request a due process hearing if the district staff deems its evaluation to be appropriate. At the hearing, the district staff must prove that its evaluation is appropriate. If the hearing officer finds the district's evaluation is appropriate, the parents may still get an independent evaluation, but they must pay for it themselves.

If the parents choose to obtain an independent evaluation, it must be considered in any decisions relative to the student's educational program and may be used as evidence in any administrative hearing. A hearing officer may also request an independent evaluation, in which case the district must pay for the evaluation.

When the district pays for an independent evaluation, 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 those the district uses when it initiates an evaluation. Parents should make certain that these criteria are met when they are requesting an independent evaluation.

While the district must consider an independent evaluation, the district is not obligated to implement the recommendations made by an outside evaluation team.

REEVALUATION

- A. An evaluation that is conducted at any time after an initial evaluation and initial determination of eligibility as a child with a disability is considered a reevaluation. For example, an evaluation on a 2nd grade student referred for a suspected learning disability who was evaluated, determined eligible as a student with a speech/language impairment in kindergarten, and received continuous speech language services since kindergarten would be considered a reevaluation. If the student had been dismissed from speech in the first grade and then referred for a suspected learning disability in the 2nd grade, the evaluation would be considered an initial evaluation since there would have been a disruption of special education services. Reevaluations for all categories of disability are conducted at least once every three years or more frequently if conditions warrant, if parents or school personnel request one, or if dismissal from special education is being considered. Reevaluations may not occur more than once a year, unless the parent and the district agree otherwise. Federal requirements also allow the parent and the district to agree that a 3 year

reevaluation is not necessary (34 C.F.R. § 300.303(b)(2)). Note: students transferring into Lexington School District Four from out-of-state may require a reevaluation to determine eligibility for special education according to South Carolina regulations.

1. Most components of the reevaluation process are identical to those required for initial evaluation. However, there may also be some differences from the initial evaluation. The specific individuals on the reevaluation team may be different than they were for the initial evaluation. The roles are the same, but the people themselves may be different. A report of the reevaluation must be written and provided to the parents. Under certain circumstances the reevaluation may be conducted without parent consent.
2. The reevaluation process is required every 3 years, or more often, if needed, to determine:
 - a. if the child continues to be a child with a disability,
 - b. whether the child continues to need special education and related services;
 - c. the educational needs of the child;
 - d. the present levels of academic achievement and functional performance (related developmental needs) of the child; and
 - e. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
3. Determining the date of the reevaluation:
 - a. The date of the initial evaluation is the date the IEP team meets to determine eligibility. For example, a student whose testing was begun on March 15, 2009, was completed on March 20, 2009, and whose IEP team met on March 31, 2009 has an initial evaluation date of March 31, 2009 since that is the date the IEP team met, determined eligibility, and completed the Evaluation Results and Eligibility Form .
 - b. The due date for the first reevaluation is 3 years from the date of the placement/IEP meeting during which the student was determined to be eligible for special education. For example, the student's initial testing was completed on March 20, 2009 but the student's IEP meeting to determine eligibility and place him in special education was March 31, 2009. The first reevaluation date is March 31, 2012.
 - c. The due dates for subsequent reevaluations are **EITHER**:
 - (1) 3 years from the date of the IEP meeting during which the IEP team decided no additional information was needed. For Example: The IEP team meets on March 31, 2012 and decides that no additional data are needed, the next reevaluation date is March 31, 2015.

OR

 - (2) 3 years from the date of the IEP team meeting during which reevaluation data were discussed. For example, the IEP team meets on March 31, 2012 and decides to collect additional data. The team meets again on May 1, 2012 to discuss the additional data. The new reevaluation date is May 1, 2015 since that is 3 years from the date of the last IEP meeting during which reevaluation data were discussed.
 - (3) Anytime the IEP team meets to complete a reevaluation review, including conducting related services evaluations, a new reevaluation date is determined by that meeting date.
4. A reevaluation must be conducted if the district determines that the education or related services needs, including improved academic achievement and functional performance of

the child, warrant a reevaluation, or, if the child's parent or teacher requests a reevaluation. A reevaluation must be conducted before the district determines a child is no longer a child with a disability. However, a reevaluation shall not occur more than once a year, unless the parent and the district and parent agree otherwise., and is not required:

- a. before the termination of a student's eligibility due to graduation with a regular diploma (**Prior Written Notice is required**)
 - b. due to exceeding the age of eligibility which would be the end of the year in which the student becomes 21 years of age.
5. If a parent requests a reevaluation, or more than 1 reevaluation per year, and the district disagrees that a reevaluation is needed, the district must provide PWN to the parent that explains, among other things, why the district refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or a due process hearing.
5. Whenever the district proposes to conduct a reevaluation, the district must provide PWN to the parents of the child that describes any evaluation procedures the District proposes to conduct in addition to the standard requirements for PWN.

Re-evaluations for additional services (e.g., ABA, OT, PT, AT, vision, hearing, etc.)

1. Prior to the comprehensive re-evaluation meeting, the teacher or parent (or physician via a prescription, letter, etc.) makes the team aware of concern; teacher completes the Referral for Speech-Language Evaluation; this is forwarded to the designated person responsible for handling the referral.
2. If no screening will take place, the re-evaluation meeting is scheduled.
3. If the student is to be screened, this must be done **PRIOR** to the re-evaluation meeting. The parent should be contacted by phone initially to be made aware of the need for screening and then must also be provided a written notification. The purpose of the screening is to provide the team with additional information to assist in determining areas in need of additional data, not to pre-determine whether additional evaluation will take place. Screenings must take place within 15 school days of the provider's receipt of the referral, and the results must be sent to the case manager prior to the re-evaluation meeting. The screening results are discussed at the re-evaluation meeting as part of the comprehensive review of data and documented on the Comprehensive Review of Existing Data Form.
4. For students with vision and hearing impairments, a release of information form should be signed by the parent prior to the re-evaluation meeting in order for the district to request the vision/hearing evaluation report- the request for report(s) must be done in an expeditious manner. Once the evaluation report is received, it is forwarded along with the completed Consultation Request Form to the vision or hearing teacher; after reviewing the vision or hearing report, the vision or hearing teacher must submit her recommendation to the case manager (prior to the re-evaluation meeting).
5. At the re-evaluation meeting, the team completes the Comprehensive Review of Existing Data: Evaluation/Re-evaluation Plan to determine if additional data is needed and ensure the evaluation is comprehensive to identify all of the student's needs; If so, the parent is provided the following:
 - Completed Referral/Evaluation Planning document/Prior Written Notice
 - Consent to Evaluate form (this document includes the parental notification of evaluation procedures)
 - Parent Handbook to Special EducationIf the parent provides consent to evaluate, the District documents the date the permission is received and uploads the form into Enrich. For OT or PT evaluations, the Doctor's Referral for School-based Therapy form is signed by the parent and then faxed by the

school to the physician. When the referral form is received by the district, the OT or PT is notified immediately so that the evaluation can be scheduled in a timely manner.

6. Student is evaluated in a timely manner, and the comprehensive evaluation results are documented on the Evaluation Report. All staff that conduct the evaluation must attend the review of additional data meeting. The review of additional data meeting is held to review results and determine if additional services are appropriate. Team completes the Eligibility Determination Form. If additional services are appropriate, the IEP is amended to reflect the additional services and the parent is provided a copy of the re-evaluation documents and amended IEP.
7. After the meeting but before the change(s) in services is implemented, the parent is provided with a PWN of the information reviewed at the meeting.

B. The membership of the team that conducts the reevaluation and determines continued eligibility is the same as the IEP team with the addition of other qualified professionals if a child is suspected of having a specific learning disability, as appropriate. The additional professionals that would participate are based on the identified concerns to be addressed in the reevaluation process. The actual team members on each reevaluation team may differ; however, there are specific members and skills that must be represented on the team. The make up of this team must be the same as the required members of an IEP team in addition to the following:

1. An individual who can interpret the instructional implications of reevaluation results.
2. At least one person qualified to conduct individual diagnostic examinations of children, if these are determined necessary.

C. The reevaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child continues to be a child with a disability, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities.

1. The reevaluation must result in determining the content of the child's IEP (if still eligible) including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (34 C.F.R. § 300.304(b)(ii)). However, the reevaluation should also assist in the development of an instructional plan for the child if the child is not found to be eligible.
2. The team must plan to administer the assessments and other evaluation measures needed to produce the required data, if any, for determining continued eligibility and educational needs. Every reevaluation should be approached and designed individually based on the specific concerns of the child to be evaluated. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.
3. The first activity the reevaluation team undertakes is a review of existing data. The reevaluation team needs to consider all data that are currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations; and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. After the team has reviewed the existing data, there must be

a determination of what data, if any, will be collected during the reevaluation, with the PWN completed to reflect that determination .

D. Requirements if No Additional Data are Needed: If the team has determined that no additional data are needed, the district must notify the parents of that determination and the reasons for it; and the right of the parents to request an evaluation. The team completes and signs the Reevaluation Review/Plan which documents the areas reviewed and the conclusions of the team and the Notice of Reevaluation Review which documents for the parents the reasons for concluding that no additional information is needed and informs the parents of their right to request a complete reevaluation. The team is encouraged to conduct the reevaluation at the parent's request.

E. Requirements If Additional Data are Needed:

1. If the team determines that additional data are needed for students classified as **LD, EMD, TMD, PMD, ED DD or Autistic**, Prior to the evaluation, the psychologist or designee obtains permission to evaluate on the Reevaluation Review/Plan, provides the parent a Prior Written Notice (Enrich).
 - a. When the data are collected, the psychologist and/or other evaluators write a report describing the findings.
 - b. The psychologist/SLP provides the parent a copy and convenes an IEP team meeting using the Letter of Invitation-IEP (Enrich) if no change in the eligibility status and/or placement is anticipated. The IEP team considers the additional data, and determines the student's eligibility status,
 - c. The IEP team makes additional changes in the IEP that are indicated by the additional data and provides the parent a copy of the changes.
2. If additional medical data are needed for students the psychologist asks the parent if the student has had a recent evaluation by an appropriate specialist. If the student has been recently evaluated, the parent is requested to provide a copy of the evaluation results. If a recent evaluation has not been conducted, the psychologist notifies the Director of special services.
 - a. The psychologist in consultation with the Director of special services schedules the evaluation and obtains Permission to Evaluate/Release/Use of Information . Upon receipt of the evaluation results from the medical specialist, the psychologist follows steps E, 1, a-c.

F. If the parent of a student with any disability requests a full reevaluation, the psychologist provides the parent a copy of the Parent Handbook to Special Education and conducts the evaluation consistent with the requirements for the initial evaluation or notifies the Director of special services. The Director follows the steps above to ensure that the reevaluation is conducted.

G. Failure to Respond or Refusal to Consent: The district must make reasonable attempts to obtain consent from the parents to conduct the reevaluation. Reasonable attempts may include at least two contacts by two different methods (phone calls, letters, visits, email, etc.) and such attempts should be documented, including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and

visits made to the parents home or place of employment, and the response, if any, from the parents.

1. If the district can demonstrate that it has made reasonable attempts and parents have failed to respond, informed parental consent need NOT be obtained for the reevaluation.
2. If the parent refuses consent for the reevaluation the district may, but is not required to, pursue the reevaluation of the child by utilizing the procedural safeguards, including mediation. The district does not violate its obligation for child find or to conduct a reevaluation of the child if it declines to pursue the reevaluation. In this case, the district would continue to provide services to the child according to the child's current IEP.

H. Determining continued eligibility

1. As indicated earlier, when the data are collected, the evaluators report the results. As is the case in all reevaluations, when making the determination of whether the child continues to be a child with a disability and whether the child continues to need special education and related services, teams must take into account that the child has made progress since the time he or she was initially evaluated and determined to be eligible for services. The fact that the child's performance gap may be less than at the time of the initial evaluation would not necessarily mean that the child is no longer a child with a disability and no longer in need of special education services.
2. If at the time of reevaluation, a student needs only general accommodations, then the student is no longer eligible for special education services, but should be referred for consideration of eligibility for a 504 plan. These careful considerations should drive the determination of continued eligibility.

I. Reevaluation procedures for a child identified as Developmentally Delayed

1. If a child ages 3 through 9 was determined eligible as a child with DD, a reevaluation must be conducted before the child turns age 10 to determine whether the child continues to be a child with a disability as defined by any of the categorical areas under the law and whether the child continues to need special education and related services.
2. The reevaluation to determine continued eligibility as a child with a disability may take place anytime prior to the child's 10th birthday.
4. All reevaluation dates will correspond (e.g., speech, psychological, vision, audiological) by using the first reevaluation due date to establish the time. A student will have only one reevaluation date---regardless of the number of disabilities.
5. At the beginning of each school year and updated monthly, the School Psychologist and Speech/Language Therapist determines which students with disabilities (includes all disabilities) are due for a reevaluation during the next 12 months and a copy is given to the Placement Chairperson and Director of Special Services.
6. The School Psychologist/SLP review accounting sheets, student files, and consults with school staff to prepare the reevaluation list.

7. The school psychologist/speech therapist monitors the reevaluation list and sets up the IEP reevaluation meeting.
- J. The reevaluation process must be completed and the meeting held by the reevaluation "due date".
- K. Parents must be given adequate notice including procedural safeguards prior to the IEP reevaluation meeting. The Placement Chairperson sends the IEP Letter of Invitation and Prior Written Notice (if applicable, see chart on page 140) before the IEP meeting, following the same procedures as any IEP meeting. After two documented attempts on two different dates, to obtain parental permission for reevaluation, the testing may be implemented after consultation with the Director of special services.
- L. Once parent permission is obtained or attempted, the School Psychologist or Speech/Language Therapist notifies the person(s) responsible for the additional testing and monitors timelines.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Initial IEP Meetings

1. An IEP meeting must be held within thirty (30) calendar days of the determination that the student needs special education and related services. ***This is usually accomplished in conjunction with the eligibility team meeting, however.*** The Placement Chairperson or Speech/Language Therapist notifies the parents and other members of the IEP team to participate in the IEP meeting.
2. The District must take steps to ensure that the parents of a student with a disability have an opportunity to attend or participate by taking the following steps:
 - a. The IEP meeting will be scheduled at a mutually agreed upon time.
 - b. Notify parents early enough to ensure they will have opportunity to attend.
 - c. If parent cannot attend, offer other methods of participation such as a conference call.
 - d. If the parent cannot be convinced to attend after two documented attempts for two different meeting dates, the IEP meeting will be held and parents will be provided information about decisions and a copy of the IEP following the meeting.
3. The parent will be provided a copy of the student's IEP along with Prior Written Notice (Enrich) following the IEP meeting.
4. The IEP must be in effect and complete before providing special education and related services to a student with a disability and must be implemented as soon as possible following the IEP meeting.
5. The IEP must be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.
6. Each teacher and provider responsible for implementing the IEP must be aware of his/her specific responsibilities and the specific accommodations, modification, and supports that must be provided for the student in accordance with the IEP.

A. IEP Team Members

- 1) The parents of the child;

- 2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- 3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- 4) A representative of the public agency who
 - 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 education curriculum; and
 - c) Is knowledgeable about the availability of resources of the public agency.
- 5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- 6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- 7) Whenever appropriate, the child with a disability.
- 8) Transition services participants.
 - a) The District must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.
 - b) If the child does not attend the IEP Team meeting, the District must take other steps to ensure that the child's preferences and interests are considered.
 - c) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the District must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

IEP Notification Requirements

1. The Placement Chairperson or Speech/Language Therapist notifies the parent in writing in the primary language of the home of the IEP meeting. The date of the first notification must be the written notice/letter.
In the case of a child who was previously served under BabyNet, an invitation to the initial IEP meeting must be sent to the BabyNet service coordinator, at the request of the parent.
2. Using the Letter of Invitation-IEP , the Placement Chairperson or Speech/Language Therapist notifies the parents in the primary language of the home of the meeting. All participants that are invited by the school must be included in the letter by position.
3. The Parent Invitation Response is attached to the IEP letter of invitation and includes a checklist for parents to sign and return to their child's school stating their intention to attend the meeting, not attend the meeting, or ask for meeting to be rescheduled for a different time and date.
4. Students age 13 and over must also be invited to attend the IEP meeting to discuss transition services.
5. Students age 18 and over have parental rights transferred to them. These students must be provided the IEP invitation letter, response form and other notices.
6. A copy of the Parent Handbook to Special Education must be given to the parents only one time a school year (typically the annual review), except that a copy also must be given to the parents:
 - a. Upon initial referral or parent request for evaluation;

- b. Upon receipt of the first State complaint in a school year and/or upon receipt of the first due process complaint in a school year;
 - c. In accordance with the discipline procedures, and
 - d. Upon request by a parent.
7. If transition is to be discussed at the IEP meeting, representative of agencies likely to be involved for providing/paying for transition services are invited to the IEP meeting by the Placement Chairperson. If the agency is unable to attend, information is elicited to assist in planning transition services for the student and continuing efforts are made by the teacher/job coach to involve these agencies.

IEP DEVELOPMENT

If the student is determined to be disabled and in need of special education, the IEP/Staffing Committee develops the IEP as described below. Prior to the meeting, the special education teacher may have written preliminary data on the IEP (in Enrich) such as: identifying information, assessment results, present levels of performance, student strengths and weaknesses, and recommended annual goals. It is made clear to the parents that what has been prepared is for discussion purposes only and may be revised, where appropriate, during the meeting.

NOTE: A Pre/IEP planning meeting with Special Services staff may be necessary for some students. However, no decision regarding a student's placement or IEP may be made at this meeting.

To initiate an IEP in Enrich the special education teacher must choose NEW IEP. Two radio buttons/choices will appear. All IEPS (initial, annual, special review) must be initiated by choosing the bottom choice. The top choice of "amend" may only be used with prior permission from a Director of special services or his/her designee.

All IEPS must address the following areas:

A. Identifying Information

- 1. Identifying information is verified, including student name, district ID number, DOB, sex, grade and Medicaid number. Dates should be listed as two digit month/two digit day/four digit year. The cover page must include the following:
 - a. School year
 - b. Grade for IEP
 - c. School for this IEP
 - d. Type of IEP
 - e. Date of Special Review Meeting
 - f. Date of IEP Meeting
 - g. Anticipated Date of Annual Review
 - h. IEP Initiation Date
 - i. IEP Ending Date
 - j. Eligibility/Reevaluation Determination Date
 - k. Anticipated Date of 3-Year Reevaluation
 - l. Other disabling conditions

2. The primary disability must also be listed on the cover page. Any discrepancies the teacher may find in Enrich must be reported immediately to the office of Special Services.

B. Transition Services

1. The IEP/Staffing Committee addresses transition services for students who are 13 or will reach age 13, during the implementation period of the IEP. Transition services are addressed for students 12 or younger when determined appropriate by the IEP Committee or the student's parent(s).
2. The IEP Committee describes the student's preferences and interests related to post-school activities. For students age 13, 14 or 15, the IEP Committee specifies the course of study during the effective dates of the IEP. For students age 16 and older during the effective dates of the IEP, the Committee develops goals, as needed, in the areas of instruction, community experiences, employment, and other post-school living areas to address the student's transition from school to adult activities.
3. The district must conduct age-appropriate transition assessment at a minimum in the areas of education/training, employment, and where appropriate, independent living. The purpose of transition assessment is to provide information to develop and write practical, achievable measurable post-secondary goals and assist in the identification of transition services necessary in helping the student reach those goals. Transition assessment must be conducted prior to the student's reaching age 13 and prior to the student's IEP. For each postsecondary goal there must be evidence that at least one age-appropriate transition assessment was used to provide information on the student's needs, strengths, preferences and interests regarding postsecondary goals.
4. Linkages to agencies responsible for accomplishment of goals are listed on the plan. Every special education student 13 or older must have some type of transition-to-work service indicated on the IEP.
5. A South Carolina Career Cluster must be included on the IEP for all students age 13 or older.
6. Each IEP for a student with a disability, who will be 13 or older during the time period of the IEP, must have measurable postsecondary goal(s) that address the areas of: training/education, employment, and independent living when appropriate. The only goal area that is not required based on individual student needs is independent living. Descriptions of these categories are:
 - a. Training/Education – specific vocational or career field, independent living skill training, vocational training program, apprenticeship, OJT, military, Job Corps, etc., or 4 year college or university, technical college, 2 year college, military, etc.
 - b. Employment – paid (competitive, supported, sheltered), unpaid, non-employment, etc.
 - c. Independent living skills – adult living, daily living independent living, financial, transportation, etc.

7. Measurable postsecondary goals are different from measurable annual goals in that they measure an outcome that occurs after a student leaves high school where a measurable annual goal measures the progress of the student while in school. However, it is important to note that for each postsecondary goal, there must be annual goals included in the IEP that will help the student make progress towards the stated postsecondary goal. When developing annual goals, the team should ask “What postsecondary goal(s) does this annual goal support?” The requirements for measurable postsecondary goals are specific to the areas of training/education, employment, and independent living, where appropriate, and may be written into a single “combo” goal that addresses training/education, employment, and independent living, where appropriate in a single goal or as separate goals. Measurable postsecondary goals should be stated in a way that can be measured as “yes, it was achieved” or “no, it was not achieved”. The statement needs to indicate what the student “will” do after graduating or completing their secondary program rather than what the student “plans”, “hopes”, “wishes”, or “wants” to do.
 - a. Examples of Measurable Postsecondary Goals
 - (1) John’s training/educational goal is to attend college to study drafting.
 - (2) John’s employment goal is to obtain employment as a CAD operator.
 - (3) John’s postsecondary goal is to attend college to study drafting in order to obtain employment as a CAD operator.
8. Each IEP for a student with a disability (who will be 13 or older during the time period of the IEP) must also contain a description of the course of study (i.e. age 13 transition services) needed to assist the student in reaching those goals.
9. The courses of study must focus on improving the academic and functional achievement of the student to facilitate movement from school to post-school by describing the courses and/or educational experiences that are related to the student’s postsecondary goals.
10. All students with disabilities have an Individual Graduation Plan (IGP). The IGP should help guide the development of a student’s IEP. The IEP team should review the transcript of required courses toward graduation and the student’s IGP. The IEP does not take the place of the IGP. The guidance counselor, school-to-work or transition coordinator, or other career counselors may need to be involved in the IEP to be considered as well. Each year the IEP team reconsiders the student’s decisions regarding the course of study should relate directly to where the student is currently performing and what he or she wants to do after graduation. These should be drawn from the IGP for that student. A connection should be made between the student’s postsecondary goals and the courses of study. To address the courses of study, the team should ask:
 - a. Do the transition courses of study focus on improving the academic and functional achievement of the student to facilitate his/her movement from school to post-school?
 - b. Do the courses of study (and other educational experiences) align with the student’s postsecondary goal(s) and Individual Graduation Plan?

- c. The statement of course of study is not required to be a listing of individual courses but could be part of the statement, if appropriate, for the student. The following are examples of statements of the course of study.
 - (1) Emily plans on going to college and is interested in engineering. She will participate in the general college prep curriculum with a focus on math and sciences.
 - (2) Abby is planning on working construction when she finishes high school. To attain the skills necessary for construction, in addition to the general education curriculum she will take additional technical education courses in trades and industry.
- d. A transition services statement must document activities & transition services for the current IEP year and identify the responsible agency and document who will pay for which services if an agency outside of the district has responsibility. Examples of transition services statements are:
 - (1) Dan needs to improve his employment skills. He will participate 2 hours a day in the community work placement program this year.
 - (2) Linda will need adult employment supports. By the end of first semester the district will provide Linda and her family with information about applying to SC Vocational Rehabilitation for services.

