2008

Operating Standards

for

Ohio Educational Agencies

serving

Children with Disabilities

Ohio Department of Education

State Board of Education of Ohio

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Ohio Department of Education

Susan Tave Zelman

Superintendent of Public Instruction

Dear Educators and Parents:

On July 1, 2008, the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* became effective. These operating standards were revised to align with the requirements of the Individuals with Disabilities Education Improvement Act of 2004 and the goals of the No Child Left Behind Act of 2001. They also reflect input and support from various stakeholders in Ohio who contributed to the rule-making process.

To better serve students with disabilities, these new standards emphasize:

- High expectations and support;
- Intervening services provided as early as possible;
- Evaluation of research-based interventions;
- Highly qualified teachers;
- Flexibility in requirements for reevaluating student progress and needs;
- Instruction in the general curriculum, presented in settings with nondisabled peers as much as possible;
- Goals and services for transition into life after high school; and
- Equal participation in education and school activities for those in nonpublic schools.

The operating standards provide a framework to ensure that all children receive a quality education tailored to their unique needs. Your efforts in adhering to the standards will help more students achieve success at school and throughout life.

Thank you for your dedication to Ohio's students.

Susan Tave Zelman

Susan Tave Zelman
Superintendent of Public Instruction

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Center for
Students, Families, and Communities

Susan Tave Zelman
Superintendent of Public Instruction

Office for Exceptional Children
Kathe Shelby, Ph.D., Director

TO: Ohio Educational Agencies serving children with disabilities

FROM: Kathe Shelby, Ph.D., Director

DATE: August 18, 2008

SUBJECT: State-Imposed Rules, Regulations, and Policies Not Required by IDEA 2004 or Federal Regulations

LIST OF STATE-IMPOSED RULES, REGULATIONS, AND POLICIES NOT REQUIRED BY PART B OF IDEA 2004 OR PART B FEDERAL REGULATIONS

As required by 20 U.S.C. 1407 and 34 C.F.R. § 300.199, the Ohio Department of Education is identifying in writing to local educational agencies and the United States Department of Education the state-imposed special education rules, regulations, and policies adopted by the State Board of Education that are not required by Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) or by Part B federal regulations.

Effective July 1, 2008, the State Board of Education adopted new Rules 3301-51-01 to 3301-51-09 and 3301-51-11 of the Administrative Code. These rules replace former Rules 3301-51-01 to 3301-51-09 and 3301-51-11 of the Administrative Code which were rescinded effective July 1, 2008. These rules are referred to as the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*.

The updated rules include the state requirements listed below and the federal Part B IDEA requirements that apply to the provision of special education and related services to children with disabilities by school districts, county boards of mental retardation and developmental disabilities, and other educational agencies. "Other educational agency" means a joint vocational school district; department; division; bureau; office; institution; board; commission; committee; authority; or other state or local agency, other than a school district or an agency administered by the Department of Mental Retardation and Developmental Disabilities, that provides or seeks to provide special education or related services to children with disabilities.

This document summarizes the state-imposed rule requirements but does not identify the rule requirements that are based on the federal Part B IDEA requirements. For the complete text of the rules, refer to the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*.

Rule 3301-51-01 Definitions

- *School district of residence*: The child's school district of residence is responsible, in all instances, for ensuring that the requirements for making a free appropriate public education (FAPE) available are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district or other entity. [(A)(2)(a)]

- *"Child with a disability"* is defined to include children aged three through five years who are experiencing developmental delays (as the term is defined in Rule 3301-51-11 and as measured by appropriate diagnostic instruments and procedures); and who, by reason thereof, need special education and related services. This election to include children ages three through five years has been made as authorized by 34 C.F.R. § 300.8(b). [(B)(10(c)]

- *"Definitions of disability terms"*: "Traumatic brain injury" is defined to include an acquired injury to the brain caused by other medical conditions besides an external physical force, including but not limited to, stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments. [(B)(10)(d)(xii)]

- *"Parent"* is defined to exclude a foster parent of a child as authorized by 34 C.F.R. § 300.30(a)(2). [(B)(42)]

- *"Referral"* is defined to mean the date the public school district or community school receives a parent's, school district's, or other educational agency's request for an initial evaluation or reevaluation. [(B)(51]