C. Age of Majority

- 1. Beginning at age 17, the IEP team must inform the student and the parents that at the age of majority under state law (age 18 in South Carolina), the rights under IDEA '04 will transfer to the student. The district must provide documentation in the IEP, at least one year before the student is 18, that the student has been informed of rights provided in the federal and state law that will transfer to the student.
- 2. If parents believe that their student may not be able to make educational decisions, they may wish to find out about obtaining a limited guardianship or some other legal means to support the student upon reaching the age of majority. It is important for the district to provide information and resources to the student and parents early in the IEP process to assist them in understanding the implications of the transfer of these rights under IDEA '04. When a student reaches the age of majority, district personnel must provide all required special education notices to both the student and to the parents and obtain informed consent for specified special education actions from the student (same requirements as for parents). Parents are not entitled to attend the IEP meeting; however, either the district or the student may, but are not required to, invite the parents to attend IEP meetings as persons who are knowledgeable about the student.
- 3. The only situation in which all rights do not automatically transfer to the student at age 18 is when a court has judged the student to be unable to fulfill his or her responsibilities (determined the student to be "incompetent"). When this has occurred, the district must provide PWN and obtain informed consent from the person whom the court has appointed as the legal guardian. Districts may provide parents information about other options and resources about this topic.

4. Once rights have been transferred to the student, he or she may be able to execute a power of attorney under S. C. Code Ann. § 62-5-501 (Supp. 2008). This regulation allows a person who is not affected by a disability to execute a power of attorney to grant another party the right to act as the agent or attorney-in-fact for the person. The term “disability” here means cause for a protective order which involves the appointment of a conservator or other protective order by the court to act on behalf of an individual. The term does not relate to whether the person has a disability as defined by the IDEA. There are additional requirements under this statutory provision that must be met.

D. Diploma/Certificate

1. The IEP/Staffing Committee documents decisions regarding whether the student will work toward a standard South Carolina diploma, South Carolina High School Credential, or a certificate of attendance (students who have only accomplished the goals specified on their IEP.) If IEP team determines South Carolina High School Credential is most appropriate, then all requirements of SCHSC must be followed as outlined in Appendix A.

E. Present Levels of Academic Achievement and Functional Performance (PLAAFP)

1. The IEP for each student with a disability must include a statement of the student’s present levels of academic achievement and functional performance, including:
 - a. how the student’s disability affects the student’s involvement and progress in the general education curriculum;
 - b. for preschool students, as appropriate, how the disability affects the student’s participation in appropriate activities; and
 - c. for those students with disabilities who take alternate assessments aligned with alternate achievement standards, a description of benchmarks or short-term objectives.
2. The present levels of performance summarize the student’s current performance and provide the foundation upon which all other decisions in the student’s IEP will be made. The PLAAFPs identify and prioritize the specific needs of a student and establish a baseline from which to develop meaningful and measurable goals. For a PLAAFP to be complete it needs to include information about:
 - a. Current Academic Achievement and Functional Performance: This is the broadest type of information that is included in the present level statement. It helps the team to begin to sort through information and data to determine how well the student is performing and to make note of additional issues outside of academic and functional behavior that have a direct impact upon how well the student performs in school. This communicates a more global understanding of the student. This might include information such as standardized assessments, learning rate, social issues, vocational interests, independent living skills, and other interests, strengths, and weaknesses.
 - b. Impact of disability upon ability to access and progress in the general curriculum: In addition to describing the student’s current performance (academics and functional areas), present levels of performance must describe how the disability

affects the student's involvement and progress in the general curriculum. The present level statement must also include more specific information that clearly describes how the student's disability impacts (or manifests itself) within the general education curriculum that prevents them from appropriately accessing or progressing. By completing this statement it will make it clear to the team what the student's needs are and which ones are of highest priority to be addressed.

- c. Baseline data provides the starting point for each measurable annual goal, so there must be one baseline data point for every measurable annual goal on the student's IEP. Baseline data in the present levels are derived from locally developed or adopted assessments that align with the general education curriculum. Examples of baseline data include percent of correct responses, words read correctly, number of times behavior occurs, and mean length of utterances. Other issues important in collecting baseline data are the understanding that any goal written will have the same measurement method as was used in collecting its baseline data. Also, when selecting baseline data the data must be:
- (1) specific – to the skill/behavior that is being measured,
 - (2) objective – so that others will be able to measure it and get the same results,
 - (3) measurable – it must be something that can be observed, counted, or somehow measured, and
 - (4) able to be collected frequently – when progress reports are sent out the progress of the student toward the goal will have to be reported using the same measurement method as used to collect the baseline data. Non-examples of this would be self-esteem or social awareness without a more specific description of what it means.
 - (5) For preschool students, the present levels describe how the disability affects the student's participation in appropriate activities. The term "appropriate activities" includes activities that students of that chronological age engage in as part of a preschool program or in informal activities. Examples of appropriate activities include social activities, pre-reading and math activities, sharing-time, independent play, listening skills, and birth to 6 curricular measures.
 - (6) For students ages 13 and older (or younger if appropriate), the present levels also describe the student's transition needs in the areas of education/training, employment and where appropriate independent living skills.
 - (7) The IEP team should consider the following questions when writing the present levels:
 - (a) In areas of concern, what is the student's present level of performance in relationship to district standards and benchmarks in the general education curriculum (or to the extended standards)?

- (b) In areas of concern, what is the student's present level of performance in relationship to level of performance that will be required to achieve the postsecondary goals?
 - (c) Are there functional areas of concern related to the disability not reflected in the general education curriculum (e.g., self-care skills, social skills, classroom survival, etc.)?
 - (d) What is the degree of match between the skills of the student and the instructional environment?
 - (e) What strengths of the student are relevant to address the identified concerns?
- (8) Examples of Present Levels Academic Achievement and Functional Performance are:
- (a) Bobby is a 9 year old fourth grade student with average ability, whose achievement testing shows relative strength in reading and weakness in math. Bobby is reading at grade level and has good comprehension. He likes to read and he also enjoys science activities. His most recent curriculum based measure (CBM) testing showed that he read 111 words per minute, which is at the 65th percentile on local norms. Math CBM testing showed that he scored 9 digits correct in a two minute timing, which is at the 17 percentile on district fourth grade norms. Bobby's mom reports that he brings home assignments requiring reading, but he often forgets his math homework.
 - (b) Example of Impact of Disability: Bobby has difficulty paying attention during class time. His inability to stay on task and follow directions is negatively affecting his classroom performance. When asked to begin work, he often looks around as if he does not know what to do. Observations indicate he often looks to peers for directions, rather than attending to the teacher. This occurs in both classes that he likes and in those he dislikes. When the teacher provides Bobby with individual help, Bobby often refuses assistance and insists he understands what to do, but then he often completes the assignment incorrectly.

Bobby also demonstrated difficulty with recognizing personal space. This is exhibited when he swings a backpack or his arms around in a crowded room or when walking down the hall. Observations of Bobby show this is also an issue during games in gym class and in unstructured activities, such as playing tag during recess. He is often unable to appropriately interact with others. Bobby sometimes stands very close to other students, squaring up to them, in a posture that is intimidating to younger students, and challenging to those his own age. He has also been observed to inappropriately touch other students. These behaviors have been especially problematic during special out-of-school activities, and Bobby has not been allowed to

attend the last two class field trips, because of the severity of problems on earlier field trips.

- (c) Example of Baseline Data: Teachers estimate that Bobby inappropriately invades other's space at least 50% of the time during unstructured activities. Observations using interval recording indicate that during recess he invaded others' space (using defined behavioral criteria) during 70% of the observation intervals. During classroom time, he was out of his seat and inappropriately close to another student during 35% of the observation intervals. Total off-task behavior during classroom observation was 60% of observed intervals.

F. Accommodations/Modifications/Supplemental Services

1. The IEP/Staffing Committee determines the extent e.g., hours per week, periods per week, etc., to which the student will participate in academic, non-academic, and extracurricular activities in the regular education environment. Any modifications (i.e., supplementary aids and services, including instructional accommodations), which are necessary to insure the student's participation in academic, non-academic and extracurricular activities in the regular program must be specified.
2. Supplementary services include, but are not limited to, the following: itinerant or resource assistance, sign language interpreting, consultation, notetaking, assistive technology services, etc.
3. Supplementary aids include, but are not limited to, the following: large print textbooks, auditory trainers, curriculum adaptations, classroom modifications, time management, behavior management, augmentative communication, assistive technology, etc.
4. The IEP/Staffing Committee provides a specific explanation of the supplementary services and aids to be provided as well as the number of hours per week of the provision of supplementary services, and the anticipated location of the services/aids. For itinerant services the number of hours of direct and indirect services must be specified.

G. Measurable Annual Goals

1. Measurable annual goals are descriptions of what a student can reasonably be expected to accomplish within a 12-month period with the provision of special education (specially designed instruction) and related services. When selecting areas of need to address through annual goals, the IEP team's focus should be on selecting goals from the most highly prioritized needs from the PLAAFPS. For curricular needs, the IEP team should consider identifying goals from the standards and benchmarks of the local district or from the South Carolina Extended Standards. To accomplish this, it is necessary that the student's performance be measured against the district or state standards, benchmarks, and indicators.
2. Measurable annual goals must be related to meeting the student's needs that result from the student's disability, to enable the student to be involved and progress in the general or advanced curriculum. In addition, they must meet each of the student's other educational needs that result from the student's disability. Annual goals are not required for areas of the general curriculum in which the student's disability does not affect the ability to be

involved and progress in the general curriculum. The annual goals included in each student's IEP should be individually selected to meet the unique needs of the individual student. The goals should not be determined based on the category of the student's disability or on commonly exhibited traits of students in a category of disability.

3. There must be a direct relationship between the measurable annual goal, baseline data and the needs identified in the PLAAFPs. Because the PLAAFPs are baseline data for the development of measurable annual goals, the same criteria used in establishing the PLAAFPs must also be used in setting the annual goal.
4. Four critical components of a well-written goal are condition, action, criteria, and measurement tool.
 - a. The **conditions** specify the manner in which progress toward the goal is measured. Conditions are dependent on the behavior being measured and involve the application of skills or knowledge. Examples of conditions are:
 - (1) When presented with 2nd-grade-level text
 - (2) Given a mixed, 4th grade level math calculation probe
 - (3) Given a story prompt and 30 minutes to write
 - b. The **action** or behavior clearly identifies the performance that is being monitored, usually reflects an action or can be directly observed, and is measurable.
 - (1) Sarah will read
 - (2) Claude will correctly solve
 - (3) Mary will respond
 - c. The **criterion** identifies how much, how often, or to what standards the behavior must occur in order to demonstrate that the goal has been reached. The goal criterion specifies the amount of growth the student is expected to make by the end of the annual goal period. The goal must allow a clear yes or no determination of whether or not it has been achieved.
 - (1) 96 words per minute with 5 or fewer errors.
 - (2) 85% or more correct for all problems presented.
 - (3) 4 or better
 - d. The **measurement tool** may include criterion assessment, district-wide assessments, rubrics, etc.
5. Well-written measurable annual goals will pass the "Stranger Test". This test involves evaluating the goal to determine if it is written so that a teacher who does not know the student could use it to develop appropriate instructional plans and assess the student's progress.
6. The number of goals addressed in the IEP depends on the student's needs. Prerequisite skills, immediate needs, and general applicability are all factors to consider when establishing priorities. Parents, general education teachers, and students are also essential sources of information when setting priorities.

7. If the student needs accommodations or modifications in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however, the IEP would need to specify the modification and accommodations.

H. Short-Term Objectives

1. Short-term objectives are only required on the IEP of a student with a disability who takes an alternate assessment aligned to alternate achievement standards. However, the use of short-term objectives is not prohibited.
 - a. Example of Present Levels Statement, Measureable Annual Goal, and short term objectives (Benchmarks) for Student taking the SC-Alt
 - (1) Present levels: Jennifer uses the BIGmack switch or step by step when it is presented, but she uses these devices only with adults, and not with her peers. She requires physical prompting to use the devices at least 90% of the time. She does not acknowledge the presence of peer communicative partners in an observable manner.
 - (2) Measurable Annual Goal 1: When in the presence of a peer, Jennifer will acknowledge the communication partner at every encounter as evidenced by gestures, changes in body posture, or vocalizations, and participate in a familiar structured turn-taking communicative routine with physical prompting in at least one school setting.
 - (3) Objective 1: In 6 instructional weeks, when joined by a peer, Jennifer will acknowledge the presence of a peer communication partner as evidenced by gestures, changes in body position, or vocalizations.
 - (4) Objective 2: In 12 instructional weeks, when joined by a peer, Jennifer will acknowledge the presence of a peer communication partner as evidenced by gestures, changes in body posture, or vocalizations, and will participate in a structured turn-taking activity with a peer when physically prompted by an adult.
 - (5) Objective 3: In 18 instructional weeks, while participating in a familiar, structured turn-taking activity with a peer, Jennifer will recognize when it is appropriate to take her turn and respond to this opportunity as evidenced by gestures, changes in body position, vocalizations, or actions, and by activating a voice-output device at the appropriate time with physical prompts from an adult.

I. Statement of Special Education and Related Services

1. Each IEP for a student with a disability must include a statement of:
 - a. the special education services;
 - b. related services;

- c. supplementary aids and services (including accommodations), based on peer-reviewed research to the extent practicable to be provided to the student, or on behalf of the student;
 - d. statement of the program modifications and
 - e. supports from school personnel that will be provided for the student to:
 - (1) advance appropriately toward attaining the annual goals;
 - (2) be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities; and
 - (3) be educated and participate with other students with and without disabilities from these activities.
2. Each of these areas must be addressed on the IEP even if the way it is addressed is indicating the student does not need the service. All services – special education and related services, supplementary aids and services, program modifications, and supports for school personnel, as outlined in the IEP (including transition services) – must indicate the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services. It is possible that service dates may vary throughout the year and should be indicated as such on the IEP.
 3. The amount of services to be provided must be stated in the IEP so that the level of the school’s commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.
 4. In determining the location for special education and related services the IEP team must consider the continuum of educational placements necessary to implement the IEP. The district must ensure that the parents of each student are members of any group that makes decisions on the educational placement of their student. The placement decision must be made in conformity with the requirement of providing services in the least restrictive environment (LRE). The educational placement is to be:
 - a. determined at least annually;
 - b. based upon the student’s IEP; and
 - c. located as close as possible to the student’s home, consistent with the requirements of the IEP.

J. Participation in State-and District-Wide Assessments

1. The IEP team must make a decision about how the student with a disability will participate in State and district-wide assessments.
2. The intent is that all students will be assessed and will be part of the state and district accountability systems. The IEP team should apply the eligibility criteria to help determine which assessment is the most appropriate for the student. The eligibility criteria for each assessment are included in the Test Administrators’ Manual for each assessment. The eligibility criteria for SC-alt are also available online at <http://ed.sc.gov> on the Office of Assessment page.
3. If the IEP team determines that the student shall take the SC-Alt, the IEP must include a statement of:

- a. Why the student cannot participate in the regular assessment and
 - b. Why the particular alternate assessment selected is appropriate for the student.
4. South Carolina has identified allowable accommodations for state assessments for both general education and special education students. These are listed in the Testing Students with Disabilities area available at <http://ed.sc.gov> on the Office of Assessment page. Most accommodations allowed for the South Carolina general assessment are for all students, but certain accommodations are designated as allowed for students with IEP's or 504 Plans only.
 5. Any accommodation regularly used in instruction must be used on classroom assessments for students with IEP's. Individual school districts may establish their own policies for allowable accommodations for district-wide assessments. All accommodations that are necessary in order for the student to participate in state- or district-wide assessments must be documented on the IEP. For current information regarding the South Carolina State Assessments see <http://ed.sc.gov> Office of Assessment.

K. Related Services

The IEP Committee determines whether related services are necessary to enable the student to benefit from special education. Each related service to be provided and the amount of time are stated on the IEP. Present levels of performance and goals must be included for related services except transportation and routine nursing services.

1. Related services should not reflect statements such as "evaluation," "referred," "to be determined," or "as needed." Related services must be specifically identified on the IEP.
2. The Placement chairperson contacts the Director of special services or his/her designee prior to IEP/Staffing meeting to approve and arrange for audiological services, assistive technology services, and orientation mobility services for qualified students and to ensure appropriate goals are drafted for IEP meeting.
3. If a physical or occupational therapy evaluation has been completed, the therapist checks "Physical Therapy" or "Occupational Therapy," enters information on the present levels of performance, records the amount and frequency of services, adds occupational or physical therapy goals to the IEP, and adds the time of the meeting of students who qualify for OT or PT. To qualify for OT or PT as a related service the therapist must find that the OT or PT is educationally necessary for the disabled student to benefit from special education, and not just because the student would benefit medically from the service. See "Guidelines for OT and PT Services."

L. IEP Team Considerations (Special Factors)

1. In order to assure that the IEP team addresses all of the special education and related service needs of the student there are several special factors that the IEP team must consider in the development of the IEP.
2. Assistive Technology: The IEP team must determine whether an individual student needs an assistive technology (AT) device or service, and if so, the nature and extent to be provided. It is possible that an assistive technology evaluation will be required to determine if the student would need an assistive technology service and/or assistive

technology device. Any needs identified should be reflected in the content of the IEP, including, as appropriate, the instructional program and services provided to the student.

3. **Behavioral Concerns:** In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior. The focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. This means that the team will need to attempt to identify the function of the behavior, usually through a functional behavioral assessment, and develop strategies to prevent the behavior from occurring again in the future.
4. The positive behavioral interventions and supports could be implemented through the IEP annual goals, program modifications, or a behavioral intervention plan (BIP). If a behavioral intervention plan is developed by the IEP team, it becomes part of the IEP and any changes to it would require a meeting of the IEP team to consider the proposed changes to the plan. A behavior contract or another type of behavior plan can be developed by a building based problem solving team or other group of individuals for a regular education student.
5. **Braille:** For a student who is blind or visually impaired, the IEP team must consider instruction in Braille. The use of Braille should be provided unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student. If Braille is to be taught as a method of accessing printed material, it is to be indicated in the IEP.
6. **Communication Needs:** The communication needs of all students with exceptionalities must be considered on each IEP. It is required that the IEP team considers the communication needs of each student, regardless of disability. This consideration must include the unique communication needs of all students in order to help them achieve their educational goals.
7. **Results of the Initial Evaluation or Most Recent Reevaluation:** In developing each student's IEP, the IEP team must consider the results of the initial or most recent reevaluation of the student. This must include a review of valid evaluation data and the observed needs of the student resulting from the evaluation process and, as appropriate, any existing data, including data from current classroom-based, local and State assessments.
8. **The Academic, Developmental and Functional Needs of the Student:** In developing each student's IEP, the IEP team is required to consider the academic, developmental, and functional needs of the student. A student's performance on State or district assessments must be included in the IEP team's consideration of the student's academic needs. In addition, as part of an initial evaluation or reevaluation, the IEP team must review existing evaluation data, including data from current classroom based, local, and State assessments.
9. **Limited English Proficiency:** The IEP team must consider the language needs of the student who has limited English proficiency as those needs relate to the IEP including the impact of how service providers communicate with the student and progress is measured.

10. **Strengths of the Student:** The IEP team should be aware of the strengths of the student, and utilize those strengths during the development of the IEP to assist in addressing the student's needs. The strengths should be included in the present levels of academic achievement and functional performance of the student, as identified through the evaluation.
11. **Concerns of the Parents:** Parents should have the opportunity to express their concerns for enhancing the education of their student during the IEP meeting. This provides the parents an opportunity to share with the district what they see as the most important in meeting the needs of their student. The concerns of the parents must be considered by the IEP team but do not obligate the IEP team.
12. **Extended School Year Services:** For students with disabilities, the IEP team must consider each individual student's need for extended school year (ESY) services during time periods when other students, both disabled and nondisabled, normally would not be served. If ESY is determined to be necessary to enable the student to benefit from his or her education, then the type and amount of special education services to be provided, including frequency, location and duration, are documented in the IEP. Districts must not limit the availability of ESY services to students in particular categories of disabilities, or limit the type, amount, or duration of these necessary services.

M. Measuring and Reporting Progress on Annual Goals

1. Once the IEP team has developed measurable annual goals for a student, the team must include a description of how the student's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the student's instructional needs.
2. Progress monitoring information is to be utilized in a formative way, to help with decision-making about instructional changes that may be needed. When a measurable annual goal includes the four components (action, criteria, condition and measurement tool), the requirement of how progress toward the goal is measured is contained within the goal and no additional information is required.
3. The IEP must include a description of when parents will be provided periodic reports about their student's progress toward meeting the annual goals. Student progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the student's progress toward his/her measurable annual goals.

N. Least Restrictive Environment

1. Least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, students with disabilities, including students in institutions or other care facilities, are educated with students who are not disabled. The IEP must contain an explanation of the extent, if any, to which the student will not participate with students without disabilities in the general education class, and in extracurricular and nonacademic activities with program modifications or supports for school personnel.
2. Students with disabilities are to be removed from the general education environment only if the nature or severity of the disability is such that education in general education classes

with the use of supplementary aids and services or modifications cannot be addressed satisfactorily.

O. Final Steps in Placement

1. If the parent is present at the IEP meeting, the parent signs the Consent for Placement which specifies student classification and initiation of services.
2. All members of the IEP committee must sign the IEP. The parent must sign the top portion as a team member and the bottom portion indicating that he/she has received a copy of the Parent Handbook for Special Education) and that he/she has reviewed the IEP document and will receive a copy.
3. The special education teacher provides the parent a copy of the IEP document and a second Prior Written Notice Form (Enrich) addressing the required components as well as the conclusions of the IEP team.
4. After the conclusion of the IEP meeting, the special education teacher must finalize the IEP in Enrich, according to the IEP committee recommendations. The teacher must also denote, in Enrich, the team members that were present in the IEP meeting and mark the IEP “complete” for official saving into the Enrich program. Special education teachers should have another professional review each IEP for compliance with required components prior to marking the IEP complete.
5. The Placement Chairperson sends all original paperwork to the district office with copies to the parents and special education teacher.
6. The Placement Chairperson notifies the Attendance/PowerSchool clerk using an Add/Change Form.
7. For students requiring special transportation the Placement chairperson completes and sends the Request for Transportation to the transportation office. Five (5) working days are requested for transportation arrangements to be finalized.
8. If the parent is not in attendance at the initial IEP meeting, attempts will be made to conduct the meeting via phone or internet. Implementation of the IEP does not occur until parental consent is obtained and the parent has been provided with Prior Written Notice (Enrich).
9. For Children Ages 3 through 21 an IEP must be developed within 30 calendar days of a determination that the child needs special education and related services and must be implemented as soon as possible after written parent consent is granted for the services in the IEP. In addition the district must ensure that an IEP is in effect at the beginning of each school year for each child with a disability.
10. FAPE must be made available to all eligible children with disabilities by their third birthday. An IEP must be developed and implemented in accordance with federal and state laws and regulations. If a child’s birthday occurs during the summer, the child’s IEP team must determine the date when services under the IEP will begin, including the consideration of extended school year (ESY) services. Many children who have

participated in BabyNet services transition to early childhood special education services by their 3rd birthday. Each child must be identified as eligible through a Part B initial evaluation prior to receiving services at age 3.

11. For a child who is transitioning into the Part B early childhood special education services from the Part C, the district must ensure that:
 - a. the child is determined eligible under Part B requirements;
 - b. an IEP is in effect by the child's 3rd birthday;
 - c. if a child's 3rd birthday occurs during the summer, the child's IEP team must determine the date when services will begin, but not later than the beginning of the school year following the 3rd birthday; and
 - d. a representative of the district will participate in transition planning conferences arranged by the Part C program.

TRANSFER STUDENTS

A transfer packet will be completed on each special education student that transfers to any school in Lexington School District Four. The school secretary or person responsible for enrollments will contact the necessary special education personnel to meet with the parent/guardian to complete the transfer packet. If special education personnel are unable to meet, secretary will have parent complete information in transfer packet except for IEP and Team Report.

*** SPECIAL EDUCATION SERVICES START ON THE STUDENT'S FIRST DAY OF ATTENDANCE AFTER CONSULTING WITH PARENTS/GUARDIANS THROUGH A MEETING OR PHONE CONFERENCE.**

1. Verification of Special Services.
 - If parent does not provide documentation of special services (previous IEP, psych reports, etc.) a school official (secretary, guidance, SPED, etc.) will contact the previous school/district to verify previous services. If unable to contact school/district, information from parent/guardian should be used to determine type/amount of services until contact can be made. If there are no records/documentation and parent is unsure, then student should be placed in general education classes until records are received or an evaluation is conducted.
2. Complete Transfer Packet.
 - Special education personnel will complete all necessary documents from the transfer packet.
 - If student has a current IEP from previous school, the team can decide to work off the current IEP until a new Lexington Four IEP can be developed (30-45 days). **If working off the current IEP you only have to document it in the Team Report. Do not complete a handwritten IEP.**

- If student does not have a current IEP, the team must develop a handwritten Lexington Four IEP until student can be placed in Enrich and a follow up meeting can be held (30-45 days). Assessment information may have to be determined later, but goals and accommodations should be completed. If student was previously enrolled in Lexington Four during the same school year and has a current Lexington Four IEP, the team can agree to work off the current Lexington Four IEP, unless there are significant differences between the Lexington Four IEP and the student's previous school IEP (i.e. they changed placement or disability).
- Document what the team decided in the notes on the Multi-Disciplinary Team Report.
- Copies to the parent/guardian and SPED classroom file.
- Copy of Add/Change Form to PowerSchool clerk
- Copy of Transportation Request (if completed) to Transportation Office and PowerSchool clerk.
- **All originals and a copy of previous school IEP/Psych report (if available) must be sent immediately to the district office.**

3. Adding Student to Enrich

- Student will be added to Enrich by district office personnel upon receipt of original transfer paperwork. If student does not show up on your caseload within one week, email the school psychologist with the student's name, grade, and disabilities.
- Student can be put into Enrich manually by school psychologist in rush situations. Please contact him/her via phone or email.

NOTE: In cases where student records are incomplete and/or outdated, the school psychologist will contact you if more evaluations are needed.

- If the records have not been received within the 45 days of the student's placement in special education, the psychologist notifies the school psychologist or speech therapist to schedule a reevaluation review meeting. The team completes the Reevaluation Review/Plan Form to describe the reevaluation plan and obtains parent's permission to evaluate on the Reevaluation Review/Plan. Initial evaluation procedures are then followed and the student must meet initial eligibility requirements.

LEAST RESTRICTIVE ENVIRONMENT

- A. Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school. The IEP team makes the decision about the child's educational placement. For children with disabilities, the special education and related services must be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The team's decision must be based on the child's needs, goals to be achieved, and the least restrictive environment for services to be provided. "Least restrictive environment" (LRE) means the child is provided special education and related services with peers who are not disabled, to the maximum extent appropriate. The IEP team must consider how the child with a disability can be educated with peers without disabilities to the maximum extent appropriate, and how he or she will participate with children without disabilities in other activities such as extracurricular and nonacademic activities.
- B. Placement decisions for all children with disabilities, including preschool children with disabilities, must be determined annually, be based on the child's IEP, and be as close as possible to the child's home. Additionally, each child with a disability must be educated in the school the child would attend if the child did not have a disability, unless the child's IEP requires some other

arrangement. LRE does not require that every child with a disability be placed in the general education classroom regardless of the child's individual abilities and needs. The law recognizes that full time general education classroom placement may not be appropriate for every child with a disability. Districts must make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. This requirement for a continuum reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each child with a disability. The continuum of alternative educational placements include instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

- C. In determining the educational placement of a child with a disability (including preschool children with disabilities), the district ensures that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. IEP teams, including the parents, must make each child's educational placement decisions on an individual basis. Placement decisions must be based on the child's IEP and must be determined at least annually. For children with disabilities, the placement should as close to the child's home as possible, and be in the school the student would normally attend, unless other factors determine this is not possible.
1. The team must consider each child's unique educational needs and circumstances, rather than the child's category of disability. Placement decisions should allow the child with a disability to be educated with nondisabled children to the maximum extent appropriate.
 - a. The first placement option considered for each child with a disability is the general education classroom in the school that the child would attend if not disabled, with appropriate supplementary aids and services to facilitate this placement. Therefore, before a child with a disability can be placed outside of the general education environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the general education classroom setting must be considered.
 - b. If a determination is made that the child with a disability can not be educated satisfactorily in the general educational environment, even with the provision of appropriate supplementary aids and services, that child could be placed in a setting other than the general education classroom.
 2. Federal and state regulations also preclude removing a child from a general education class just because the general curriculum must be modified to meet his or her individual needs.
 - a. If an entirely different curriculum is needed for the child's alternate goals, it needs to be determined if appropriate special education supports (for both the child and teacher) can be appropriately provided within the context of the general education classroom.
 - b. It is not the intent to have the general education teacher devote all or most of his or her time to the child with a disability or to modify the general education curriculum beyond recognition.
 - c. A child's removal from the general education environment can not be based solely on the category of disability, configuration of the delivery system, availability of special education and related services, availability of space or administrative convenience.

D. The district ensures that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the LRE

1. Although each school is not required to establish or maintain all options on the continuum, it must make an option available if the individual needs of a child require a specific placement option.
2. The continuum includes various educational settings, such as
 - a. general education class,
 - b. special classes,
 - c. special schools,
 - d. home instruction,
 - e. instruction in hospitals, and
 - f. instruction in institutions
3. This continuum of various types of classrooms and settings in which special education is provided is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully with other children without disabilities to the maximum extent appropriate.
4. In addition, although each school building is not required to be able to provide all the special education and related services for all types and severities of disabilities at the school, the district has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate.

E. Harmful Effects

1. The IEP team must also consider possible harmful effects in determining the educational placement, both in terms of the general education setting and a more restrictive setting.
 - a. The team must consider the distance that the child would need to be transported to another school, if not in the home school (e.g., length of bus ride, importance of neighborhood friendships, and other such considerations).
 - b. In addition, potential disadvantages of being removed from the general education setting must be assessed (such as, what curriculum content will the child miss when out of the classroom, etc.). Parents and other team members, including the child's general education teacher, should discuss openly the possibility of supplementary aids and services, and other supports, that would allow the child to remain in the general education setting. A part of this discussion must include what is needed for the child to be able to participate and progress in the general education curriculum.
2. The IEP team must also consider other harmful effects such as those that may exist when it may be inappropriate to place a child in a general education classroom.
 - a. The IEP team may consider the well-being of the other children in the general classroom (e.g., would being in the classroom impede the child's or the ability of other children to learn). Courts have generally concluded that, if a child with a disability has behavioral problems that are so disruptive in a general education classroom that the education of other children is significantly impaired, the needs of the child with a disability generally can not be met in that environment.

- b. If the IEP team making the placement decision determines, that even with the provision of supplementary aids and services, the child's IEP could not be implemented satisfactorily in the general education environment, that placement would not be the LRE placement for that child at that particular time, because her or his unique educational needs could not be met in that setting.

F. The process for determining the LRE must be individualized for each child with a disability, including preschool age children, children in public schools, private schools, or other care facilities. Removing a child from the general education classroom must not occur unless the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services can not be achieved satisfactorily. The general education environment encompasses general education classrooms, and other settings in schools such as lunchrooms and playgrounds in which children without disabilities participate.

- 1. When determining LRE, IEP teams must consider:
 - a. Whether the child's IEP can be implemented in the regular educational environment with the use of supplementary aids and services.
 - b. Whether placement in the regular classroom will result in any potential harmful effect on the child or on the quality of services that he needs.
 - c. Whether placement in the regular classroom, even with appropriate behavioral interventions, will significantly impair the learning of classmates.
 - d. Program modifications or supports for teachers and staff may need to be provided to enable the child:
 - (1) to advance appropriately in attaining the annual goals listed on the IEP,
 - (2) be involved in and make progress in the general curriculum and participate in extracurricular and nonacademic activities, and
 - (3) be educated and participate with other children with and without disabilities in these activities, as appropriate.
 - e. The supplementary aids and services, and other supports, that may be needed for the child to be in the general education class, other education-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. Examples of supplementary aids and services may include
 - (1) paraeducator or interpreter services,
 - (a) In the case of a child who is deaf or hard-of-hearing, a sign language interpreter may be needed to enable the child to participate in the general education classroom.
 - (b) The sign language interpreter would sign what the teacher and children say, and if necessary voice what the child who is deaf or hard-of-hearing signs.
 - (c) The teacher and children may need training about communicating through an interpreter, how best to communicate with the child, and the interpreter's role on the educational team.
 - (2) assistive technology devices and services,

- (a) Assistive technology needs of the child may also require training and ongoing technical assistance for teachers and other staff members.
 - (b) For example, if a communication device is used, district personnel and parents may need training to be able to use the system initially and thereafter when the device is updated with new vocabulary.
- (3) resource room and itinerant services to be provided in conjunction with regular class placement.
- f. The nonacademic and extracurricular services and activities available to the student. The district must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in district sponsored nonacademic and extracurricular settings. This requirement also applies to children who are being educated solely with others who have disabilities, including those in public schools, private institutions or other care facilities. The IEP team is responsible for considering how the child with a disability can participate with children who do not have a disability in a wide range of possible nonacademic and extracurricular services and activities to the maximum extent appropriate
- 2. The district ensures that all teachers, administrators, related services personnel know their responsibilities in ensuring LRE, and that the staff is provided with the needed technical assistance and training. Considerations might include:
 - a. providing written information to staff; offering ongoing in-service training,
 - b. professional development,
 - c. results-based staff development;
 - d. individual technical assistance; or
 - e. mentoring by experienced teachers and administrators.

G. EARLY CHILDHOOD LEAST RESTRICTIVE ENVIRONMENT

- 1. For preschool children ages 3 through 5 with disabilities, placement and LRE requirements are the same as for school-aged children. This means that preschool children with disabilities must have a continuum of placement options available and have the right to be educated with their peers without disabilities to the maximum extent appropriate. As with school-aged children, the needs of preschoolers are to be considered individually, and the individual needs of the child would determine the most appropriate setting for services to be provided. Most preschoolers benefit from placement in a preschool program with typically developing peers.
- 2. Lexington School District Four provides early childhood services to children without disabilities in 3 and 4-year-old at-risk preschool programs and may consider placement in this program for LRE purposes. The district may seek alternative means to provide inclusive options for young children through collaborative relationships with private preschool programs or other community-based settings at the district's discretion. If a preschool child with a disability is already attending a general education preschool program, the IEP team should consider whether special education and related services can be provided in that setting with the use of supplementary aids and services, or supports for district personnel.

3. Various educational placement options are possible and the district may choose appropriate option to meet the LRE requirements, both within the community and at the school. The key question for the IEP Team to consider is where this child would be if she or he did not have a disability. The full continuum of placement options, including integrated placement options with typically developing peers, must be available to preschool children with disabilities. Examples include
 - a. Head Start,
 - b. community-based preschools (may be in churches, whether or not religiously affiliated),
 - c. child care centers or family child care homes, mothers'-day-out programs,
 - d. Title I programs,
 - e. at-risk 3-4-year-old preschools,
 - f. migrant or bilingual programs,
 - g. play groups, and
 - h. other such early childhood programs.
4. For children who are age 5 by September 1, kindergarten would be the least restrictive environment, to the extent appropriate.

CHANGES IN STUDENT PLACEMENT

If the current service delivery model (identification, model, location) is not appropriate for a given student to be successful, the following procedures should be followed:

- A. The Special Education Teacher and/or Speech/Language Therapist consults with the Placement chairperson and the School Psychologist to discuss alternative strategies for implementation in the current setting. This may also include a referral to RtI team for additional interventions in general education.
- B. The Special Education Teacher and/or Speech/Language Therapist monitors the implementation of the alternative strategies for a specified period of time and reports the degree of progress to the School Psychologist.
- C. The Special Education Teacher and/or Speech/Language Therapist keeps the parents informed of alternative strategies and the student's progress.
- D. If sufficient progress has not occurred, additional special education services may be considered by the IEP team, such as a change in supplementary aids and services/accommodations and/or an increase in resource or related services. Additional evaluations (consideration for other areas of disability) may also be considered. If an RTI team has been monitoring general education interventions for a student already identified as a student with a disability, that determination/recommendation must be made by the IEP team utilizing the re-evaluation process.
- E. If maximum resource services are deemed insufficient, self-contained placement should be considered by the IEP team.
- F. Changes in identification/eligibility, placement model or school locations are decisions made by the student's IEP team, including parental notice and participation. If it is necessary to revise any annual goals and/or objectives, change any services or accommodations, or change the amount of time the student is assigned to special education as stated in the IEP, an IEP meeting must be conducted in accordance with all district, state, and federal requirements. See IEP Procedures.

- G. The IEP team will determine if additional reevaluation data are needed in consideration of a change in placement. If additional reevaluation data are needed, the procedures for reevaluations under IDEA04 will be followed and a reevaluation plan will be developed and implemented. See Reevaluation Procedures.
- H. Changes to more restrictive placements should be discussed with the Director of Special Services before IEP meetings are scheduled.
- I. If extenuating circumstance warrant, the Placement Chairperson in consultation with the Coordinator/Director of Special Services may approve modification of Steps 1-4.
- J. For self-contained placement to be consistent with state and federal requirements of providing special education in the least restrictive environment (LRE), self-contained placement should be considered only after lesser restrictive placements have been tried. Exceptions to this may be made when the severity of the student's disabling condition prohibits successful regular classroom participation for even part of a school day. If a student is returning from a restrictive placement such as a residential school, day treatment program or hospital, the Director of Special Services ***must be consulted regarding*** appropriate placement options and any needed evaluations.
- K. Following consultation with appropriate school staff and parents regarding the proposed change in placement, the Placement Chairperson follows procedures for an IEP meeting.
- L. If the parent is not present at the IEP meeting and due notice and opportunity to participate have been provided the parent, the Placement Chairperson or Speech/Language Therapist sends the parent the Follow-up Letter to IEP and Prior Written Notice .
- M. Immediately following the meeting, if any changes in identification/disability classification have occurred, the Placement Chairperson or Speech/Language Therapist must complete the Add/Change Form and forward to the Attendance/PowerSchool clerk and District Office.
- N. The School Psychologist and/or Placement Chairperson checks the records for completeness and forwards all original paperwork, except a copy of the IEP, to Special Services.

ANNUAL IEP REVIEW PROCEDURES

- A. At the beginning of each school year, the district shall have an IEP in effect for each student with a disability in its jurisdiction.
- B. In accordance with IDEA04, a student's Individualized Education Program (IEP) must be reviewed periodically, but not less than annually, and no later than one calendar year from the previous IEP meeting.
- C. The IEP team reviews the IEP and student's progress in meeting stated goals and objectives and determines if appropriate special education and related services are offered to the student.
- D. Annual IEP review meeting require that all IEP procedures be followed, including parent notice and opportunity to participate. See IEP procedures.
- E. The annual review meeting and the development of the IEP for the next school year will be completed prior to the last day of the current school year.

- F IEP dates should be written as follows:
1. Effective dates for implementing the IEP will be written for a calendar year, excluding summer months.
 2. IEP meeting date is the date the actual IEP meeting is held. IEP must be implemented within the timeframe recommended by the IEP team.
 3. Assessment for Present Levels of Performance must be current.
- G. Reevaluations may be held during the annual IEP meeting. All reevaluations including psychological, speech, or vision, hearing, or medical should be considered for merging for a common meeting.

The annual IEP meeting date becomes the "new" reevaluation date.

If the reevaluation plan indicates additional data needed, the additional data must be completed in a timely manner and a subsequent IEP meeting is held for the reevaluation. See Reevaluation Procedures.

- H. During the annual IEP review, the current IEP must be reviewed and the new IEP developed. Prior Written Notice must be provided to the parent with a copy of the new IEP.
- I. If the parent was not in attendance at the annual IEP review meeting and had been given due notice and opportunity to participate, following the meeting the Placement Chairperson or Speech/Language Therapist send the parent a copy of the Follow-up Letter to IEP(Enrich) along with a copy of the IEP and Prior Written Notice.
- J. If changes in identification or placement occur in the IEP at the annual IEP Review meeting that require parental consent, the appropriate procedures and documentation must be done and copies of all required paperwork must be sent to Special Services.
- K. If changes occur in the IEP at the annual IEP Review meeting that affect changes in identification/disability, the Placement Chairperson sends the Add/Change Form to the PowerSchool clerk immediately upon receiving parental consent.
- L. For students that qualify for Extended School Year (ESY) services, the special education teacher and/or related service provider completes the ESY eligibility (Enrich) for each student recommended for ESY services. The multidisciplinary team forwards the written recommendations to Special Services.

SPECIAL IEP REVIEW MEETING

- A. Special reviews of a student's IEP may be held in addition to the required IEP annual review meeting. A special review may be requested by parents or school personnel to consider changes in the IEP for services, accommodations, goals and objectives, identification or placement. The Invitation Letter (Enrich) and Prior Written Notice(if applicable)(Enrich) must specify the reason for the Special Review.
- B. Special IEP reviews may be needed periodically to address a student's Functional Behavior Assessment (FBA)(Enrich), Behavior Intervention Plan (BIP)(Enrich), and/or Manifestation Determination Review.

- C. For a special IEP review, all IEP procedures, including parental notice and participation, and participation of required participants must be implemented. For meetings on behavior, the parent must be provided the parent information on discipline procedures for students with disabilities.
- D. If a parent is not in attendance at a special IEP review and has been given due notice and opportunity to participate, the Placement Chairperson or the Speech/Language Therapist must send the parent the Follow-up Letter to IEP (Enrich), Prior Written Notice(Enrich) and copies of the updated IEP indicating the changes made.
- E. If the parent is not in attendance at a special IEP review and has been given due notice and opportunity to participate, and the IEP indicates a change in identification and/or placement requiring parent consent after two documented notices on two different dates, without response the change in identification/placement may be made after consultation with the Director of Special Services.
- F. Original copies of the IEP and related paperwork are sent to Special Services following a special IEP review.
- G. Regular education teachers and other staff providing services to the student must have access to the IEP regarding accommodations and/or services to be provided that affect the implementation of the IEP.

IEP AMENDMENTS AND TEAM MEMBER EXCUSALS

- A. The IDEA provides the possibility that certain IEP team members might be excused from attending either a part or an entire IEP meeting. Allowing IEP team members to be excused from IEP meetings is intended to provide additional flexibility to parents in scheduling IEP team meetings and to avoid delays in holding meetings when a team member can not attend due to a scheduling conflict. This provision applies specifically to the following IEP members:
 - 1. The child's regular education teacher, if the child is or may be participating in the regular education environment;
 - 2. The child's special education teacher, where appropriate, the child's special education provider;
 - 3. The district representative who is qualified to provide or supervise the provision of specially-designed instruction and an individual who can interpret the instructional implications of the evaluation results.
 - 4. Note that written agreement or consent is needed to excuse **required** members of the IEP team. Neither written agreement nor consent is needed to excuse an IEP team member who has knowledge or special expertise and attends at the invitation of the parent or district since such individuals are not required members of the IEP team.
- B. The requirements to excuse a member of the team depend upon whether or not the member's area of expertise will be discussed at the meeting. The requirements in one situation call for an "agreement" between parents and the district; in the other situation, parental "consent" is required. An agreement is not the same as consent, but instead refers to an understanding between the parent and the district. "Consent" refers to informed written consent. This level of consent is not required

for “agreement.” Agreement is less formal and does not trigger the IDEA’s procedural safeguard and the other requirements that must be met when requesting informed parental consent.

- C. When a member of the IEP team’s area of expertise is **not** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions:
1. The parents and district **agree** that the member’s attendance is not necessary and the parents’ and
 2. The district’s agreement is **in writing**. This written agreement must be sent as an attachment with the PWN for the meeting and signed prior to the meeting.
 3. If a member is excused by written agreement and it becomes evident during the IEP meeting that the absence of the excused member inhibits the development of the IEP, the team could reconvene after the needed information is obtained either by having the member attend or having the member submit the information in writing as long as the IEP is developed in a timely manner.
- D. When a member of the IEP team’s area of expertise **is** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions:
1. The parents and district **consent** to excuse the member and
 2. The member submits in writing to the parent and team input into the development of the IEP before the meeting. The IDEA does not specify how far in advance of the meeting a parent must be notified of the district request to excuse a member, but the ideally the district would provide the parents with as much notice as possible and have the agreement or consent signed at a reasonable time period prior to the meeting.
- E. Parents’ rights are protected since parents can request an additional IEP meeting at any time and do not have to agree to excuse a team member. (Federal Register, August 14, 2006, p. 46674). Parents who want to confer with an excused team member may ask to do so before agreeing or consenting to excusing the member. The district may not routinely or unilaterally excuse IEP team members as parent agreement or consent is required for **each** excusal. It is up to the district to determine the individual with the authority to make the agreement with the parent to excuse a team member. The designated individual must have the authority to bind the district to the agreement with the parent or to provide consent on behalf of the district. Neither the IDEA nor the state has specifically identified a timeframe within which the district must complete the agreement or consent since to do so would effectively counter the intent of providing additional flexibility to parents in scheduling IEP meetings. If the district requests the excusal of a team member at the last minute or the parent needs additional time or information to consider the request, the parent always has the right not to agree or consent to the excusal.
- F. When any member is excused from an IEP meeting, information must be shared with this team member. In fact, the IDEA requires that the child’s IEP must be accessible to each regular education teacher, special education teacher, related services provider, and other service providers who is responsible for the implementation regardless of whether that team member was present at the IEP meeting.
- G. When a member of the IEP wishes to make a minor change to the IEP without holding an IEP team meeting, the special education teacher managing the student’s file will notify the parent of the amendment and complete the appropriate paperwork.