- *"Special education"* is defined so that any other related service is included in the definition of special education if the individualized education program (IEP) team considers the service special education rather than a related service under state standards and if the service otherwise meets the requirements for specially designed instruction. This election to include any other related service in the definition of special education has been made as authorized by 34 C.F.R. § 300.8(a)(2)(ii) [(B)(58)]

- *"Transition services"* is defined to require that transition services shall be provided by individuals who have the competencies, experiences, and training required to meet the individual student's transition services needs, and may include job training coordinators, vocational special education coordinators, career assessment specialists, work-study coordinators or other qualified individuals. [(B)(63)]

Rule 3301-51-02 Free Appropriate Public Education

- *Extended School Year Services*: Additionally, the school district shall consider the following when determining if extended school year services (ESY) should be provided:
  - Whether ESY services are necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child' educational goals; and

- Whether extended school year services are necessary to avoid something more than adequately recoupable regression. [(G)]
  [The above language is the language used by the United States Court of Appeals, Sixth Circuit, in interpreting the federal extended school year requirements. Although the Sixth Circuit decisions were issued prior to IDEA 2004 and the 2006 federal IDEA regulations, the October 13, 2006 ESY regulation carried over unchanged the March 12, 1999 ESY regulation.]

Rule 3301-51-03 Child Find

- *Developmental Delay*: The Ohio Department of Education has adopted a definition of developmental delay, as authorized by 34 C.F.R. § 300.111(b), but a school district is not required to adopt and use the term for any children within its jurisdiction. If a school district uses the term developmental delay, the school district must conform to both the state's definition of that term in Rule 3301-51-11 and to the age range of three through five years of age which is the age-range subset adopted by the Ohio Department of Education. [(B)(2)]

Rule 3301-51-04 Confidentiality

- *Disciplinary Information:* A school district, county board of mental retardation/developmental disabilities (county board of MR/DD, and other educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. When a child transfers from one school, county board of MR/DD, or other educational agency to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. [(Q); 34 C.F.R. § 99.36]

Rule 3301-51-05 Procedural Safeguards

- *Change of Placement*: A change of placement means a change from one option on the continuum of alternative placements to another. Informed parental consent must be obtained before making a change of placement of a child with a disability unless the district of residence can demonstrate that it made reasonable efforts to obtain consent and the parent has failed to respond or the change of placement is the result of a disciplinary action. [(D)(4)(a)-(c)(ii)]

- *Surrogate Parents*: A surrogate parent shall be assigned as soon as possible (but, per the federal regulation, no later than 30 days of the date that it is determined that the child needs a surrogate parent).[(E)(4)(a)] The school district of residence maintains the ultimate responsibility for the assignment of a surrogate parent.[(E) (4)(b)] All surrogate parents must have successfully completed the training prescribed by the Ohio Department of Education prior to acting on behalf of the child.[(E)(3)] and (4)(c)(iv)] Pursuant to Revised Code Section 3323.051, neither the surrogate parent nor the authority that assigned the surrogate parent shall be liable in civil damages for acts of the surrogate parent unless such acts

constitute willful or wanton misconduct.[(E)(6)] A child who has reached the age of majority may request a surrogate parent.[(E)(8)]

- *Additional Prior Written Notice Requirements*: Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability within thirty days of the date of referral. Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability prior to a change of placement that is a result of a disciplinary action. The IEP shall serve as written notice unless the parent disagrees with the IEP. If the parent disagrees, written notice shall be provided prior to the implementation of the IEP. [(H)(4)]

- *Administrative Reviews*: The child's parent or educational agency other than the school district may request an opportunity to present complaints to the superintendent. Administrative reviews are recommended but cannot be used to delay or deny an impartial due process hearing that has been requested in writing or to deny any other rights afforded to parents under IDEA. [(K)(1)]

- *Mediation*: If the mediation requires changes in the IEP, the IEP team shall be convened to incorporate changes into the IEP within twenty school days following the mediation agreement or as agreed to in the mediation agreement. No part of the mediation discussion or sessions may be electronically recorded. [(K)(3)(b)(ix) and (x)]