DISCONTINUING SPECIAL EDUCATION SERVICES/DISMISSAL FROM SPECIAL EDUCATION

A. No longer eligible for services

1. When a parent or school personnel suspect that a child is no longer eligible for special education services and related services, a reevaluation must be conducted prior to the child's dismissal from the program to determine if the child is no longer a child with a disability. As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments.
2. If it is determined by the IEP team through a reevaluation that the child is no longer a child with a disability, the district may recommend dismissal from special education. All recommendations for discontinuing services must be reviewed by the psychologist and Director of special services or his/her designee prior to the IEP/Dismissal Committee meeting. When dismissal is recommended, the parents are notified prior to proposed termination of services through the Letter of Invitation –IEP (Enrich). While parental consent is not necessary for dismissal, due process procedures may be invoked in cases of irreconcilable differences with regard to a change in placement

B. Revocation of parental consent

1. A parent or student who has reached the age of majority may revoke consent for the continued provision of special education and related services. This revocation must be provided to the district in writing so that both the parent and the district have documentation that the child will no longer receive special education and related services. When parents revoke their consent for special education services, the revocation is not retroactive but becomes effective on the date that it was revoked. Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the consent was revoked.
2. Once the district receives a parental revocation of consent, in writing, for all special education and related services for a child and provides Prior Written Notice (Enrich), the district must, within a reasonable time, discontinue all special education and related services to the child. In situations where a parent disagrees with the provision of a particular special education or related service and the parent and district agree that the child would be provided with a FAPE if the child did not receive that service, the district should remove the service from the child's IEP. If, however, the parent and district disagree about whether the child would be provided with a FAPE if the child did not receive a particular special education or related service, the parent may use due process procedures to obtain a ruling that the service with which the parent disagrees is not appropriate for their child. The parent may not revoke consent for a particular service.

3. Once the district has received the written revocation of services from the parent, the director of special services or the director's designee must promptly provide the parent or student who is 18 or older with PWN regarding the change in educational placement and services that will result from the revocation. The district may ask why the parent is revoking consent, but may not require the parent to provide an explanation. The district's inquiry may provide an opportunity to discuss and resolve the problem, but may not delay or deny the discontinuation of services.
4. The PWN must be provided a reasonable time before the district discontinues services and must give the parent information and time to fully consider the change and its implications. This PWN will ensure that parents are fully informed of the educational services and supports that they are declining. The PWN must inform the parent, as plainly as possible, that the student will no longer receive any special education or related services; nor will the student be entitled to the protections under the IDEA disciplinary procedures if he or she violates the district's disciplinary code of conduct. The PWN must be clear and specific so that the parent or student can make an informed decision. The district may not discontinue services until the PWN has been provided to the parent. If the student who has reached age 18 revokes consent for services, the district must provide any notice (including PWN) to the student and parents. The district may not use the dispute resolution mechanisms in the IDEA (mediation and due process) when a parent revokes consent. The district cannot override a parent's revocation of consent for the continued provision of services.
5. Revocation of consent releases the district from responsibility and liability for providing a FAPE from the time the parent revokes consent in writing until the time, if any, that the child is again evaluated and deemed eligible for special education services and related services. The district will not be deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to discipline protections under the IDEA. Once a parent has revoked consent and PWN has been provided, the child is considered to be a general education student. Teachers are no longer required to provide previously identified IEP accommodations in the general education environment. The revocation is for all special education services.
6. Once a parent revokes consent for a child to receive special education and related services, the child is considered a general education student. Therefore, if a parent revokes consent after the school year begins, but before administration of the annual state assessment, the district is no longer required under the IDEA to provide accommodations that were previously included in the child's IEP.
7. The parent's revocation of consent is not retroactive; therefore, the district would not be required to amend the child's educational records to remove any references to the child's receipt of special education and related services. The parent still retains the right, however, to request amendments to information that is inaccurate or misleading or violates the privacy or other rights of the child.
8. Children who have previously received special education services and subsequently had consent revoked are treated no differently in the child find process than any other child. Ensuring that general education teachers make appropriate referrals for children suspected of having a disability, which would include the referral of children whose parents have previously revoked consent, is consistent with the child find responsibility.
9. After withdrawing their child from special education services, the parent maintains the right to subsequently request an initial evaluation to determine if the child has a disability

and needs special education. There is no limit as to how frequently a parent may revoke consent and then subsequently request an initial evaluation. If a child who had previously received special education services and had consent revoked was again referred for an evaluation, the district must treat this referral as an initial evaluation rather than as a reevaluation. Depending on the data available, a new evaluation may not always be required. On the basis of the review of existing evaluation data and input from the child's parents', IEP team, and other qualified professionals, the group would identify what, if any, additional data were needed. The parent retains the right to refuse to provide consent for an initial evaluation.

10. Although special education and related services must be discontinued promptly upon receipt of the written revocation of parent consent and the sending of PWN, the district may consider the appropriateness of a 504 evaluation under Section 504 of the Rehabilitation Act of 1973 for the child.

C. Graduation

1. All students receiving special education services will receive a regular high school diploma at the completion of their secondary program if they meet graduation requirements of the state. A regular high school diploma does not include an alternative diploma that is not fully aligned with the state's academic standards, such as a certificate of attendance, an occupational diploma/certificate, or General Educational Development (GED) (Federal Register, August 14, 2006, p. 46580). If a modified or differentiated diploma or certificate is used for students receiving special education services, however, such diplomas or certificates do not end eligibility for special education services.
2. When the student enters high school, progress toward graduation must be monitored annually and recorded on an official transcript of credits. Some students may require services to age 21 to meet IEP goals. The district's obligation to provide special education services ends (a) when the student meets graduation requirements and receives a regular high school diploma, (b) at the end of the school year in which the child reaches age 21, or (c) when an evaluation shows that the child is no longer eligible for special education services.
3. Students with disabilities must be afforded the same opportunity to participate in graduation ceremonies as students without disabilities even if the IEP team determines that services will continue after the student has met all of the required credits (but an official diploma has not been awarded). A student may require services to age 21 to meet IEP goals or because he or she has not obtained all of the required credits for graduation. In either case, however, the student may be allowed to participate in graduation ceremonies with his or her classmates.
4. No reevaluation is required prior to exiting a student due to graduation with a standard high school diploma. However, before the student completes the last semester of high school in which she/he is expected to graduate, the district must provide the student (if over age 18) and the parents with PWN of the discontinuation of services at the end of the school year along with a Summary of Performance. The PWN will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Parental consent is not required when a child graduates with a regular diploma.

D. Services to age 21

1. Lexington Four ensures that all students with disabilities between the ages of 3 and 21, inclusive, have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. Students who turn 21 after September 1 of the school year, and have not received a high school diploma, will be permitted to enroll and complete the school year in an appropriate program as determined by their IEP team. The school must provide the student and the parents with PWN and Summary of Performance at the end of the school year in which the student turns 21; however, parental consent is not required. A reevaluation is also not required when a student ages out of eligibility for services upon turning age 21.
2. Even when the student or parent states that he or she does not intend to return to school for the next school year, the IEP team must provide the student with notice that he or she is eligible to continue receiving services to age 21 and develop an IEP for the student.

E. Summary of performance

1. A Summary of Performance (SOP) is required under the reauthorization of the IDEA for a child whose eligibility for special education services terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The district must provide the child with a summary of the child's academic achievement and functional performance which must include recommendations on how to assist the child in meeting the child's postsecondary goals. The purpose of the SOP is to transfer critical information that leads to the student's successful participation in postsecondary settings. It includes a summary of the achievements of the student with current academic, personal, and career/vocational levels of performance. Information may be included as part of the summary based on assessment findings and team input. Assessment data and accommodations included in the summary should be written in functional terms easily understood by the student. Any supporting documents are to be appropriately referenced and included with the summary. Signatures by the student and IEP team members are encouraged as verification that the contents of the summary have been explained but are not required.
2. The SOP must, at a minimum, address the following:
 - a. Academic achievement: Information on reading, math, and language grade levels, standardized scores, or strengths.
 - b. Functional performance: Information on learning styles, social skills, independent living skills, self-determination, and career/vocational skills.
 - c. Recommendations: Team suggestions for accommodations, assistive services, compensatory strategies for postsecondary education, employment, independent living, and community participation.
3. The SOP is intended to assist the student in transition from high school to higher education, training and/or employment. This information is helpful under Section 504 and the Americans with Disabilities Act (ADA) in establishing a student's eligibility for reasonable accommodations and supports in postsecondary settings. It is also useful for the Vocational Rehabilitation Comprehensive Assessment process. However, recommendations in a student's SOP do not assure that an individual who qualified for special education in high school will automatically qualify for accommodations in a postsecondary education or employment setting. Post secondary settings will continue to

make ADA and Section 504 eligibility decisions on a case-by-case basis based on their criteria.

4. Since the SOP must be provided to the student with a disability whose eligibility terminates due to graduation or age, it is reasonable to conclude that the SOP must be completed and provided to the student by the end of the final year of a student's high school education. That does not mean that it can not be completed and provided to the student prior to graduation. The timing of completion of the SOP may vary depending on the student's postsecondary goals. If a student is transitioning to higher education, the SOP may be necessary as the student applies to a college or university. Likewise, this information may be necessary as a student applies for services from state agencies such as vocational rehabilitation. In some instances, it may be most appropriate to wait until the spring of a student's final year to provide an agency or employer the most updated information on the performance of the student.

F. Student drops out of school

1. Under S.C. Code Ann. § 59-65-30 (2004), students are allowed to drop out of school at age 17 and may at some point obtain a GED. If for a student with a disability drops out of school, documentation to that effect must be placed in the student's confidential file. The district must inform the parents that special education services continue to be available to the student through age 21. Best practice recommends that the district send a letter to the parents, stating that the district remains ready to provide special education services to their child. If the student reenrolls, the previous IEP must be implemented until a new IEP is developed. The new IEP should be developed as soon as possible after the student reenrolls.
2. If a student drops out of school, the district is obligated to consider the student's a FAPE entitlement very carefully. The district has an obligation to report the student's truancy to the proper authorities if the student is younger than age 17.
3. If a student drops out of school, no PWN, consent, or reevaluation is required. However, reevaluation may be needed if the students were to reenroll and a new IEP may need to be developed.

G. Prior written notice and consent

The following chart may be useful in determining when a reevaluation, PWN and parent consent, as well as an SOP are needed:

Reason for Discontinuing Services	Reevaluation Required	Prior Written Notice Required	SOP Required
No longer eligible for special education services and related services	Yes	Yes	No
Graduation	No	Yes	Yes
Services at age 21	No	Yes	Yes
Drops out of school	No	No	No

GUIDELINES/PROCEDURES FOR STUDENTS WITH DISABILITIES ATTENDING ADULT EDUCATION PROGRAMS

School districts are responsible for ensuring provision of a free, appropriate, public education in the least Restrictive environment for all students with disabilities age 3 to 21, unless they have earned a standard high school diploma prior to age 21. Consistent with this requirement, school districts are responsible for provision of special education and related services to students with disabilities who attend an adult education program (AEP). To accomplish this requirement, the following procedures will be implemented. Lexington Four shares Adult Education programs with Lexington Two located at our Early Childhood Center.

- A. When a student with a disability seeks enrollment in an adult education program (AEP), the director of the AEP will contact the special education director of the student's district of residence. The Director of Adult Education will convene an IEP team consisting of the student's special education teacher, regular education teacher (if applicable), a district representative, a representative of occupational education, and the director of the AEP. The IEP team will first consider the student's eligibility and need for continued special education services.
1. If the team determines that the student no longer qualifies for special education after reviewing existing student data or after collection of additional data to make a determination of eligibility, the team may recommend dismissal from special education services. The student may then enroll in the AEP as a non-disabled student.
 2. If the team determines that the student continues to qualify as a student with a disability but no longer requires special education and/or related services, the team may develop an accommodations plan under Section 504 which specifies the accommodations and modifications to be provided by AEP instructor.
 3. If the team determines that the student continues to qualify as a student with a disability and needs special education and related services, the IEP team will consider the appropriateness of the AEP. The team determines whether the placement is likely to assist the student in accomplishing the goals and objectives specified in the student's IEP as well as the likelihood of the student's being successful in the AEP curriculum. If the IEP team determines that the AEP placement is not an appropriate placement for the student, the team reviews and revises the student's current IEP as necessary and recommends that the student remain in the current placement with provision of special education and related services specified in the IEP. If the student (age 18 to 21) or the parent of students age 17 or younger disagrees with the team's recommended placement and proposed IEP, the student or parent may request a due process hearing to assert the appropriateness of the AEP placement. The student may decide to enroll in the AEP without special education and related services if the student is otherwise qualified to enroll in the AEP. The district has no obligation to provide services in a placement deemed by the IEP team to be inappropriate for the student.

4. If the team determines that placement in the AEP with special education and related services is appropriate, the team will revise the IEP to specify the services to be provided in the AEP by a special education teacher. Arrangements for the provision of special education services will be made on a case-by-case basis. For example, the student may receive special education services in the student's zoned high school regardless of where the AEP is located. If the student is attending an AEP outside the student's district of residence, the student may receive the special education services from the school district in which the AEP is located through a formal agreement. In this case, the district in which the AEP is located will provide the special education and related services and will bill the student's district of residence for the actual cost of providing the services.

ALTERNATIVE EDUCATIONAL SETTINGS (AES)

IEP Alternative Educational Setting/Homebased

Students in Special Education programs may be placed in an Alternative Educational Setting which could be homebased services as part of the continuum of least restrictive environment to meet the educational needs of the student. AES/homebased placements generally are not intended to be long-term or permanent except in circumstances where the student is unable to attend school because of reasons related to his/her disability. Special education students must be placed in the AES/homebased model in accordance with their IEPs and do not need a physician's certification or a Medical Homebound form. Consultation with the Coordinator/Director of Special Services is required prior to AES/homebased placement.

When special education students are placed on AES/homebased, all the IEP procedures for a change in placement must be implemented. An IEP should be developed to appropriately reflect the special education services, goals and objectives to be provided during the AES/homebased period.

Following the IEP meeting to place a student on AES/homebased, documentation must be sent immediately to Special Services. .

Placement into Alternative Settings

An IEP meeting must be held to review student's behavior and academic levels to determine the student's most appropriate placement; a representative from Alternative Setting should attend the IEP meeting.

If the IEP team decides to change the student's placement to an Alternative Setting, the following must take place:

- The student's IEP should be revised to reflect the alternative setting in the LRE section
- The student will continue to receive special education services in the alternative setting
- If necessary, the student's BIP should be revised to support the student in the alternative setting
- The IEP team must develop a systematic review plan to help ensure the student's opportunity to transition back to a regular school placement. This review should include:
 - an IEP meeting with the home/receiving school's special education teacher and the alternative setting special education teacher in attendance
 - discussion of the student's behavior at the alternative setting and strategies/supports that were both successful and ineffective
 - Re-integration steps such as returning to the home school on a partial day schedule or other transition steps to re-connect the student with the home school

- an intake meeting is scheduled with the administrators/teachers in the alternative setting to review the alternative school information with the parent
- parent is provided all copies of the IEP amendments and Prior Written Notice before the change in placement can occur
- all staff who will be working with the student should be provided with a copy of the BIP(if applicable) and IEP accommodations

Placement Out of Alternative Settings

When the student's behavior has improved to the degree that placement back into a regular school setting is recommended, the following must take place:

- an IEP meeting is held to discuss the student's return to the home/receiving school.
- based on discussion of the student's behavior at the alternative setting, strategies/supports that were both successful and ineffective, and the requirements for success in the new setting, the student's BIP is revised to support the student in the home/receiving school setting
- the action steps needed to implement the transition plan are prepared, such as scheduling the student's return to the home school on a partial day schedule or other transition steps to re-connect the student with the home school
- the student's IEP is revised to reflect the home/receiving school setting
- parent is provided all copies of the IEP amendments and Prior Written Notice before the change in placement can occur
- all home/receiving school staff who will be working with the student should be provided with a copy of the BIP and IEP accommodations

Alternative Settings For Expelled Special Education Students

Expelled student with disabilities, according to IDEA04, continue to have the opportunity for instruction that provides for the student to progress in the general education curriculum and advance toward achieving the goals in the student's IEP at a site determined by the student's IEP team. The IEP committee shall determine the extent of service(s) for expelled special education students. The expelled student may be a candidate for the District's Alternative Academy or the ACE program, an afterschool alternative program. After the student has been expelled, the Placement Chairperson consults with the Coordinator/Director of Special Services and follows IEP procedures for change in placement.

An alternative educational setting may be considered for students during the time between a recommendation for expulsion and the decision from the district hearing officer. In the case, an IEP team may determine temporary placement such as ACE.

In some instances, following the decision from the district hearing officer, an IEP team may meet to consider an alternative education setting in lieu of expulsion.

Interim Alternative Educational Settings (45 school day removal)

A student with a disability, under IDEA04, may be subject to placement in an interim alternative educational setting for certain disciplinary reasons. If after consultation between the Principal and Coordinator/Director of Special Services, a student qualifies for removal to an interim alternative educational setting, the student's IEP team meets to determine the appropriate setting that will allow the student the opportunity to continue to progress in the general curriculum, to continue to receive IEP services that enable the student to meet the goals in the IEP, and to include services and modifications to

prevent the problem behavior from reoccurring. The Placement Chairperson will follow IEP procedures for a change in placement.

Students with disabilities may participate in any alternative educational setting available to non-disabled peers. Placement in AES must be determined on a case by case basis and the specific location and type of service must be determined by the IEP team.

MEDICAL HOMEBOUND/HOMEBASED SERVICES

- A. **Medical Homebound:** If a student with a disability is placed on medical homebound for medical reasons by a licensed physician, the school-based homebound coordinator will notify the placement chairperson that the student has been deemed eligible for homebound instruction. The placement chairperson will convene the IEP team to review and revise the IEP to reflect a description of the planned medical homebound services.
- B. **Homebased Services:** If a student with a disability is being considered for homebased placement, the placement chairperson must notify the Director of Special Services prior to convening the IEP team meeting to determine if homebased services are appropriate. The team will review and revise the IEP to reflect a description of the homebased services.
- C. For EFA accounting purposes students placed on homebound instruction are coded as HO while students on homebased instruction are coded in the student's current disability category.

VIRTUAL SCHOOLS

Students with disabilities may participate in virtual and the online courses to same extent as their nondisabled peers. Upon enrollment of a student with a disability in a virtual or online course, the placement chairperson must notify the office of Special Services. For specific procedures for enrolling in and/or considering virtual/online course participation.

CHARTER SCHOOLS

- A. Children with disabilities, who attend public charter schools are served in the same manner as the district serves children in its other schools. The district is responsible for the provision of a FAPE and other the IDEA requirements in the same manner as it provides for other schools in the district. This includes:
 - 1. providing supplementary and related services on site at the charter school to the same extent the district has a policy or practice of providing these services on the site of its other public schools;
 - 2. providing funds to the charter school on the same basis as it provides funds to the other schools in the district;
 - 3. distributing other federal funds to the charter school as it distributes funds to the other schools in the district, consistent with the state's charter school law;

- B. The public charter district is responsible for the provision of a FAPE and all other the IDEA requirements for children with disabilities who attend the state's public charter district, including virtual schools within that district, are also served in the same manner.

SURROGATE PARENTS

A. Determination of Need

1. For special education purposes, a surrogate parent is not necessary if the person enrolling the student meets one of the following definitions of a "parent" as defined in IDEA:
 - a. A biological or adoptive parent of a child; or
 - b. A foster parent; or
 - c. A guardian generally authorized to act as the child's parent or authorized to make educational decision for the child (but not the state if the child is a ward of the state); or
 - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.
2. If the person enrolling the student does not meet any of the definitions listed in 1 above, a surrogate parent must be appointed. A surrogate parent must also be appointed when a parent requests the appointment in writing. The surrogate parent will then represent the parent in making educational decisions for the student. To determine if a student is in need of a surrogate parent, the Placement chairperson
 - a. Reviews the referral information to determine if the student's caregiver is the parent, legal guardian, other family member, state agency or other.
 - b. Reviews information included in the Health and Developmental History relative to the identity of the student's caregiver and his or her relationship to the student.
 - c. If the Placement chairperson determines that the student is residing in a foster home or otherwise in custody of a state agency, the Placement chairperson contacts the Social Worker who obtains verification from the custodial agency relative to the status of the parent's educational rights.
 - d. If the Social Worker determines that the student is a ward of the state, the Social Worker obtains a copy of a court order or other written verification of the student's status as ward of the state from the custodial agency and attaches it to the Determination of Need/Surrogate Parent
 - e. If the student is transferring as a result of placement in a group home or foster home or is living with person other than the parent or is presented for enrollment by another agency (e.g., DSS, DJJ, SAFY, Mentor, Continuum of Care), the Determination of Need for Surrogate Parent (Form No. 54) must be completed. A court order or other legal documentation is required to establish custody and parental rights related to education.
 - f. If parents retain all educational rights, then the Placement Chairperson and Speech Therapist includes the parents in all special education notices and meetings and

parental consents. In cases where the parent does not have educational rights, a surrogate parent would need to be appointed. Caseworkers or employees of agencies (e.g., DSS, SAFY, Mentor, Continuum of Care) cannot act and provide consent as a parent even if that agency has the educational rights for the child. A Foster Parent may be appointed as a child's surrogate parent. See Surrogate Parent Procedures.

- g. In cases where a parent is unresponsive or lives a great distance from the child's school, Lexington School District Four may obtain written authorization from the parent to appoint a surrogate to represent the child. Parental permission for the appointment is voluntary, explicitly authorized in writing using the Parental Authorization for Appointment of Surrogate Parent and can be revoked at any time. The surrogate, once appointed, represents the child until the parent revokes authorization for the child to be represented by the surrogate.
- h. If any individual requests that a surrogate be appointed for a student, the Placement chairperson maintains written documentation of the request in the student's record and will follow procedures 1-5 to determine if the student is eligible for a surrogate parent.
- i. When a surrogate parent has been appointed, the Placement Chairperson completes the Determination of Need/Surrogate Parent, attaches all written documentation to it and maintains this information in the student's record.

B. Efforts to obtain parental involvement

1. At least ten (10) calendar days prior to assignment of a surrogate, the Placement chairperson makes a minimum of two (2) documented attempts to locate the parent. If a response is obtained from the parent prior to the ten (10) day period, then the time line is waived. These attempts may include but are not limited to a combination of the following:
 - a. Correspondence via regular mail;
 - b. Correspondence via certified mail;
 - c. Phone calls to last known phone number;
 - d. Phone calls to neighbors and relatives;
 - e. Phone calls to other agencies;
 - f. Home visits to last known address;
 - g. Home visits to neighbors and relatives, and
 - h. Visits to other agencies.
2. The Placement chairperson documents all attempts to locate the parent in the student's record. Documentation may include phone logs, narrative reports, and copies of correspondence including phone logs, narrative reports, and copies of correspondence including returned envelopes and certified mail receipts.
3. If the Placement chairperson locates the parent but determines that he or she is unwilling or unable to participate in the education decisions relative to his or her child, the Placement chairperson advises the parents of their right to have a surrogate appointed to act on the behalf of the student.
4. If the parent requests to have a surrogate assigned, the Placement chairperson attaches a copy of the parent's written request for assignment of a surrogate parent to the Determination of Need/Surrogate Parent. The Placement chairperson informs parents that parent permission for the appointment of a surrogate must be voluntary, explicitly authorized in writing, and revocable at any time. The surrogate, once appointed, may then

represent the child until such time as the parent revokes authorization for the child to be represented by the surrogate parent.

5. If the Placement chairperson determines the location of the student's parent but the parent refuses to participate in the educational decision making process and refuses or does not respond to efforts to have a surrogate assigned to represent the student, the Placement chairperson contacts the Director of special services who may initiate a due process hearing to gain consent for evaluation or placement.
6. The Director assigns a surrogate for the student after obtaining consent for evaluation/placement or following the decision of a hearing officer for the placement to take effect.

C. Qualifications

1. To determine if the potential surrogate parent meets Federal and State eligibility requirements, the Placement chairperson requests that the individual complete the Surrogate Parent Verification of Eligibility. Caseworkers or employees of agencies (e.g., DSS, SAFY, Mentor, Continuum of Care) cannot act and provide consent as a parent even if that agency has the educational rights for the child. In most circumstances, a Foster Parent meets the definition of a parent and does not have to be appointed as a Surrogate Parent.
2. The Placement chairperson reviews the completed Surrogate Parent Verification of Eligibility to ensure that the potential surrogate meets all eligibility requirements and understands the student's cultural and linguistic background.

D. Assignment

1. When the Placement chairperson has selected a surrogate, either from the registry listing or an eligible relative or other person who knows the child, he or she sends the Assignment of Surrogate Parent to the surrogate.
2. A copy of the letter of assignment is maintained in the student's record.
3. The Placement chairperson meets with the surrogate, the teacher and other school personnel who are knowledgeable about the student's educational needs. The Placement chairperson reviews the role and responsibility of the surrogate parent in the educational decision-making process, provides a copy of the Parent Handbook to Special Education to the surrogate, and reviews parents' due process rights as outlined in the handbook. The teacher or other appropriate school personnel provide information relative to the student's disability or suspected disability and review any resulting educational implications.

E. Removal

1. If it is necessary for a surrogate to resign for personal reasons (e.g., moved, illness, other commitments), the Director of special services or his/her designee maintains written documentation in the student's record of the date and reason for the resignation.
2. If the Director of special services or his/her designee or Principal's Designee determines that the surrogate is no longer eligible due to:
 - a. Conflict of interest,

- b. The parent appears to represent the student,
 - c. Student is no longer eligible for special education, or
 - d. Student reaches age of majority and is capable of representing him or herself,
3. If the Director of special services or his/her designee or Principal's Designee determines that the surrogate is not fulfilling his or her responsibilities (e.g., repeatedly missing scheduled meetings, failing to respond to correspondence relative to the scheduled meetings or conferences), the Director of special services or his/her designee advises the surrogate in writing of his or her removal and the reason and maintains a copy of this correspondence in the student's record.
 4. The Director of special services or his/her designee determines if the student continues to need a surrogate parent. If the student remains in need of surrogate representation, the Director of special services or his/her designee determines if an eligible caregiver or relative is available and willing to serve as surrogate. If none is eligible or available, he or she selects a volunteer from the registry.
 5. The Director of special services or his/her designee maintains written documentation (e.g., phone log, narrative report, copies of correspondence) relative to any disagreement of the choice of a surrogate parent. In the event that a due process hearing is conducted as a result of disagreement about the choice of a particular surrogate parent, this documentation may be needed as evidence.

F. Procurement

1. To recruit surrogate parent volunteers, the Placement chairperson may contact, by telephone or letter, churches, civic organizations, and other organizations/individuals interested in disabled students.

CONFIDENTIALITY

- A. Confidentiality of educational records is a basic right shared by all students in the district and their parents. Confidentiality regulations apply to all districts and private schools that accept federal funds. In addition, all school personnel (including contracted employees) are governed by confidentiality requirements of the IDEA, which apply to students with disabilities. All people involved in special education should be aware of the laws and regulations ensuring that all records and information will be kept secure and remain confidential.
 1. Each school shall annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to:
 - a. Inspect and review the student's education records;
 - b. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
 - c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that § 99.31 of FERPA authorize disclosure without consent; and
 - d. File a complaint under §§ 99.63 and 99.64 concerning alleged failures by the district to comply with the requirements of FERPA.

- e. The procedure for exercising the right to inspect and review education records.
 - f. The procedure for requesting amendment of records.
2. The district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The district shall effectively notify parents who have a primary or home language other than English. This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place.
3. Definitions of terms used are as follows
- a. **Personally identifiable** means information includes information such as the name of the child, child's parents, or other family member; address; personal identifier such as the child's social security number or student number; or list of personal characteristics or other information that would make it possible to identify the child.
 - b. **Destruction** means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so no one can be identified.
 - c. **Educational records** means any document or medium on which information directly related to one or more students is maintained by a participating agency.

B. Access Rights

- 1. FERPA and Federal and State special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.
- 2. Educational records include, but are not limited to:
 - a. academic work completed and level of achievement
 - b. attendance data
 - c. scores and test protocols of standardized intelligence, aptitude, and psychological tests
 - d. interest inventory results
 - e. health data
 - f. family background information
 - g. information from teachers or counselors
 - h. observations and verified reports of serious or recurrent behavior patterns
 - i. IEPs
 - j. documentation of notice and consent
- 3. Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 C.F.R. 99.3, states that the term "**education records**" **does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.**"
- 4. The district must prevent the disclosure to any unauthorized person of personally identifiable information pertaining to all students. **Disclosure** is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

5. FERPA regulations allow some **exceptions to the requirement to obtain parent consent before releasing records**. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations. For example, FERPA allows the school to release records to authorized individuals, such as:
- a. other school officials, including teachers at the school where the student attends, who have a legitimate educational interest;
 - b. officials of another school, school district, or postsecondary educational institution where the student is enrolled or seeks or intends to enroll if the district makes a reasonable attempt to notify the parents or the student of the disclosure at the last known address, however no notice is required if the disclosure is initiated by the parent or adult student;
 - c. authorized representatives of the US Comptroller General, US Secretary of Education, and State Educational Agencies in connection with an audit or evaluation of Federal or State supported programs, or for the enforcement or compliance with Federal legal requirements related to those programs;
 - d. disclosure in connection with financial aid for which the student has applied or received to determine eligibility, amount, or conditions of the aid or to enforce the terms and condition;
 - e. disclosure to accrediting organizations to carry out their functions;
 - f. disclosure to a parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code;
 - g. disclosure of relevant educational records to a court in a legal action initiated by the district against a parent. Also, disclosure to comply with a judicial order or subpoena. However, these disclosures may be made only if the district makes a reasonable effort to notify the parents or eligible student of the order or subpoena in advance of compliance with the order or subpoena, unless the order or subpoena states that the existence or contents of the order or subpoena not be disclosed;
 - h. disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals;
 - i. disclosure of directory information. This is information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended; and
 - j. disclosure to the adult student or student of any age if attending a postsecondary school, or to the parents of a student who has not reached 18 years of age and is not attending an institution of postsecondary education.

6. Any district employee who receives a request from a parent to inspect and review educational records relative to his or her child should notify the a Director of special services or his/her designee within five (5) calendar days.
7. The Director of special services or his/her designee is responsible for establishing a mutually agreed upon date and time for the parents to review the records. However, this shall not be more than thirty (30) calendar days from the receipt of the request. Should the information be needed immediately for an IEP meeting or due process hearing, the Administrator will be responsible for meeting the required timelines of the meeting or hearing.
8. The Administrator is also responsible for having appropriate individuals present at the meeting to explain or interpret the records.
8. The parents must inform the Administrator in writing if they have given permission for a representative to inspect and review the records of their child.
9. The Director of special services or his/her designee provides the parents a copy of any record requested within ten (10) calendar days of the request. There is no charge during a school year for up to twenty-five (25) pages per student. After this number, a fee of ten (10) cents per page may be charged. Should the parent indicate that this charge presents a financial hardship, the parent must provide a Director of special services or his/her designee with information regarding annual income to determine if the parents meet the poverty guidelines as established by the district's Free Lunch and Reduced Price Scale. The district does not charge a fee to search for or to retrieve information.
10. The Director of special services or his/her designee is responsible for determining if the parent has the authority to inspect and review records relating to his or her child. The parent is allowed to access information unless the district has been notified by written court documents that the parent does not have the authority to do so.
11. The Director of special services or his/her designee is responsible for designating a person to explain the parental rights orally under Confidentiality to the parent at the initial contact or no later than prior to evaluation.
12. Principals annually provide written notice of privacy rights to parents. The parent of the student has the right to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information. Notification from the parent or eligible student must be made in writing within 15 days of registering their child and must state what information should not be classified as directory information.
13. When the district responds to a federal grand jury or other subpoena issued for law enforcement purposes, there is no obligation to notify the parents if the court or agency issuing the subpoena orders the district not to disclose the existence or contents of the subpoena or the records disclosed pursuant to the subpoena. In response to any other subpoena or court order, the parents and the student must be notified prior to the release of the information, or there must be parental consent or consent of the student, if age 18 or older.
 - a. When a test protocol contains personally identifiable information directly related to an individual student, that protocol is an education record and the parent has the

right to inspect and review it. In most cases, however, the parent does not have the right to a copyrighted test protocol. Exceptions to this provision may apply during pretrial discovery, subpoenas, and the right to question witnesses about their records or if ordered by a special education due process hearing officer or a judge.

- b. When transferring records, discipline records should be included as part of a student's education records.

C. Record of Access

1. The Director of special services or his/her designee maintains documentation of parties obtaining access to individual files located at the district office.
2. The Special Services secretary provides within ten (10) calendar days to parents, upon specific request:
 - a. A list of names of persons to whom personally identifiable data has been released,
 - b. An explanation of the specific type of data released,
 - c. The purpose for which it was released, and
 - d. The date of release.

D. Records On More Than One Child

In order to determine if any educational record includes information on more than one student, the Director of Special Services or designee shall review the information prior to meeting with the parents and disclose only that portion which relates to their child.

E. List of Types and Locations of Information

The Director of special services or his/her designee is responsible for providing parents, upon specific request, a list of types of data collected and the specific location of the data. Upon written or verbal request from a parent, the Director of Special Services shall provide this information in writing within ten (10) calendar days.

F. Amendment of Records at Parents' Request

1. After the Director of special services or his/her designee has reviewed educational records with parents and provided any necessary interpretations, parents may challenge the accuracy or appropriateness of data which the parents believe to be inaccurate, misleading, or in violation of student's rights of privacy. Under these conditions the parent may request the district to amend the information.
2. Parents must make their request for amendments in writing to the Director of special services or his/her designee.
3. The Director of special services or his/her designee notifies parents within fifteen (15) calendar days of the disposition of the formal request to amend:
 - a. When the parents' request is accepted, the appropriate amendments shall be made and the parents shall be informed in writing.

- b. When the request is denied, parents shall be informed in writing of this refusal and their right to request a hearing before the District's Hearing Office, not a special education due process hearing officer.

G. Opportunity for a Hearing

1. Parents shall submit a written request for a hearing to the Director of special services or his/her designee.
2. When the decision of the hearing officer is that the data is inaccurate or misleading or violates the privacy or other rights of the child, the appropriate amendments are made and the Director of special services or his/her designee informs the parent in writing. The decision of the hearing officer is binding.
3. When the decision of the hearing officer is that the data is accurate, the Director of special services or his/her designee shall inform the parents of their right to provide the agency with a written statement commenting on the data or setting forth any reasons for disagreeing with the data. The statement is attached to the data and remains as long as the contested portion of the data is maintained. The decision of the hearing officer shall be binding.
4. Disclosure of the contested portion of the data to authorized persons, subsequently, shall include a copy of the parents' statement.

H. Consent

1. The district transmits personally identifiable data when the student transfers from one school system to another, subject to the following requirements:
 - a. When a student transfers during the year from one school in the district to another school within the district, the student's folder is sent by the Principal's Designee to the receiving school without parental permission within ten (10) calendar days. The sending school is not required to notify the parents about the transfer of records.
 - b. Upon receipt of a request for records from another school outside the district, the special services secretary sends the requested information within ten (10) calendar days of the receipt of the request. The Special services secretary Documents the transfer of records in the student's file.
 - c. All requests to release or obtain information on students should be provided through the Office of Special services. If the form Release of Information is signed by the parent at the school level, then this signed form must be sent to the Director of special services or his/her designee for final processing.
 - d. Special education records may not be withheld from another district or the parent because of fines owed by a student.

I. Safeguards

1. The Director of special services or his/her designee is the responsible person for ensuring confidentiality compliance for all students enrolled in the agency's programs for children with disabilities.
2. Training of special education staff is conducted annually regarding confidentiality implementation. This training must be completed by November 1st of each year and appropriate documentation maintained.
3. The Director of special services or his/her designee maintains for public inspection a list of names and positions of those employees having access to personally identifiable data.

J. Destruction of Information

1. Lexington School District Four will retain and destroy special education records in accordance with the South Carolina Department of Archives and History General Records Retention Schedules for School Districts (Subarticle 6, 12-906.2). Special education records will be retained until no longer needed to provide educational services to the student or for the necessary school district purposes such as auditing or monitoring (generally 5 years). This could include students that graduate, completes his or her educational program at age 21, moves from the district, or reaches the maximum age for special education services. Parents or adult students will be notified forty-five calendar days prior to destruction through the Lexington School District Four website and a local newspaper advertisement. Parents or adult students have a right to request and be provided a copy of any personally identifiable data which has been obtained or used while providing special education services for their children.
2. Personally identifiable information may be destroyed at the written request of the parents (except that the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation).
3. Forty-five (45) days prior to destruction of any personally identifiable information, the Director of special services or his/her designee shall notify parents by public notice that they have the right to request, and be provided, a copy of any data. If the district does not receive a response the personally identifiable information will be destroyed.

K. Student's Rights

1. Upon a student reaching the age of majority, the special education teacher will explain to the student orally the rights under Confidentiality at the first IEP/staffing meeting after the student reaches the age of majority.
2. The Adult Students with Disabilities Educational Rights Consent Act provides additional options to exercise and assign educational rights for adult students with disabilities. The options include the following:
 - a) Student makes educational decisions (automatically accords at the age of majority-eighteen years old).

- b) Student makes educational decisions with support and assistance of an adult of his or her choice (informal arrangement).
- c) Student delegates educational rights to an agent (using a delegation form or power of attorney).
- d) A representative is appointed to represent the educational interests of an adult student while he or she is in school (using certification process that involves a medical professional).
- e) Educational rights, along with other rights, are assigned to a court-appointed guardian (using Probate Court process)

DISPUTE RESOLUTION

A. Informal Approaches to Dispute Resolution:

1. One of the first options for dispute resolution should be a review of the child's IEP. The parents and district may be able to resolve issues about a child's program by conducting a review of the IEP and amending it, as appropriate. The solution does not have to be permanent. It might be a temporary compromise to try a particular form of instruction or classroom placement for a specified time period. During the time period, the team would monitor the child's progress and determine how well the compromise addressed the concern. The trial period may help the parents and district personnel come to a comfortable consensus on how to help the child. It is in everyone's best interest (and especially that of the child) for the IEP team to work together in a communicative, respectful, and honest manner. Remember that in many cases, the team will be working together for many years.
2. **IEP Facilitation:** A facilitated IEP meeting includes an impartial facilitator who is not a member of the IEP team, but rather has been trained to help keep the IEP team focused on developing the child's program while addressing conflicts. The facilitator's job is to promote open, respectful communication and listening among IEP team members and to help work toward resolving differences of opinion. The facilitator does not impose a decision on the team, but rather helps to clarify points of agreement and disagreement. Most importantly, the facilitator ensures that the meeting remains focused on the child.

B. Mediation

1. Mediation is one of three formal methods of resolving disputes in special education concerning identification, evaluation, placement, and provision of FAPE at the local level. Other methods are state complaint and due process hearing. To begin the process of mediation, both parties must agree to mediate. Either the parents or the district may suggest this option initially by asking the other party if they are willing to mediate the disputed issues. The cost of mediation is borne by the state. There are no costs to either the parents or the district.
2. Mediation can have the following benefits over a complaint or due process hearing:
 - a. Mediation uses the strengths of both participants to solve problems.
 - b. Because it is voluntary and because a mediator has no authority to order any particular resolution, mediation is a safe way for both parties to offer and consider alternatives.
 - c. Mediation can be less antagonistic.
 - d. Mediation is less time consuming.

- e. Mediation is less costly for both parties.
- f. If an agreement is reached, it is written and accepted by the parties rather than ordered by a hearing officer or the SDE.
- g. A negotiated agreement may help with future positive relationships.

3. Mediation Process

- a. Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.
- b. The SDE is responsible for the costs of mediation. This cost is handled by the state's paying directly for the training of all mediators and by the flow through of the IDEA funds that may be used by the district for all aspects of the mediation process, including the costs of meetings to encourage mediation.
- c. Mediation must be provided in a timely manner and at a location that is convenient for both parties in the dispute.
- d. Agreements reached during mediation must be in writing and must include the resolution of each issue for which agreement was reached. Every mediation agreement must also include a statement that:
 - (1) Discussions during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;
 - (2) Each party understands that the agreement is legally binding upon them; and
 - (3) The agreement may be enforced in state or federal court of competent jurisdiction.
- e. The goal of the parties in mediation is to reach an agreement that is workable for all. If an agreement is reached it is put in writing by the mediator and signed by both parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated.

4. Mediation Requests

- a. When parents or district personnel disagree about a special education issue, either party may request mediation. However, both parties must agree to use this process. Therefore, the first step in initiating special education mediation is to ask the other party if it is willing to mediate the disputed issue. Mediation may be requested by either the Director of Special Services or a parent. Mediation may be requested even after a due process hearing request has been filed. This is one reason that the timeline for mediation is short. Mediation must be completed within the due process timeline, and mediation may not be used to delay the parents' right to due process. However, the due process hearing timeline may be extended by the due process hearing officer for a specific period of time during the mediation process if requested by the parties.
- b. Once both parties agree in writing to mediation the mediation session should typically occur within fourteen (14) calendar days. The district selects a mediator on a random or rotational basis. If the mediator is not selected on a random or rotational basis, both parties must be involved in and agree to the selection of the mediator. If the district and parents do not agree on the assignment of the mediator, the director of special services or parents should contact the Office of General Counsel at the SDE so that a mediator can be appointed by the SDE from the

approved list. The SCDE maintains this list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

- c. The director of special services provides parents with information concerning the mediation process and information identifying the mediator. The mediator provides parents with his or her contact information and notifies both parties as to the date, time, location, and purpose for mediation. The location must be convenient to the parties and should be acceptable to everyone. A neutral location is preferred. In some cases where neutral sites are not readily available, mediations can be held on district property. The mediator also answers any questions about the process and may request additional information from the parties.

5. Mediation Participants

- a. Mediation is an informal process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and a district representative.
- b. Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the district representative may ask an outside advocate to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a disability themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate assist them.
- c. The mediator makes the final decision as to who attends the mediation session.

6. Special Education Mediators

- a. In order to be considered trained and qualified, mediators must fulfill the following requirements:
 - (1) Be knowledgeable in laws and regulations relating to the provision of special education and related services;
 - (2) May not be an employee of the SCDE, any state agency that provides a FAPE for children with disabilities, or the district that is involved in the education or care of the child; and
 - (3) Must not have a personal or professional interest that conflicts with the person's objectivity.

7. Mediation Results

- a. During mediation, the mediator will work with both parties to reach an agreement. If mediation discussions result in both parties' reaching agreement, the mediator records the results in a written mediation agreement, which is signed by both parties. When the issues in mediation involve IEP decisions, the mediation agreement may become part of the student's IEP if agreed to by the parties. The actions agreed upon in the mediation should be implemented immediately, unless the mediation agreement specifies otherwise.
- b. If the IEP is changed by adding the mediation agreement, the IEP team may write a new IEP or amend the existing IEP to reflect the mediation agreement. The district

is responsible for following up with the required notice and consent forms. The revised IEP is then implemented. If the mediation agreement is not part of the IEP the district must ensure that any person responsible for implementing the agreement is informed of their responsibilities. If the mediation is not successful, the mediator may declare that the mediation is at impasse and suggest that both parties consider other methods for dispute resolution, such as filing a complaint or requesting a due process hearing.

- c. The district must maintain copies of any forms or other formal written documentation generated by the mediation process. The director of special services must send a copy of the mediation request form and of the written agreement reached by the parties to the Office of General Counsel.

C. State Complaint

1. The complaint process is one of the methods parents or others have to resolve special education disagreements with the district.
2. The complaint process is one of the parent rights (procedural safeguards, see Chapter 1) afforded under federal and state regulations. The SDE is mandated to make available an opportunity for individuals or organizations to file formal complaints against the district.

a. Filing a Complaint

- (1) Any individual or organization may file a complaint if they believe that the district is not complying with federal or state laws or regulations relating to special education. The complaint must allege a violation that has occurred not more than one year prior to the date the complaint is received by the SDE.
- (2). The complaint must be in writing and signed by the person or representative of the organization making the complaint. The complaint must include a statement that the district is not complying with the requirements of the IDEA and/or the SBE special education regulation, 43-243, and it must give the facts upon which that statement is based. The signature and contact information for the complainant and if alleging violations with respect to a specific child:
 - (a) the child's name and address of residence, or other contact information if the child is a homeless child or youth;
 - (b) contact information for the person filing the complaint;
 - (c) the name of the school the child is attending;
 - (d) a description of the nature of the problem involving the child, including facts related to the problem; and
 - (e) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.
- (3) The party filing the complaint must forward a copy of the complaint to the district against which the allegations are made at the same time the complaint is filed with the Office of General Counsel. The OEC website includes a sample form that may be used, but is not required, to file a complaint.

- (4) If a complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint, that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved through the complaint process.

b. Investigating the Complaint

- (1) The complaint investigator at the SDE must resolve a complaint within 60 calendar days from the date the complaint is received by both parties unless exceptional circumstances exist or the parents and district agree to extend the time to engage in mediation or in other alternative means of dispute resolution. During the 60 days, the complaint investigator must carry out an independent investigation, including an on-site investigation if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the district with the opportunity to respond to the complaint; review all relevant information and make an independent determination as to whether the district is violating a requirement of the IDEA, the applicable state and federal regulations, or state or district policies and procedures; and issue a written decision.
- (2) The complaint investigator may contact the person making the complaint and the special education director to clarify the issue(s), review all relevant records and documents, and determine whether or not the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of federal or state special education laws or regulations or the state's or district's policies and procedures. The investigator will contact the district against which the complaint is filed to allow the district to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint. Both parties can provide additional information to the investigator that is relevant to the issue. It is left to the complaint investigator to review and determine the relevance of any additional information.
- (3) After the investigation, the complaint investigator issues a written decision addressing each of the allegations in the complaint. The written decision includes:
 - (a) findings of fact and conclusions;
 - (b) the reasons for SDE's final decision; and
 - (c) any corrective action or actions that are required including the specific period of time within which each corrective action must be completed.
- (4) The written decision is final and not subject to appeal although both parties retain all rights to mediation and/or due process hearing to further pursue the matter. There is no reconsideration of a decision rendered during the state-level complaint investigation process.

c. Following up on the Complaint

- (1) When the corrective actions are completed by the district, the complaint investigator sends a letter of completion to the district with a copy to the person making the complaint. At that point, the complaint file is closed. Any findings made by the complaint investigator during the course of the investigation that are not directly related to the student named in the complaint are forwarded to the General Supervision and Program Units in the OEC for follow up.
- (2) The Office of General Counsel maintains a database to assist in the management of timelines regarding complaints, responses, written decisions, and corrective actions. Issues identified in complaints are discussed with the Program and General Supervision Units in order to identify and verify individual and systemic findings of noncompliance and to assist in the provision of targeted technical assistance to districts.