- *Sufficiency of Due Process Complaint*: If the hearing officer receives a notification challenging the sufficiency of a due process complaint, the hearing officer shall make a determination within the five-day period specified in the federal regulation and shall notify all parties in writing of that determination on the same date the determination is made. If the hearing officer determines that the complaint is insufficient, the determination shall include the reasons for the determination, a statement in clear language that the case has not been dismissed, and a notice of resources to assist parents without counsel in completing due process complaints and in correcting deficiencies. [(K)(8)(e)(iii)*(b)* and *(c)*]

- *Resolution Sessions*: As required by Revised Code Section 3323.05(G)(2), discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. [(K)(9)(a)(iii) and (d)(i)]

- *Due Process Hearing Officer*:
  - A due process hearing officer must be an attorney licensed to practice law in Ohio who has successfully completed all training required by the Ohio Department of Education. [(K)(10)(c)(i)*(e)*]
  - The Ohio Department of Education may require any and all current hearing or state level review officers to reapply for eligibility to remain on the list of persons who serve as hearing officers. [(K)(10)(c)(iv)]
  - Training sessions are a mandatory requirement to remain eligible for appointments. [(K)(10)(c)(iv)]
  - Being on the list of possible hearing or state level review officers should not be considered a guarantee or expectation of appointment. [(K)(10)(c)(iv)]
  - The due process hearing officer is responsible for notifying all parties of the date, time, and location of the hearing; arranging a disclosure conference; issuing a subpoena when

relevant; ruling on procedural issues; and arriving at a written decision based solely on evidence and testimony presented at the hearing and mailing the decision. [(K)(12)]

- *Appeal of Due Process Decision*:
  - As specified in Revised Code Section 3323.05(H), any party aggrieved by the findings and decision in the hearing may appeal the findings and decision in writing to the Ohio Department of Education within forty-five days of receipt of the hearing decision, and the department shall appoint a state level review officer who will conduct the review. [(K)(14)(b)]
  - Any party aggrieved by the findings and decision of the state level review officer may appeal the final order by filing a civil action within forty-five days of notification of the decision in the common pleas court of the county of the child's district of residence as provided by Revised Code Section 3323.05(H) (or within 90 days from the date of the decision in the district court of the United States as provided in the federal regulation, 34 C.F.R. § 300.516). [(K)(17)(b)]

- *Cost of Hearing*: Subject to certain stated exceptions, most costs incurred in a hearing requested by the parent, including the cost of the hearing officer, shall be assumed by the school district of the child's residence. If another public agency providing services to the child requests a hearing, that agency and the school district of residence will share the hearing costs, subject to the stated exceptions. The Ohio Department of Education compensates state level review officers. Hearing officers and state level review officers are paid as specified in the rule. [(K)(16)]

- *Functional Behavioral Assessment:* A ten-day requirement is added. If the conduct was a manifestation of the child's disability, the IEP team must either:
  - Start to conduct a functional behavioral assessment within ten days of the manifestation determination and complete the assessment as soon as practicable, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
  - If a behavioral intervention plan already has been developed, within ten days of the manifestation determination, review the behavioral intervention plan and the implementation of the plan, and modify it, as necessary, to address the behavior subject to disciplinary action (and return the child to the placement from which the child was removed except as otherwise provided). [(K)(20)(f)(i)]

- *Procedures for Expedited Due Process Hearings*: As authorized by 34 CFR 300.532(c)(4), the Ohio Department of Education has established procedures for expedited due process hearings. Times frames are established for the district to notify the department of an expedited request, for the district to notify the parents if the district is requesting the hearing, and for the department to appoint a hearing officer. The hearing officer and state level review officer shall not grant any extensions of time. [(K)(22)(d)]

Rule 3301-51-06 Evaluations

- *Interventions*: Each school district shall provide interventions to resolve concerns for any preschool or school-age child who is performing below grade-level standards. A school district may not use interventions to delay unnecessarily a child's being evaluated to determine eligibility for special education services. If such interventions have not been implemented prior to referral for evaluation, appropriate interventions should be implemented during the same sixty-day time frame during which the school district conducts a full and individual evaluation. [(A)(2)-(4)]