D. Due Process Hearing

1. Filing the Due Process Hearing Request

The district, the parents of a child with a disability, or the student (if the student is age 18 or older) has the right to file a due process hearing complaint. A special education due process hearing may be initiated to resolve differences about a child's identification, evaluation, educational placement, or provision of a FAPE. The due process complaint must allege a violation that occurred not more than two years before the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint. There are two exceptions to this timeline when:

- a. the district has misrepresented that it has resolved the problem, or
- b. the district has withheld information that it was legally required to give to the parent.

2. To request a due process hearing, the party filing the complaint sends a copy of the due process hearing request to the other party and to the Office of General Counsel. This notice is confidential and must contain the following information:

- a. name of the child;
- b. address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- c. name of the school the child is attending;
- d. description of the nature of the problem and the facts that form the basis of the complaint; and
- e. a proposed resolution of the problem.

3. When the district receives this request for a due process hearing, district personnel are required to:

- a. inform parents about mediation;
- b. inform parents of free or low-cost legal services; and

- c. provide a copy of the Parent Handbook to Special Education for the first due process complaint in the school year .

4. Assigning a special education due process hearing officer

- a. The district must maintain a current list of trained, qualified special education due process hearing officers. This list must include the names and qualifications of the special education due process hearing officers who are available.
- b. The district may also have hearing officers to resolve other matters not related to special education, such as the district's disciplinary hearing officer. For special education due process hearings, however, a special education due process hearing officer is required. This person is trained and qualified to conduct special education due process hearings. To differentiate between hearing officers, the complete term "special education due process hearing officer" is used in this section.
- c. The district is responsible for conducting due process hearings in accordance with all federal and state requirements, including assigning special education due process hearing officers. The district is required to appoint a special education due process hearing officer within 10 calendar days of receiving or initiating a hearing request.
 - (1) A special education due process hearing officer must
 - (a) have no personal or professional interest that would conflict with his or her objectivity.
 - (b) not be an employee or former employee (an officer, agent, district board official) of the district that is responsible for the child's education.
 - (c) have knowledge and understanding of the IDEA and legal interpretations pertaining to law;
 - (d) have knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (e) have knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - (f) be at least 21 years of age and be a high school graduate (or hold an equivalent credential).
 - (2) Only persons who have been trained by the CDE may be special education due process hearing officers. If a special education due process hearing officer does not adhere to the federal and state regulations or policies and procedures, including all timelines, he or she will be removed from the list of qualified hearing officers.
- d. Parents or attorneys representing the parents have the right to raise an objection as to the special education due process hearing officer appointed by the district on the basis of a potential bias or personal or professional conflict. If the determination is made by the special education due process hearing officer that a potential bias or conflict exists, he or she must remove himself/herself and the district must go to the next name of the list of persons qualified to serve as special education due process hearing officers.

5. Resolution meeting

- a. When the parent has requested a due process hearing, the director of special services must schedule a resolution meeting to occur within 15 calendar days of receiving the due process requests. The director must convene a resolution meeting with
 - (1) the parent,
 - (2) the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and
 - (3) a representative of the district who has the authority to make binding decisions on behalf of the district.
 - (4) The parent and the district determine which members of the IEP team will attend the meeting.
 - (5) The district may not include their attorney unless the parents bring their attorney.
- b. The purpose of this meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint. The district then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the district signs. The agreement is, by law, enforceable in any state or federal court of competent jurisdiction. However, the law also permits either party to void the agreement within 3 business days of the date the agreement was signed. The resolution agreement must be signed by the parent and a representative of the district that has the authority to bind the district.
- c. If a resolution of the complaint is not reached at the meeting and the district has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the district's receipt of the complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence. This includes the issuance of a written decision within 45 calendar days after the end of the resolution period. If no resolution is reached during the resolution session and the parties do not believe they can reach a mutually agreeable resolution, the parties may contact the special education due process hearing officer to request the timeline start prior to the end of the 30-day resolution period.
- d. The parent's failure to participate in a resolution meeting when he or she has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held. In addition, if the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the district may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents' due process complaint .
- e. If the district fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion .
- f. A resolution meeting, however, is not required if the parent and the district agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. If no resolution is reached at during the session,

the parties may contact the special education due process hearing officer and request the timeline start.

6. Prehearing requirements

- a. The party receiving a due process hearing request must send the party filing the request a response that specifically addresses the issues raised in the complaint within 10 calendar days of receiving the complaint.
- b. If either the district or the parent believes that a due process complaint it has received does not meet the legal notice requirements the party may submit to the special education due process hearing officer a sufficiency challenge.
 - (1) The sufficiency challenge must be submitted within 15 calendar days of the date of the party's receipt of the due process complaint.
 - (2) The special education due process hearing officer has up to 5 calendar days from the receipt of the sufficiency challenge to determine whether or not the original complaint notice is sufficient.
 - (3) The special education due process hearing officer shall immediately notify the parents and the district in writing of his or her decision.
- c. If the district has not sent a PWN to the parent regarding the problem described in the parent's due process complaint notice, the district, within 10 days of receiving the complaint, must send to the parent a response that includes:
 - (1) an explanation of why the agency proposed or refused to take the action raised in the complaint;
 - (2) a description of other options that the IEP team considered and the reasons why those options were rejected;
 - (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (4) a description of the other factors that are relevant to the agency's proposed or refused action .
- d. A party may amend its due process complaint notice only if:
 - (1) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or
 - (2) the special education due process hearing officer grants permission not less than 5 days before a due process hearing occurs. When a complaint is amended the timelines start over.
- e. Within 5 business days prior to a hearing, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the evaluation that they intend to use at the hearing. Failure to provide this evidence to the other party in a timely fashion gives the other party a right to request that the special education due process hearing officer prohibit the introduction of the evidence at the hearing.
- f. If the district and the parent agreed to the resolution meeting but have not resolved the issues within 30 days of the date the due process complaint was received, the hearing may begin. Note that the meeting is required unless the parent and the district agree to waive it. Also, note that, if both parties agree in writing to waive

the resolution meeting, the 45 calendar day timeline to complete the due process hearing begins the day after the written agreement is signed.

7. Conducting a due process hearing

- a. The due process hearing must be held at a time and place reasonably convenient to the parent of the child and must be a closed hearing, unless the parent requests an open hearing. The parties shall be notified in writing of the time and place of the hearing at least 5 days prior to the hearing. Both parties have the right to be present at the hearing, as well as be accompanied and advised by legal counsel and people who have special knowledge about children with disabilities.
- b. Parties have the right to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena by the special education due process hearing officer. Under S. C. Code Ann. § 59-33-90 (2004), special education due process hearing officers have the authority to issue subpoenas related to meeting the requirements set forth in the IDEA. Each party may present witnesses in person or present their testimony by affidavit if the due process hearing officer agrees, including expert medical, psychological or educational testimony. Each party has a right to prohibit the other party from raising any issue at the hearing that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing.
- c. Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. They also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents.

8. Reaching a decision

- a. The 45 day timeline for completion of a due process hearing starts on the day after *one* of the following events occurs:
 - (1) both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
 - (2) the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
 - (3) both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation.
- b. A special education due process hearing officer may grant extensions of time upon request of either party unless the due process hearing is an expedited hearing. The request must be in writing. Extensions should only be granted for good cause. The concept of good cause does not include negligence, inconvenience, or lack of preparation on the part of the parties. The special education due process hearing officer must notify the parties in writing of the decision to grant or deny the extension request. If the request is granted, the decision must also include a definite date for the timeline to resume.

- c. After the close of the special education due process hearing, the special education due process hearing officer must render a decision on the matter, including findings of fact and conclusions, within 10 calendar days. The decision must be written or, at the option of the parent, must be an electronic decision. Any action of the special education due process hearing officer resulting from a due process hearing shall be final, subject to appeal and review.
- d. A written decision of the result of any hearing must be provided to the district and must be sent by certified mail to the parent or attorney of the child. In addition, the special education due process hearing officer must delete personally identifiable information from the report and send a copy to the Office of General Counsel, which must make the decision available to the Special Education Advisory Council.

9. Appealing the due process decision

- a. If the district or the parents are dissatisfied with the decision of the special education due process hearing officer, either party may file a notice of appeal with the Office of General Counsel not later than 10 calendar days after the date of the receipt of the written decision. A request for an extension to file an appeal (beyond the 10-day time limit) must be made in writing to the Office of General Counsel within 5 days of the receipt of the local decision. Within ten business days of receiving a request for an extension to file an appeal, the state-level review officer may grant the request for good cause shown. The concept of “good cause” may not include negligence or a matter of low priority in filing the request for appeal. In no event will the state-level review officer grant an extension of more than 20 days beyond the original 10-day timeline.
- b. The appeal should include a statement of the decision of the local due process hearing officer, the specific points being appealed, copies of all items entered as evidence, and the names and addresses of the parents if the district is appealing the decision. The appealing party may also include written arguments. When parents appeal the decision, the district must provide a statement of the decision and copies of all items entered as evidence. The district must also provide a written transcript of the local due process hearing to the Office of General Counsel. The Office of General Counsel must appoint a state-level hearing officer and submit to the state-level hearing officer the request for appeal, the transcript, and any other relevant documentation.
- c. The state-level due process hearing officer must conduct an impartial review of the hearing and make an independent decision based on the review. The review officer must conduct the review according to the following requirements:
 - (1) Examine the entire hearing record; an audiotape of the hearing must be made. The district must have court reporter to record the proceedings. The district is responsible for ensuring that the transcript of the proceedings will be available as required by the state appeal procedures; this includes the provision of advance notice to the court reporter concerning the appeal timelines and the possible need for a quick turnaround time in producing the transcript.
 - (2) Ensure that the procedures at the hearing were consistent with the requirements of due process;

- (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 C.F.R. § 300.512 apply; and
 - (4) Afford the parties an opportunity for oral or written arguments, or both, at the discretion of the reviewing official.
- d. The decision of the state-level review officer is final unless either party chooses to bring a civil action in either state or federal district court of competent jurisdiction. Personally identifiable information is also deleted from the report, and is made available to the Special Education Advisory Council and to the public by the Office of General Counsel.

10. Stay-put

- a. While the due process hearing is pending, the student involved in the complaint must remain ("stay-put") in the current educational placement, unless:
 - (1) The parents and the district agree to a different placement.
 - (2) The proceedings arise in connection with the initial admission of the child to school, in which case the child will be placed in the appropriate regular education classroom or program, unless otherwise directed by a special education due process hearing officer because a child's behavior is substantially likely to result in injury to the student or to others.
 - (3) The student is in an IAES for disciplinary reasons. See the section on suspension and expulsion of students with disabilities for a more complete explanation of stay-put requirements under disciplinary actions.
- b. If the due process hearing involves an evaluation or initial services under Part B for a child who is transitioning from Part C services to Part B services and is no longer eligible for Part C services because the child has turned age three, the district is not required to provide the Part C services that the child was receiving. However, if the child is found eligible for special education services and related services under Part B, and the parent consents to the initial provision of special education and related services, then the district must provide those special education and related services that are not in dispute between the parent and the district.

11. Civil action

- a. After a local due process hearing, or an appeal of that hearing, is completed either the parents or the district may pursue a civil action through a state or federal court for reimbursement of attorneys' fees.
- b. Federal and state regulations allow the civil action by either party.

12. Attorney's fees

- a. If the parents prevail in the due process hearing or upon appeal, a court may award some or all of the attorney's fees parents have paid in conjunction with the due process hearing. Only a court can award attorney fees to the parents and only if the parents are the prevailing party. Although the special education due process hearing officer has no authority to order attorney's fees, the hearing officer must find that the party seeking attorney's fees is a prevailing party in the action. There may be limitations, however, on the amount of attorney fees ordered by the court. For example, if the court finds that the parents prolonged the process or if the fees

charged are more than the hourly rate usually charged, the judge has the authority to reduce the award requested by the parents.

- b. The district may be awarded attorney fees
 - (1) if a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation, or
 - (2) if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. In determining the amount of the reimbursement of attorney fees, the judge must follow the IDEA regulations.

13. Expedited due process hearings

- a. Whenever a due process hearing is requested by a parent to appeal a decision regarding placement for disciplinary reasons, a manifestation determination, or a decision concerning extended school year services or when the hearing is requested by the district that believes maintaining the current placement of a child is substantially likely to result in injury to that child or to others, the hearing is considered to be expedited. The district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
- b. Unless the parents and district agree in writing to waive the resolution meeting or agree to use the mediation process a resolution meeting must occur within 7 days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- c. The decisions from expedited due process hearings are appealable consistent with 34 C.F.R. § 300.514. When an appeal is made by either the parents or the district, the child must remain in the IAES pending the decision of the special education due process hearing officer or until the expiration of the time period (period of disciplinary removal if the behavior is not a manifestation of the disability or period due to removal for special circumstances – drugs, weapons, or serious bodily injury), whichever occurs first, unless the parent and district agree otherwise.

DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES

Students with disabilities, who qualify under the Individuals with Disabilities Education Act (IDEA 04) for Special Education or Section 504 of the Rehabilitation Act, follow the regular student behavior code, UNLESS the student's Individual Education Program (IEP) or 504 Plan indicates that the regular school discipline code is not appropriate. In such cases, the IEP or 504 Plan will specify the special considerations or adaptations to the student discipline code.

A. Code of Conduct Violations

1. When a child with a disability violates a school's code of conduct, that behavior could result in suspension or expulsion. Such removals from school are subject to the disciplinary provisions of special education law. Therefore, school district officials must consider suspension and expulsion for children with disabilities very carefully. The following terms and definitions apply:
 - a. **Change in Placement for Disciplinary Reasons** (long-term removal) means that school officials or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability:
 - (1) The child is suspended or expelled from school for more than 10 consecutive school days.
 - (2) The child is subjected to a series of short-term suspensions that constitute a pattern because **all** of the following have occurred:
 - (a) they cumulate to more than 10 school days in a school year;
 - (b) each incident of misconduct involves substantially the same behavior; **and**
 - (c) because of other factors such as the length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another.
 - (d) The child is placed in an interim alternative educational setting or is suspended from school.
 - b. **School Day** means any day, including a partial day (50% of the day), that all children, including children with disabilities, are in attendance at school for instructional purposes (34 C.F.R. 300.11(c)). Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required during the period of suspension.
 - c. **School District Official** means
 - (1) A regular education administrator; and
 - (2) a director of special services or his/her designee or designee; **and**
 - (3) a special education teacher of the child with a disability.
 - d. **Short-Term Suspension** means removal not exceeding 10 school days (or a series of removals not constituting a change in placement).
 - e. **Controlled Substance** means a drug or other substance identified under the Controlled Substances Act.
 - f. **Illegal Drug** means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional. **NOTE: Alcohol and tobacco are not included in this definition.**
 - g. **Weapon** means any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily

injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

- h. Serious Bodily Injury** means a bodily injury that involves one or more of the following: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

The term “dangerous behavior” may be used interchangeably with the phrase “substantially likely to result in injury to the child or others”.

B. Short Term Removals (not a change in placement)

- 1. A school administrator may remove a student with a disability** from his or her current placement (suspend) to an appropriate interim alternative setting for violations of the student code of conduct for up to 10 consecutive school days or 10 cumulative school days without invoking any additional due process procedures for students with disabilities. Students may be suspended additional days beyond 10 cumulative school days in the same school year for separate incidents of misconduct, as long as the removals do not constitute a change of placement as described below. The school is not required to provide educational services during the first 10 days of removal in a school year.

2. Subsequent Short-Term Removals (Not a Change in Placement)

- a. When a student with a disability has more than a single suspension in a school year, school officials should carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. If the school administrator orders two or more short-term suspensions of a child with a disability during a school year, these suspensions are not a change in placement for disciplinary reasons if the suspensions do not constitute a pattern of removals.
- b. To determine if a change of placement has occurred, the school administrator must consider whether the series of suspensions constitutes a pattern of removals. School administrators may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements, is appropriate for a student with a disability who violates a code of student conduct.
- c. When a series of suspensions/removals total more than 10 school days in a school year, school administrators must determine whether a pattern of removals has developed by considering:
- (1) Whether the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals
 - (2) The length of each removal;
 - (3) The total amount of time the child has been removed; and
 - (4) The proximity of the removals to one another.
- d. School officials have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitute a change in placement for disciplinary reasons. This determination is subject to review through due process proceedings.

- e. School administrators and IEP team members should be addressing the issues of the suspensions prior to reaching the 11th day. By addressing accumulated days of suspension early, the school may be able to avoid the need for a suspension that would result in a disciplinary change in placement. Suspensions should be carefully monitored so that school personnel will be aware of whether another removal will constitute a change of placement.
- f. Schools must provide FAPE to all children with disabilities, including those who are suspended or expelled from school. The school is not required to provide educational services to students with disabilities during the first 10 cumulative days of suspension in a school year. However, when the total number of school days of suspension in a school year reaches 11, the school must begin providing educational services on the 11th day. School officials must determine the extent to which special education and related services must be provided to the child beginning on the 11th school day of suspension. A manifestation determination is not required as long as the student is not suspended more than 10 consecutive days or the series of removals do not constitute a change of placement.
- g. This is known as the "11th day rule." In this situation," school officials" means a general education administrator, special education director or designee(s), and the child's special education teacher, as specified. Beginning on the 11th school day of suspension in a school year, and each school day of suspension thereafter, special education and related services needed for the child must be provided to enable the child to:
 - (1) participate in the general education curriculum, although in another setting; and
 - (2) to progress toward meeting the goals set out in the child's IEP.
- h. If the short-term suspension includes the 11th cumulative school day of suspension in a school year, necessary services identified by the school officials must be provided. The 11th day rule applies, whether or not the 11th school day of suspension results in a pattern of removal that constitutes a change of placement.
- i. Additionally, if the child has not had a functional behavioral assessment and the district has not implemented a behavioral intervention plan for the child, school officials may (**but are not required to**) determine that the child needs a **functional behavioral assessment** to address the behavior that resulted in the suspension and to develop a **behavioral intervention plan** if the assessment suggests such a plan is necessary for the child. If a FBA/BIP are deemed necessary, the the IEP team is required to conduct a re-evaluation review meeting following re-evaluation review meeting procedures, as outlined earlier in the Re-evaluation review section, to obtain permission for conducting the FBA.
- j. The services to be provided to the student on the 11th day do not have to replicate every aspect of the services that a child would receive if in his or her normal classroom. The services provided must enable the student to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the student's IEP. The district is not required to provide students suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same settings as they were receiving prior to the imposition of discipline. It is important,

however, that the student continue to progress toward meeting graduation requirements.

- k. **In-School Suspensions.** Whether school days of in-school suspension count as school days of suspension for determining if a change of placement has occurred, depends on the nature of the in-school suspension environment. Many schools already use in-school suspension for code of conduct violations. Because children frequently are unsupervised and undirected by school personnel if placed on out-of-school suspension, many LEAs prefer to use in-school suspension, at least for first-time offenders or less serious offenses. Comments following the federal regulations indicate that LEAs have authority to utilize in-school suspension as a disciplinary tool (Federal Register, August 14, 2006, p. 46715).

Additionally, a school day of in-school suspension should not count as a school day of suspension for services or change of placement purposes if, during the in-school suspension, the child is afforded an opportunity to:

- Continue to appropriately progress in the general curriculum;
- Continue to receive the services specified on his or her IEP; and
- Continue to participate with children without disabilities to the extent they would have in their current placement.

The assumption is that LEAs may use in-school suspension for children with disabilities just as they would for children without disabilities. The issue is really whether the school day(s) count toward accumulating the 11th school day of suspension which would require the beginning of educational services or toward the 10 consecutive school days for change of placement or provision of services. The Comments to the regulations indicate that for children with disabilities, if the in-school suspension approximates the current placement in the areas outlined above, it does not count toward the 10 school days needed for a change of placement or provision of services. On the other hand, if in-school suspension is a place where children are held without opportunities to progress in the general curriculum, receive IEP services, and participate with children without disabilities to the same extent they would have in the current placement, the days **do** count as school days of suspension for change of placement and provision of services purposes.

Bus Suspensions. Children with disabilities may be suspended from using public school transportation even though they are not suspended from school. However, bus suspension may affect the LEA's requirement to provide a FAPE. If special education services are needed for the child to receive a FAPE and the child needs transportation to receive special education services, transportation would be needed and must be addressed by the IEP team. The following guidance to LEAs to determine if school days for bus suspension count as school days for change of placement and provision of services purposes may be useful:

- The LEA is always required to provide a FAPE. If a child with a disability cannot get to school to benefit from special education services, it is likely that the school is required to continue to provide transportation in some manner.
- If transportation is specified as a related service on the IEP, school days of suspension from bus transportation would count in determining if a change of placement occurs and in the provision of services unless the LEA provides transportation some other way.

- If transportation is NOT required as a related service under the IEP, school days of suspension from the bus should NOT count as school days of suspension for change of placement and provision of services. In such cases, the child's parents have the same obligation to get the child to and from school as a child without disabilities who has been suspended from the bus (unless the parents cannot provide the needed transportation). Also, if bus transportation is not included on the IEP, the comments to the regulations suggest a suspension from transportation privileges may indicate the IEP team should consider whether that behavior on the bus should be addressed within the IEP or a BIP for the child. (Federal Register, August 14, 2006, p. 46715.)

C. Long-term Removals (Change of Placement)

The removal of a student with disabilities is a change of placement when:

- the removal is for more than 10 consecutive school days or
- the removal is one of a series of short-term removals that total more than 10 days and constitutes a pattern of removals
 - a pattern of removals is determined by reviewing factors such as (1) the reason for each removal and whether the student's behavior is similar in each incident, (2) the length of each removal, (3) the proximity of the removals to one another, and (4) the total amount of time the student is removed.

The school administrator, in consultation with the Special Services Director, may remove a student with a disability who violates the code of student conduct from his or her placement to an appropriate interim alternative educational setting (IAES), another setting or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

If school and District personnel determine that the additional removal will not constitute a change of placement, the student may be removed beyond the initial 10 days, depending upon the outcome of a manifestation determination. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability who violates a code of student conduct.

When the school administrator considers a long-term suspension/expulsion, the following steps must be followed:

1. On the date the decision is made to make a removal that constitutes a change of placement for a student with a disability because of a violation of the code of student conduct, the school must notify the parents of that decision and provide them with a copy of the Parent Handbook to Special Education.
2. After a student with a disability has been suspended out of school for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP. The student must receive, as

appropriate, a functional behavioral assessment (FBA), behavior intervention plan, and modifications designed to address the behavior violation so that it does not recur. The provision of services is documented for each day of suspension over 10 days.

- a. An FBA must be based on multiple sources of data, including but not limited to, information obtained from direct observation, interviews with the child, teachers, and parent, review of records including disciplinary records, and other sources of information that will lead to the development of appropriate positive behavioral interventions and supports and other strategies that address the behavior.
3. The IEP team must meet to determine if the student's violation of the district's code of student conduct was a manifestation of his/her disability.

The district will examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to the rates for non-disabled children.

Manifestation Determination

A manifestation determination meeting will be held as soon as possible, but not later than 10 school days following any decision to change the placement of a student with a disability due to a violation of the code of student conduct. The LEA, parent, school psychologist, and other relevant members of the student's IEP team must review the following:

- all relevant information in the student's file,
- the student's IEP including a functional behavior assessment (FBA) and behavior intervention plan (BIP),
- any teacher observations, and
- any relevant information provided by the parent.

Based on the review of all relevant information above, the team must determine if the conduct in question:

- (a) was caused by or had a direct and substantial relationship to the student's disability
- OR
- (b) was the direct result of the LEA's failure to implement the student's IEP.

If it is determined that the conduct of the student was the result of either a or b above, then the conduct must be determined to be a manifestation of the student's disability.

If the LEA, parent, and relevant members of the student's IEP team determine the conduct in question was a direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

If the IEP team determines that the student's behavior WAS a manifestation of the disability, the IEP team must:

- Return the student to the placement from which he/she was removed, unless the parent and LEA agree to a change in placement as part of the modifications of the BIP.
- Conduct a FBA or review/revise the current FBA and develop a BIP or review/revise the current BIP, as necessary, to address the behavior.

If it is determined that the student's behavior is a manifestation of the disability, the student cannot be subject to a long-term removal for the behavior. The school can request a special education due

process hearing officer to order placement in an Interim Alternative Educational Setting (IAES) for up to 45 school days if the district can show that continuing in the current placement is substantially likely to result in injury to the student or others.

If the IEP team determines that the student's behavior WAS NOT a manifestation of the disability, the LEA

May apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except that the student must continue to receive educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP, and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

The IEP team must convene and follow change of placement procedures, as well as determine appropriate services. These services must enable the student to (1) participate in the general curriculum, although in another setting, (2) progress toward meeting his/her IEP goals, and (3) receive services to address the behavior violation so that it does not recur.

Educational Services During Removals

The school is not required to provide educational services during the first 10 days of out-of school suspension (OSS). However, if the total number of days of OSS reaches 11, educational services must be provided. The IEP team must determine the amount and type of services that will be provided to the student. Special education and related services (if included on the IEP) must be provided to enable the student to participate in the general education curriculum in another setting (if applicable), to progress toward mastery of his/her IEP goals, and to prevent the behavior from recurring. Services provided after the first 10 days of OSS do not have to replicate every aspect of the services that the student would receive in his/her normal classroom. However, the student must be allowed to progress toward meeting graduation requirements. Special transportation will be provided as necessary.

Behavior Related to Weapons, Drugs, Serious Bodily Injury

- a. School administrators may remove a child with a disability to an interim alternative educational setting (IAES) up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:
 - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the school district;
 - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district (tobacco and alcohol are not illegal drugs under this definition); or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district.
- b. When a child has been removed to an interim alternative educational setting, the IEP team must determine what special education and related services are needed and where the services will be provided to enable the child to participate in the

general education curriculum, although in another setting and to progress toward meeting their goals set out in the child's IEP.

- c. If the IEP team determines that a functional behavioral assessment would be appropriate, one will be conducted. If appropriate, the IEP team will review and revise any existing behavioral intervention plan or develop one with services and modifications that are designed to address the behavior violation so that it does not recur.
- d. When a child commits a violation related to **weapons, drugs, or serious bodily injury**, the school officials may initially suspend the child for up to 10 school days without educational services (if the suspension includes the 11th cumulative day of suspension in the school year, educational services should begin on the 11th day). When the IEP team meets, it can determine the location of the 45 school day interim alternative educational setting and the services to be provided to the child.
- e. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a **violation of a code of student conduct (including weapons, drugs or serious bodily injury)** the school must **notify the parents** of that decision, and provide the parents the **Parent Handbook to Special Education**.
- f. Once the child has been placed in an interim alternative educational setting or otherwise removed for disciplinary reasons, if the school believes that returning the child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others, the school may request an expedited due process hearing to request the hearing officer to order another 45 school day interim alternative educational setting. The burden of proof is on the school to justify an additional removal be ordered by the hearing officer.

Parent Appeal/Expedited Due Process Hearing

- a. If the child's parents disagree with any decision regarding the disciplinary placement or the results of the manifestation determination, the parents may appeal the decision by requesting an **expedited** due process hearing. Additionally, if the school believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, the school may request an expedited due process hearing.
- b. A parental request for a due process hearing does not prevent the school district from seeking judicial relief such as a temporary restraining order or an injunction, when necessary.

c. Resolution Meeting During Expedited Due Process Hearing

A resolution meeting must occur within seven days of the school receiving notice of a parent's due process complaint, unless the parents and school agree in writing to waive the resolution meeting or agree to use the mediation process. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the school's receipt of the due process complaint.

d. Placement during Expedited Due Process Hearing

When the parent or the school appeal a disciplinary placement or the result of the manifestation determination, the child remains in the interim alternative educational setting determined by the IEP team pending the decision of the hearing officer or until the expiration of the time of the disciplinary removal, whichever occurs first, unless the parent and the school agree otherwise.

e. Expedited Due Process Hearings

Expedited due process hearings occur in two instances under the disciplinary provisions:

- (1) When a parent challenges the manifestation determination or any placement decision in a disciplinary context; or
- (2) When a school district asks a special education due process hearing officer to order an interim alternative educational setting because a child's behavior is substantially likely to result in injury to the child or to others.

Students not yet determined eligible for special education

- a. The discipline requirements address the issue of suspending or expelling children not yet identified as a child with a disability but whose parents allege the school district had knowledge that the child was a child with a disability before disciplinary action was proposed. The IDEA affords protections to children not determined eligible only if a school district had knowledge that a child was a child with a disability before the behavior which precipitated the disciplinary action occurred.
- b. A school district is deemed to have such knowledge if:
 - (1) the parents of the child have expressed concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
 - (2) the parents of the child have requested an evaluation of the child; or
 - (3) the teacher of the child or other school personnel expressed specific concern about a pattern of behavior demonstrated by the child directly to the director of special services or his/her designee or other supervisory school personnel.
- c. Although teachers and other school personnel may casually express concerns about the behavior or performance of children in their classrooms, such expression of concern do not create knowledge on the part of the school district. Schools also are not deemed to have knowledge of a disability merely because a child received services under other programs designed to provide compensatory or remedial services or because the child had limited English proficiency.
- d. Also, a school will not be considered to have knowledge of a disability if the parent of the student
 - (1) has not allowed an evaluation of the child;
 - (2) has refused special education and related services; or
 - (3) the child has been evaluated and determined not to be a child with a disability.

- e. If it is determined that the school did not have knowledge that the child is a child with a disability, the school may proceed with its proposed disciplinary action, including suspension or expulsion without educational services.
- f. If the child's parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is specified with regard to an expedited evaluation. However, in this context, the term "expedited" suggests the evaluation should be concluded in a shorter time frame than a normal evaluation.
 - (1) Pending the results of the evaluation, the child remains in the disciplinary setting determined by school authorities (that may be the out-of-school suspension or expulsion). The school is not required to put disciplinary proceedings on hold until the evaluation is completed.
 - (2) If the child is subsequently determined to be a child with a disability, based on the evaluation and review of information supplied by the parents, the school must provide the child with all of the protections of the IDEA, including the provision of special education and related services during the suspension. If the child is determined to **not** be a child with a disability, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

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

- 1. When reporting a crime committed by a child with a disability, the school personnel must ensure that copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the crime is reported.
- 2. To ensure that the “appropriate authority” receives the confidential special education and disciplinary record, the Principal’s Designee should indicate on the incident report that “a confidential file, including a psychological report is available upon request of the appropriate authority.” Parent consent is required prior to releasing the special education records to the appropriate authorities.

ADDITIONAL STATE OR PROGRAM REQUIREMENTS

Foster Care/Alternative Residence Requirements

Information on Special Education students who are enrolled in the district and who live in foster homes or group homes in the District must be reported to Special Services quarterly. The school must provide information that indicates the county of residence in which the student lived when he/she entered foster care (not the previous school district before coming to District Four). This information can be obtained from the Court Order and/or the student's caseworker. This is a requirement of the South Carolina Foster Care Proviso Act. Forms are provided to the schools for reporting this information.

Medical Homebound

Students who are in either regular or special education programs and who are confined to the home or hospital because of illness, accident, pregnancy, or congenital defect, when the illness does not constitute a disability, should be classified as medical homebound.

1. A licensed physician must certify on the required medical homebound form that the student is unable to attend school.
2. The School Team determines if homebound is necessary and appropriate and also determines the amount of time necessary.
3. Medical homebound teacher appointments and students assignments are handled by someone in each school appointed by the Principal.

If the student has an IEP and goes on homebound for medical reasons, the student's special education IEP classification does not change on the IEP. However, EFA weighting may change to HB depending upon which area is weighted higher. The district has a Medical Homebound procedures guide which addresses these specifics. Based on the nature of the reasons for the homebound placement, the team will adjust the student's program, services, goals, and amount of special education service time.

SCHEDULING TO MEET SDE/EFA GUIDELINES

- A. In order to qualify for EFA funding, the student must receive total time in special education of at least 250 minutes per week. For speech-language impaired, a minimum of 50 minutes/week must be provided. The Documentation of Indirect Services must be maintained by all teachers providing indirect services to students to reflect the time required and the services provided.
- B. The special education teacher, in conjunction with regular classroom teachers, should assist the guidance counselor in determining the schedule of classes for grades 7-12 for students with disabilities. The purpose of this involvement is to assist in determining inclusion and/or course needs and appropriate course levels for the student.

NOTE: Both itinerant and resource designations are for EFA funding purposes only and are both considered "regular education with supplementary support."

- C. Students are considered self-contained if they spend 60% or more of the school day in a special education program. Students in self-contained classes are typically scheduled into regular art, music, physical education, and library classes at the elementary levels when appropriate. Inclusion opportunities in regular classrooms are determined appropriate through the student's IEP. Self-contained students at the elementary, middle, and high school levels must be scheduled in other regular classroom settings to the maximum extent appropriate to meet the students' needs.
- D. **Caseloads**
 1. Although the actual caseload number must be contingent upon the severity of the students' disabilities, the State Department sets maximum possible caseloads for the following models and disabilities.

SPECIAL EDUCATION CASELOADS

<u>Grades K-6</u>	Self-contained	Resource
EMD*	15	33
TMD/PMD*	12	
ED	12	33
LD/DD	15	33
OI/OHI	12	20
VI	10	15
HI	10	15
Grades 7-12	Self-contained	Resource
EMD*	18	33
TMD/PMD*	15	
ED	15	33
LD	18	33
OD/OHI	15	20
VI	12	15
HI	12	15

*EMD/TMD/PMD are referred to as Mental Disabilities (MD). Programming would depend upon the level of support the student needs to benefit from special education.

2. A majority of the students on all special education teachers' caseloads must be disabled in the area of the special education teacher's certification. For example, a teacher who is certified in learning disabilities must have a majority of students on his/her caseload diagnosed learning disabled.
3. The principal of the school should approve all schedules made by the special education teacher.

MEDICALLY RELATED PROCEDURES

The school is responsible for performing medically related or health procedures under the supervision and guidance of the School Nurse for clean intermittent catheterization, tube feeding, suctioning, and other procedures necessary for the student with a disability to benefit from special education. The School Nurse and/or principal designee performs the procedures in keeping with DHEC and other health regulations and guidelines. In conjunction with the IEP team, the School Nurse prepares a nursing care plan to address the medical procedure needs and provides training, as appropriate, to school staff. The medically related procedures should be addressed under related services on the IEP.

MATERIALS AND EQUIPMENT

In addition to money allotted to each special education teacher through the school budget, additional funds through Special Services may be available for specialized materials, supplies, and equipment. A

district purchase order which includes the name and address of the vendor or company from which the materials are being request, the date, school, and delivery date should be completed fully and sent to Special Services for processing.

All materials should be delivered to the appropriate school, the contents of packages should be compared to the packing slip, and the packing slip should be sent to Special Services so that the invoice can be monitored appropriated for payment.

All equipment purchased with IDEA04 or Medicaid funds must be marked to indicate the source of federal funds, Please mark all equipment with following: year purchased and IDEA04 or Medicaid. This marking should be on the back or bottom of the equipment with a permanent marker.

All equipment is to be listed on the Equipment Inventory (Form No. 64) with the status of the equipment appropriated coded for an updated inventory. The Equipment Inventory (Form No. 64) is submitted yearly to Special Services for audit purposes.

ATTENDANCE/CASELOAD REPORTING PROCEDURES

- A. To ensure correct EFA accounting, the Placement Chairperson or Speech/ Language Therapist immediately must send the Attendance/PowerSchool clerk the Add/Change Form following the IEP meeting and parental consent whenever a student is placed in special education, if their is a change in identification/disability of the student, or the student is dismissed from special education. The date of placement is the same date IEP services are to begin. The Placement chairperson or designee enters student information in the Active special education database at the time of initial placement of a student into Enrich
- B. To ensure correct EFA accounting, the Special Education Teacher and Speech/Language Therapist must provide the PowerSchool clerk with a copy of his/her caseload within the first week of school and consult with the PowerSchool clerk to ensure that the classification and date entering is correct in attendance records.
- C. The special education teacher verifies their caseload list in Enrich on a continuing basis throughout the school year.
- D. At the end of the year, each Special Education Teacher and Speech/Language Therapist must send to Special Services the names of the projected caseloads for the next year and dismissals from the program.

SPECIAL EDUCATION SERVICES

Special Education is a service and not a setting. Services may be provided to students in a variety of settings from the general education classroom to a specialized classroom to a community setting. Participation in the general education curriculum, to the extent appropriate, for every special education student involves access to the general education curriculum standards and not necessarily assignment to a place of instruction. The special education placement is based upon the level of support a student needs to benefit from special education in the school setting: itinerant, resource, and self-contained. Some students may require special education services provided outside the school setting such as homebased, hospital, or residential programs.

STATE AND FEDERAL REQUIRED TIMELINES

ACTIVITY	PARAMETERS	TIME
Completion of evaluation	Date of parental consent until evaluation	<u>Maximum</u> of 60 days from receipt of parent consent to eligibility team meeting
Eligibility/IEP meeting	Date of eligibility determination until meeting	Maximum of 30 days
Updating IEP	Date of IEP meeting until IEP updated	Maximum of 12 months
Reevaluation	Date of eligibility meeting until the next eligibility meeting	Maximum of 3 years.

TIMELINE WAIVERS

- A. There may be extenuating circumstances which necessitate that time lines specified for the referral, evaluation, placement, and IEP procedures be waived. In all cases of failure to adhere to stated timelines, written documentation of the reasons must be maintained.
- B. Waivers should be used only as an exception for extenuating circumstances and must be discussed with the Director of special services or his/her designee except for waiver of IEP meeting timelines.

ACADEMIC TESTING

- A. Special education students must participate in state-wide and district-wide testing.
 - 1. Students may receive accommodations on state-wide or district-wide test **ONLY IF** those accommodations are specified in the student's IEP and are routinely applied and implemented as part of the student's daily instructional program.
 - 2. Allowable accommodations for the various required tests are listed in the appendix portion of each test's Test Administrators Manual (TAM)
 - 3. Students who receive non-standard accommodations on PASS are counted for AYP and report card purposes as NON-PARTICIPANTS. Therefore IEP teams should exercise extreme caution in recommending a non-standard accommodation on state-wide tests. For example: oral administration of the ELA portion of PASS for grades 3 and 4 is considered by the State Department of Education a NON-standard administration of the test and the student's work will automatically be scored as zero. Similarly use of a calculator on the math portion of PASS in grades 3 and 4 is considered a NON-standard accommodation and the student will be reported as a non-participant with a score of zero. Oral administration of PASS in grades 5-8 and use of a calculator in grades 5-8 are considered STANDARD accommodations and the student's results will be reported based on the student's actual performance.

4. For district-wide testing the Measures of Academic Performance (MAP) test is typically used for formative assessment and benchmarking. Since the purpose of this district-wide test is to assess the student's performance in the general curriculum for diagnostic and prescriptive purposes, non-standard accommodations are typically not deemed to be appropriate to assess the student's progress in the general curriculum. Any non-standard accommodation should be reviewed with the Special Services Administrator.
5. Schools work with District Test Coordinator and Principal's Designee to complete appropriate forms for testing accommodations as identified by each student's IEP.

SPECIAL EDUCATION ELIGIBILITY CATEGORIES

(Revised 10/11)

For Special Education purposes in South Carolina, students may be classified according to the reporting purposes required under IDEA04, SC Department of Education eligibility criteria for Special Education, or the SC Department of Education finance reporting.

The categorical classifications used for special education in South Carolina include:

IDEA04 Categories	SC Special Education Eligibility Categories	SC Educational Finance Act Classifications	
Intellectual Disability	Intellectual Disability (MD)	Educable Mentally Handicapped (EM)	1.74
		Trainable Mentally Handicapped (TM)	2.04
		Profoundly Mentally Handicapped (PM)	2.04
Specific Learning Disability	Specific Learning Disability (LD)	Learning Disability (LD)	1.74
Emotional Disturbance	Emotional Disability (ED)	Emotionally Handicapped (EH)	2.04
Speech or Language Impairment	Speech/Language Impaired (SLI)	Speech Handicapped (SH)	1.90
Hearing Impairment Deafness	Hearing Impaired & Deafness (HI)	Hearing Handicapped (HH)	2.57
Visual Impairment and Blindness	Visually Impaired & Blindness (VI)	Visually Handicapped (VH)	2.57
Orthopedic Impairment	Orthopedically Impaired (OI)	Orthopedically Handicapped (OH)	2.04
Other Health Impairment	Other Health Impaired (OHI)	Other Health Impaired (LD)	1.74
Deaf-blindness	Deaf-Blind (DB)	Hearing or Vision	2.57
Traumatic Brain Injury	Traumatic Brain Injury (TBI)	OH	2.04

Autism	Autism	Autism	2.57
Multiple Disabilities	Multiple Disability	Highest weighted category	
Developmental Disabilities	Developmental Disabilities (DD)	Will be funded as LD*	1.74

*for those students who are age 5 by September 1

Student Accounting for Homebound/AES/Homebased

For PowerSchool data entry, the student in special education who is on approved medical homebound, is listed in PowerSchool as Homebound (HB) using the same procedures as for non-disabled students on medical homebound. For the student in special education who is on AES/homebased, the PowerSchool accounting continues to list the student under the disability category.

For SPECIAL EDUCATION ACCOUNTING sheets, the students on medical homebound and AES/homebased will continue on the caseload of the special education teacher who is the case manager during homebound. The student would continue to be listed by disability category.

PRIVATE AND PAROCHIAL SCHOOLS

A. Definitions of private schools

1. Federal and state laws and regulations recognize that children with disabilities may be receiving their education in private elementary and secondary school settings for different reasons. In different situations, district has different obligations. The district's obligation to provide special education services or pay for services provided to children in private schools depends on whether:
 - a. The child with a disability is placed in the private school by the public school as a means of providing special education and related services;
 - b. The child with an disability is enrolled in a private school by his or her parents because the provision of a FAPE is at issue; or
 - c. The child with a disability is voluntarily enrolled in a private school by his or her parents to receive general education.
2. South Carolina defines a private school as: "a school established by an agency other than the State or its subdivisions which is primarily supported by other than public funds, and the operation of whose program rests with other than publicly elected or appointed officials" (S.C. Code Ann. § 59-1-110 (2004)). The definition of private schools includes parochial schools and home-school programs.
3. Additionally, South Carolina defines elementary and secondary schools as follows:
 - a. "Elementary school" means any public school which contains grades no lower than kindergarten and no higher than the eighth.
 - b. "Secondary school" means either a junior high school or a high school.
 - c. "High school" means any public school which contains grades no lower than the seventh and no higher than the twelfth.

- d. “junior high school” shall be considered synonymous with the term “high school” (S.C. Code Ann. § 59-1-150 (2004)).
- 4. South Carolina’s statutory definition of “elementary school” does not include preschool programs. Charter schools in South Carolina are considered part of the district and are not private schools.

B. Placement in private schools by the school district

- 1. Both federal and state laws and regulations allow a district to place a child with a disability in a private school when the IEP team determines that the district is not able to provide the services locally. Sometimes a private school setting is the LRE where a child can achieve educational benefit. When the district determines, through the IEP process, that a child with a disability should be placed in a private school or facility, the child’s educational program, including special education and related services, must:
 - a. be provided according to an appropriately developed IEP and at no cost to the parents; ensure the special education program is provided by staff who meet SDE personnel standards, including HQT;
 - b. ensure that the private school provides services consistent with the IDEA requirements and other pertinent Federal and State laws and regulations (e.g., in accordance with IEP requirements); and
 - c. ensure that the child has all rights of a child with a disability who is served by the public school.
- 2. The district must ensure that a representative of the private school or facility attends the IEP meeting to place a student in a private school. If a representative can not attend, the district must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- 3. After the child with a disability enters the private school or facility, the district responsible may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility. If the private school or facility initiates and conducts the IEP meeting, the private school must notify the district and the district must ensure that the parents and a district representative participate in any decision about the child's IEP. In addition, the district and the parent must agree to any proposed changes in the IEP before those changes are implemented.

- C.** Any time a child with a disability is placed in a residential treatment facility (RTF) by a state agency, the district in which the RTF is located is obligated to ensure that the private facility can provide the child with a FAPE.

D. Children placed in private schools by parent, when FAPE is an issue

- 1. If the parents of a child with a disability, who previously was receiving special education and related services from the district, enroll their child, without the consent of or referral by the district, in a private preschool or a private elementary or secondary school because the parents believe the child was not receiving a FAPE from the district, a court or special education due process hearing officer may require the district to reimburse the parents for the cost of that enrollment only if the hearing officer makes both of the following findings:

- a. The district did not make a FAPE available to the child in a timely manner before the private school enrollment; and
 - b. The private school placement made by the parents is appropriate to meet the needs of the child.
2. A court or special education due process hearing officer may find that a private school placement by the parents is appropriate for a child although that placement does not meet state standards that apply to special education and related services which are required to be provided by the district.
3. A court or special education due process hearing officer may deny or reduce any reimbursement for private school placement by the parents, if the court or special education due process hearing officer makes any of the following findings:
 - a. At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that they were rejecting the services or placements proposed by the district to provide a FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
 - b. or at least 10 business days, including any holidays that occur on a business day, before removal of the child from district, the parents did not give written notification to the district that they were rejecting the services or placements proposed by the district to provide a FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
 - c. Before the parents' removal of the child from district, the district provided PWN to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or
 - d. The actions of the parents in removing the child from the district were unreasonable.
4. A court or special education due process hearing officer must not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notification to the district, if the court or special education due process hearing officer makes any of the following findings:
 - a. Compliance with the notification requirement would likely have resulted in physical harm to the child.
 - b. The district prevented the parents from providing the required notification.
 - c. The district did not inform the parents of their requirement to notify the school of their intent to remove their child.
5. A court or special education due process hearing officer, at its discretion, may allow a parent full or partial reimbursement of the costs of a private school placement even though the parent failed to provide the notice required, if the court or hearing officer finds either of the following:
 - a. the parent can not read or write in English, or
 - b. compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

6. The district must be given an opportunity to offer a FAPE to the child before tuition reimbursement can become an issue. However, the special education due process hearing officers and courts retain their authority under prior case law to award appropriate relief when the district fails to provide a FAPE for a child who has not yet received special education and related services. Federal regulations (34 C.F.R. § 300.403) address this issue.

E. Child Find for children voluntarily enrolled in private schools by their parents.

1. When children are enrolled by their parents in private schools, the district has continuing responsibility for child find and must locate, evaluate, and identify children with disabilities in private schools just as they do in the districts. The district where the private school is located must conduct child find activities to locate children with disabilities attending private elementary and secondary schools that are located in the jurisdiction of the district. This includes children with disabilities who reside in another state but attend a private school that is located within the boundaries of District Four.
2. In meeting the child find obligation with regard to children with disabilities attending private schools within the district boundaries, District Four personnel must consult with appropriate representatives of private schools and parents of private school children with disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for other children in the district. Additionally, they will determine how parents, teachers, and private school officials will be informed of the process.
3. The activities undertaken to carry out the child find responsibility must meet the following criteria:
 - a. Be similar to the activities undertaken for exceptional children enrolled in the district's schools;
 - b. Provide for the equitable participation of private school children;
 - c. Provide for an accurate count of children with disabilities enrolled in the private schools; and
 - d. Be completed in a time period comparable to the time for these activities in the district's schools.
4. There may be times when parents request that both the district where they reside and the district where the private school is located evaluate their child under child find requirements. Parents may request that the district where the family resides conduct an evaluation under its responsibility for the provision of a FAPE at the same time that they request that the district where the private school is located evaluate the child. In this situation, the districts would need to work with the parents to ensure their understanding of the problems concerning trying to conduct two separate evaluations at the same time.
5. If the parents of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures of mediation or due process, and the school is not required to consider the child as eligible for special education services.
6. If a child is enrolled, or is going to enroll, in a private school that is not located in the parent's district of residence, parental consent must be obtained before any personally

identifiable information about the child is released between officials in the district where the private school is located and officials in the district of the parent's residence (34 C.F.R. § 300.622(a)(3)).

F. Federal requirements for children voluntarily enrolled in private schools by their parents and homeschooled children

1. The IDEA requires that children with disabilities in private schools (K–12) receive an opportunity for participation in special education services. The IDEA makes it clear that a child with a disability in a private school has no individual right to special education or related services. Rather, the public district where the private school is located must ensure that a proportionate share of federal funding is used to provide services to this population of children. Therefore, under federal law, in almost all cases, the public district where the private school is located would not be obligated to provide any or all special education and related services to every child with a disability enrolled in a private school located within its boundaries. All requirements for parentally placed private school children also apply to homeschooled children in South Carolina.
2. District Four annually consults with private school representatives and representatives of parents of parentally-placed private school children and homeschooled children with disabilities attending private schools within the district during the design and development of special education and related services for parentally-placed children and before making decisions regarding the following:
 - a. The child find process, including:
 - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
 - (2) How parents, teachers, and private school officials will be informed of the process.
 - b. The determination of the proportionate share of federal funds available to serve parentally-placed private school children and homeschooled children with disabilities including the determination of how the proportionate share of those funds was calculated.
 - c. The consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children and homeschooled children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
 - d. How, where, and by whom special education and related services will be provided for parentally-placed private school and homeschooled children with disabilities, including a discussion of:
 - (1) The types of services, including direct services and alternate service delivery mechanisms; and
 - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school and homeschooled children; and

- (3) How and when those decisions will be made; and how, if the district disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the district will provide to the private school officials a through a contract.
3. Consultations with appropriate representatives of private schools and parents of private school and homeschooled children with disabilities should occur in a timely manner before decisions are made that affect the ability of children in a private school to participate in services. These representatives of private schools and parents of the private school children with disabilities must have the opportunity to express their views and have meaningful input into the special education process.
4. **Calculating the allocation of proportionate share of funds**
 - a. The IDEA describes the minimum amount of funds that must be expended to provide services for children enrolled in private schools by their parents. That amount is calculated by determining the number of children with disabilities who are enrolled in private schools by their parents within the district, and have been identified as a child with a disability by the public district, **whether or not they are receiving services**. This count must be reported in the application for the Part B federal funds received for children ages 3 through 21 and 3 through 5 preschool funds.
 - b. To meet federal requirements, the district must have an accurate count of the number of children with disabilities voluntarily enrolled by their parents in private schools located within the district. This count includes children attending private schools and homeschooled in the district that are identified as eligible for special education services and related services by the district, whether or not they are receiving any special education services. The district must consult with appropriate representatives of private schools and representatives of parents of private school children and homeschooled children with disabilities in deciding how to conduct the annual count of children with disabilities in private schools. The annual private school child count is to be used by the district for planning the level of services to be provided to private school children and determining the proportionate share of funds to be used in the subsequent school year. This count will be included in the annual December 1 Child Count.
 - c. Once the proportionate share of funds is calculated, the funds that are actually expended do not have to be federal funds. Therefore, if state categorical aid funds or local funds are being used to provide services to children with disabilities who are enrolled in a private school, this expenditure could meet the requirement of the district to spend its proportionate share of funds on such children. The cost of carrying out the child find activities, including an evaluation, can not be included in determining if the district has met its obligation to provide a proportionate share of funds for private school children. If all funds allocated for special education and related services to private school children are not expended during the school year, the funds must be carried over to provide services to children who are in private schools and homeschooled in the next subsequent school year.
 - d. The district where a private school is located is responsible for spending a proportionate amount of its subgrant under Part B on special education and related

services for children enrolled by their parents in private schools located in the district. There is no exception for out-of-state children with disabilities attending a private school located in the district. Therefore, out-of-state children with disabilities must be included in the group of parentally-placed children with disabilities whose needs are considered in determining which parentally-placed private school children with disabilities the district will serve and the types and amounts of services the district will provide. The district providing the services may not charge for child find and equitable services even if the child with a disability resides in another state.

- e. The South Carolina definition of private school only addresses settings for children beginning at kindergarten. Therefore, the proportionate share of funds under the preschool federal allocation would be calculated for five-year-old children voluntarily enrolled in a private school K–12.

G. Services provided with a Services Plan

1. After the district determines the amount of funds that must be allocated for providing services to children with disabilities in private schools and homeschooled located within the district, the district, in consultation with appropriate representatives of private schools and representatives of parents of children with disabilities voluntarily enrolled in private schools and homeschooled, must determine how the funds will be allocated, how and where services will be provided and by whom. The district, however, must ultimately determine the types and levels of services to be provided.
2. If a child with a disability, who is voluntarily enrolled by his or her parents in a private school or homeschooled, receives services offered by the district where the private school is located, with its proportionate share of funds according to the agreement reached in the consultation, the school would develop a services plan for the child. The regulations refer to this plan as a services plan to avoid confusing it with an IEP. An IEP is an inherent component of a FAPE. A "services plan" is to be used because it is clear under federal and state laws and regulations that these children in private schools and children who are homeschooled do not have an individual right to receive a FAPE. The parents of children served with a services plan do not have any due process rights beyond issues related to child find which includes evaluation/reevaluation. Parents may file a complaint with the SCDE if they feel that the district has failed to meet its obligations under the federal and state law and regulations.
3. The services plan describes the specific special education and/or related services to be provided to the child as a result of the consultation with appropriate representatives of private schools and representatives of the parents of private school and homeschooled children. To the extent appropriate, the services plan includes all of the IEP components. The elements in each child's services plan may vary depending on the services to be provided. Like an IEP, the services plan must be reviewed and revised on an annual basis, and as necessary.
4. **Many children's services plans will include:**
 - a. The child's present level of academic achievement and functional performance;
 - b. The measurable annual goals, including benchmarks or short-term objectives, if appropriate;

- c. A statement of the special education, related services, supplementary aids and services and modifications;
- d. A statement of the program accommodations, or supports;
- e. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education environment;
- f. The projected date for the beginning of the services and modifications, and the amount, anticipated frequency, location and duration of the services and modifications; and
- g. A statement of how the child's progress toward the measurable annual goals will be measured and how the parents will be regularly informed of their child's progress.

5. Location of Services for Children with a Services Plan

- a. Under federal law, the location where services will be provided should be determined in consultation with appropriate representatives of private schools and with representatives of parents of children with disabilities enrolled in private schools and homeschooled. The location of services will impact the amount to be expended to provide services to children with disabilities in private schools and homeschooled. There are options available for the location of the delivery of services to children with disabilities in private schools and homeschooled. Some of the services may be provided in schools throughout the district or at a central location in the district. The district may decide that only some services will be provided at the private school setting. When services are provided in the private school, they may take place at a central location rather than each attendance site.
- b. However, while permitting services to be provided at a parochial school site, the federal law does not require that services be provided in that setting. An offer to provide services at the district site generally meets a district's obligations, even if parents refuse the services at that site.

6. The IDEA requires transportation to be provided to a child with a disability in a private school if transportation is necessary for the child to benefit from or participate in the services provided. The district is not required to provide transportation outside of its boundaries. Transportation costs may be figured into the proportionate amount of funds expended for services.

7. Schools may not use funds to:

- 1. create separate classes organized on the basis of school enrollment or religion of children if the classes are at the same site; and the classes include children enrolled in districts and children enrolled in private schools ;
- 2. finance the existing level of instruction at a private school or otherwise benefit the private school; or
- 3. meet the needs of the private school or the general needs of children enrolled in the private school .

8. Property, equipment, or supplies used on private school premises for providing special education services must remain in the control of the district and be removed from the private school when they are no longer needed to provide the services. They must also be removed to avoid unauthorized use. Federal funds can not be used for repair, remodeling, or construction at a private school site. Therefore, state regulations require that the district

ensure that any equipment or supplies be placed in a private school in a manner that allows removal without the necessity of remodeling the private school.

H. Preschool children enrolled in private settings

1. The requirement in the IDEA for each district to provide equitable participation in special education and related services to parentally-placed private school children attending private schools within the district's boundaries through a services plan only applies to elementary and secondary school children. South Carolina's statutory definition of "elementary school" does not include preschool programs; therefore, preschool children with disabilities attending private day care programs should not automatically be treated as private school children and service plans should not automatically be the first option.
2. Federal and state regulations require that child find activities including evaluation, if appropriate, be conducted for all children whose parents live within the district. Due process rights, including the receipt of appropriate notifications and IEP meetings, apply to all children who qualify as preschool children with disabilities within the district. If the district in which the child resides agrees the child's placement in the district's preschool program is not appropriate for a particular preschool child with a disability, the district must locate and offer an appropriate program, which may be the private day care or private preschool program. The district may have to pay for either a portion of the cost or the entire private day care program when it does not have an appropriate placement. Regardless of whether a preschool child with a disability is placed in a public preschool program or a private preschool program when the district does not have an appropriate program, the district must ensure the provision of a FAPE to the child and must pay for all cost associated with the provision of special education and related services in the LRE as stated in the child's IEP.
3. If the district where the preschool child lives convenes an IEP team and the team believes that it can provide the child a FAPE through its preschool program, but the child's parents opt instead to place the child in a private day care or preschool program, the district of residence must consider the child for the possible provision of equitable services through a services plan. If the child attends a private preschool or day care program in another district, unlike elementary and secondary school-age children, the district where the private program is located is not responsible for the provision of any special education or related services. The district of residence is responsible for providing equitable services to preschool-age children in private preschool and day care programs.

I. Mediation and due process rights for private school children

1. Parents of children voluntarily enrolled in private schools or homeschooled and receiving services under a services plan can not seek due process or mediation regarding the district's alleged failure to meet the requirement of providing services to these children. Rather, the parents may request a meeting to review and revise the child's services plan, or utilize the state formal complaint process concerning alleged child find violations. However, parents can request mediation or due process if the parents believe the school has failed to properly evaluate and identify their child.
2. A private school official has the right to file a complaint with the South Carolina Department of Education (SEA) that the district did not engage in consultation that was meaningful and timely, or did not give due consideration to his or her views. The private school official must provide the basis for his or her belief that the district did not comply

with these consultation requirements. As part of this complaint process, the district must forward appropriate documentation related to the private school official's complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, he or she may submit a complaint to the U.S. secretary of education. The complaint should provide the basis of the official's belief that the district did not comply with the consultation requirements, and the SEA must forward the appropriate documentation to the secretary. The complaint process is available to parents (or another individual or organization), even if services provided in a private school are on a services plan, and not an IEP. However, this right is limited to child find activities only.

PARENT RIGHTS

A. Parent Participation

1. Lexington School District Four ensures that parents have the opportunity to be members of any decision-making team for their child, including eligibility, initial evaluation, reevaluation, and development of an IEP for the provision of a free, appropriate, public education (FAPE).
2. Every child with a disability aged 3 to 21 is entitled to receive a FAPE defined by special education and related services that meet the following criteria:
 - a. Are provided at district expense, supervision and direction, and without charge;
 - b. Meet the standards of the state;
 - c. Include an appropriate preschool, elementary school, or secondary school education.; and
 - d. Are provided in conformity with an IEP.
3. Parents must be provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a FAPE for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings.
4. The district makes reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is other than English. The parent and the district may agree to use alternative means of meeting participation, such as video conferences or conference calls
5. These meeting requirements do not apply to informal or unscheduled conversation of district personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

B. Definition of Parent

1. District personnel determine the appropriate person(s) to make educational decisions on behalf of the child. Those individuals have a right to receive notice, give or revoke consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc.
2. "Parent" is defined as:

- a. A biological or adoptive parent of a child;
 - b. A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the State);
 - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - e. A surrogate parent who has been appointed in accordance with S.C. Code Ann. § 63-1-40 (2008).
3. If there is more than one party qualified to act as parent and the biological or adoptive parent attempts to act as the parent the biological or adoptive parent is presumed to be the parent and legal decision-makers unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. A judge may decree or order a person acting as a parent or legal guardian to act as the "parent" to make educational decisions about the child. The district recognizes this person(s) as the legal decision maker for the child

C. Parental Rights in Special Education Notice

1. The district provides a copy of the listing of parental rights which includes a full explanation of all of the procedural safeguards available to the parent using the Parent Handbook to Special Education to ensure that parents have knowledge about their rights under the federal and state special education laws. The notice is provided:
 - a. At least one time in a school year; and
 - b. Upon a referral or parent request for initial evaluation;
 - c. First formal complaint or due process complaint filed in a school year;
 - d. Upon a disciplinary removal from school that constitutes a change in placement; and
 - e. Upon parent request.
2. These are the only times when the Parent Rights Notice is required to be provided.
 2. The notice is written in language understandable to the general public and 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. If the language or mode of communication is not a written language, the district translates the notice orally or uses another mode of communication so that the parent understands the content of the notice. Parents may elect to receive the Notice of Procedural Safeguards by electronic mail communication. If the Parent Handbook to Special Education (is provided electronically the district should have a copy of the email sent to the parent and documentation that the notice was received.

D. Parents Rights to Prior Written Notice

1. As a procedural safeguard, the district provides parents with prior written notice using the Prior Written Notice form (Enrich) within a reasonable amount of time before the date the district proposes or refuses to initiate or change the

- a. Identification,
 - b. Evaluation,
 - c. Educational placement of their child, or
 - d. Provision of a FAPE to their child.
2. The PWN provided to parents for each proposed special education action must contain specific information:
 - a. A description of the action proposed or refused;
 - b. An explanation of why the district proposes or refuses to take the action;
 - c. A description of each evaluation procedure, assessment, record, or report the district used as basis for proposed or refused action;
 - d. A description of the other options the IEP team considered and reasons why they were rejected;
 - e. A description of any other factors relevant to the proposal or refusal;
 - f. A statement that the parents have parental rights under the law; and
 - g. Sources for parents to contact to assist in understanding their rights such as district staff or PRO Parents.
3. Additionally, if the PWN is to propose to conduct an initial evaluation or a reevaluation, the notice must describe any evaluation procedures that the district proposes to conduct.
4. The PWN must be provided in language understandable to the general public, and in the native language of the parent unless it is clearly not feasible to do so. Additionally, if the native language or other mode of communication of the parent is not a written language, the district must take steps to ensure that (a) the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication (such as sign language); (b) the parent understands the content of the notice; and (c) there is written documentation that these requirements are met.
5. PWN must be given at the conclusion of every IEP meeting prior to initiation or rejection of any issues discussed at the IEP meeting. These notices must provide information to parents about the proposed issues to be discussed and then about decisions made at the meeting.
6. When a district representative and parent agree to excuse an IEP team member whose area of expertise will **NOT** be discussed during an IEP meeting, the PWN will describe the proposed topics and issues to be discussed and will include an attachment of the written agreement that excuses the team member to be signed by the district representative and the parent as well as an attachment with information as to the date, time, location, and positions of district personnel attending the meeting.
7. When a district representative and parent have consented to excuse an IEP team member whose area of expertise **WILL** be discussed during an IEP meeting, the PWN must describe the proposed topics and issues to be discussed and include attachments of the written consent to be signed by the district representative and the parent as well as the written input into the meeting provided by the excused team member and an attachment with information as to the date, time, location, and positions attending the meeting. This PWN must be provided to the parents a reasonable amount of time prior to the meeting in order to allow the parent time to make an informed decision.

8. In amending a child's IEP, the parent of a child with a disability and the district representative may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Even when using the IEP amendment process, the district must provide PWN of any changes agreed upon in the IEP

E. Parent Consent with PWN is Required for the Following Actions

1. Consent to conduct an initial evaluation. If the parent does not provide consent (refuses) for initial evaluation, or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards available under special education laws and regulations, including mediation. If the parent refuses or does not respond, the district does not violate its obligation for the provision of a FAPE to the child if it declines to pursue the evaluation.
2. Consent to conduct a reevaluation. If the parent refuses to consent to a reevaluation, the district may, but is not required to, pursue the reevaluation by using mediation or due process procedures. Additionally, informed parental consent is not required to conduct a reevaluation if the district can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond.
3. Consent for the initial provision of services on the IEP. If the parent fails to respond or refuses services the district CANNOT use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. Under these circumstances, the district does not violate its obligation for the provision of a FAPE to the child for failure to provide the child with the special education and related services for which the district requested consent. In addition, the district is not required to convene an IEP meeting or develop an IEP for the child.

F. The Following Requests for Parent Consent Do Not Require PWN

1. Consent to excuse an IEP team member from IEP team meeting: A required member of the IEP team, may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if, (a) the parent, in writing, and the district consent to the excusal; and (b) the IEP team member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting .
2. Consent to invite outside agency: When the IEP team is considering a child's postsecondary goals and transition services needed to assist the child in reaching those goals, the district is required to invite a representative of any agency that is likely to provide or pay for transition services. The district must obtain parental consent at least annually to invite the representative from that agency because confidential information about the child would be shared at the meeting
3. Consent for use of private insurance and Medicaid: When an IEP team has identified special education and related services for a child who is Medicaid eligible or is covered by private insurance the district must request parent consent at the time the services are determined, but at least annually, in order to access Medicaid or private insurance.

G. Parental Consent is not Required for the Following

1. Review of existing data as part of an initial evaluation or a reevaluation,
2. Administration of a test or other evaluation that is administered to all children, or
3. Change in placement (increase/decrease in amount of special education services) once a parent has given consent for initial provision of special education services. In these situations, only PWN to the parent of the action proposed is required.

H. THE TABLE BELOW PROVIDES A SUMMARY OF WHEN CONSENT AND PWN ARE REQUIRED

**Requirements for Prior Written Notice and Parental Consent
(34 C.F.R. § 300.503)**

Proposed Action by the DISTRICT	Prior Written Notice (PWN)(§ 300.503) or Notification	Requires Parental Consent	Due Process If Parent Refuses to Give Consent
Initiate evaluation	PWN	Yes	May or may not use
Proposed Action by the DISTRICT	Prior Written Notice (PWN)(§ 300.503) or Notification	Requires Parental Consent	Due Process If Parent Refuses to Give Consent
Refuse to initiate initial evaluation or reevaluation	PWN	No	N/A
Identification and Eligibility Determinations	PWN	No	N/A
Initial provision of IEP services (placement)	PWN	Yes	Not allowed
Revocation of parental consent for special education services	PWN	No	Not allowed
Reevaluation of a student	PWN	Yes	May or may not use
Substantial change in placement	PWN	Yes	N/A
Disciplinary change in placement	PWN	No	N/A unless the behavior is a manifestation of the disability and the parent will not agree to a change in placement
Evaluation, reevaluation, or initiation of services for children parentally placed in private schools	PWN	Yes	Not allowed
Evaluation, reevaluation, or initiation of services for children parentally placed in private schools if a FAPE is at issue	PWN	Yes	Yes
Notification of all IEP	Notification	No	N/A

meetings (prior to the discussion of proposed changes)			
Notification of the decisions made at an IEP meeting (prior to implementation)	PWN	No	N/A
Invite an outside agency to the IEP for secondary transition	Notification	Yes	N/A
Use of private insurance or Medicaid	Notification	Yes	N/A
Use of IFSP for an IEP	Notification	Yes	N/A

I. Parental Consent Requested But Not Provided

1. The district must make reasonable attempts to obtain consent from the parents for each special education action as required. Documentation of reasonable attempts should be kept including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents home or place of employment, and the response, if any, from the parents.
2. As indicated previously, parent consent is required to conduct a reevaluation. However, parent consent is not required for this action if the parent does not respond to the district's requests for consent and the district can document its attempts to obtain parental consent as outlined above. Additionally, under the disciplinary protections, the district would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services; or the child has been evaluated and determined not to have a disability.

J. Notice of IEP Meeting

1. The district must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting must be scheduled at a mutually agreed upon time and place. The written notice must indicate:
 - a. The purpose;
 - b. the date;
 - c. the time;
 - d. the location of the meeting;
 - e. the titles or positions of the persons who will attend on behalf of the district (The district must notify the parents about who will be in attendance at an IEP team meeting, however, individuals may be indicated by position only.
 - f. information about the parents' right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child;
 - g. Information about the parents' right to have the local Part C coordinator (or BabyNet representative) invited if their child was previously served in Part C.
2. In addition, beginning not later than the first IEP to be in effect when the child turns 13, or younger if determined appropriate by the IEP team, the notice must:

- a. Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
 - b. Indicate that the district will invite the student; and
 - c. Identify any other agency that will be invited, with parent consent (or student consent if age 18), to send a representative.
3. If a parent is in jail, she/he is technically not "unknown or unavailable". The parent's participation may be obtained by telephone and consent may be obtained through contact by mail, unless it is not feasible to do so.

***Please refer to Lexington County School District Four's Procedural Safeguards Notice for complete listing of Parent Rights.**