- *Request for Evaluation*: A school district will, within thirty days of receipt of a request for an evaluation, either obtain parental consent for an initial evaluation or provide to the parents prior written notice stating that the school district does not suspect a disability and will not be conducting an evaluation. [(B)(3)]

- *Reevaluation*: In addition to the times when the child must be reevaluated under the federal regulation at 34 C.F.R. § 300.303, the child must be reevaluated when a child transitions from preschool to school-age services; and in order to make a change in disability category. [(D)(1)(c) and (d)]

- *Evaluation Procedures*: Medical consultation shall be encouraged for a preschool or school-age child on a continuing basis. For preschool children, as appropriate, the evaluation shall include listed specialized assessments. [(E)(3)(h) and (i)]

- *Evaluation Plan and Evaluation Team Report*: As part of an initial evaluation, if appropriate, and as part of any reevaluation, the evaluation team shall develop an evaluation plan that will provide for the evaluation or reevaluation and will be summarized in an evaluation team report. [(F)(1)]

- *Review of Existing Evaluation Data*: The review of existing evaluation data on the child shall include data about the child's progress in the general curriculum or, for the preschool-age child, data pertaining to the child's growth and development, data from previous interventions, and any relevant trend data beyond the past twelve months, including the review of current and previous IEPs. [(F)(1)(a)(iv)-(vi)]

- *Written Evaluation Team Report*: The written evaluation team report shall include:
  - A summary of information obtained during the evaluation process; and
  - The names, titles, and signatures of each team member, including the parent, and an indication of whether or not they are in agreement with the eligibility determination. Any team member who is not in agreement with the team's determination of disability shall submit a statement of disagreement.

  The school district must provide a copy of the evaluation team report and the documentation of determination of eligibility or continued eligibility to the parents prior to the next IEP meeting and in no case later than fourteen days from the date of eligibility determination. [(G)(1)(b)]

- *Criteria for Determining Specific Learning Disability*: As required by federal regulation 34 C.F.R. § 300.307, the state has adopted in this rule criteria for determining whether a child has a specific learning disability. The criteria permit the use of a process based on the child's response to scientific, research-based intervention and the use of alternative research-based procedures and do not require the use of a severe discrepancy between intellectual ability and achievement. [((H)(1) and (3)(d)]

- *Additional Procedures for Identifying Children with Multiple Disabilities*: A group of qualified professionals and the parents of the child may determine the child has multiple disabilities if the child exhibits a combination of two or more areas of disability, except for a combination that includes a specific learning disability; and a severe or profound deficit in communication or adaptive behavior documented through the use of individually administered standardized instruments as specified in the rule. [(I)]

- *Additional Requirements for Identifying Children with Deafness or Hearing Impairment*: A group of qualified professionals and the parents of the child may determine the child has deafness or a hearing impairment if the child exhibits a hearing loss of specified decibels for specified frequencies, according to the guidelines referenced in the rule, which has an adverse effect and result as described in the rule. [(J)]

Rule 3301-51-07 Individualized Education Program (IEP)

- *Definition of Individualized Education Program (IEP)*: The IEP must include a statement that discusses the child's future and a statement of measurable annual goals, including academic and functional goals and benchmarks or short-term objectives. Benchmarks or short-term objectives shall be included for all children with disabilities and not for only children with disabilities who take alternate assessments aligned to alternative achievement standards. [(H)(1)(a) and (c)]

- *Transition Services*: For each child with a disability, beginning at age fourteen (or younger, if determined appropriate by the IEP team), the IEP shall include a statement, updated annually, of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program). [(H)(2)(a)]

- *Notice to Parent of IEP Meeting*: For a child with a disability, beginning not later than the first IEP to be in effect when the child turns fourteen, or younger if determined appropriate by the IEP team, the notice also must indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the child; and indicate that the school district will invite the child. [(J)(2)(b)]

- *Parent Copy of Child's IEP*: Within thirty calendar days after the IEP meeting, the school district must give the parent a copy of the child's IEP at no cost to the parent. [(J)(6)]

- *Development of Initial IEP*: The initial IEP must be developed within whichever of the following time periods is the shortest:

- Within thirty calendar days of the determination that the child needs special education and related services;
- Within ninety calendar days of receiving parental consent for an evaluation; or
- Within one hundred twenty calendar days of the receipt of a request for an evaluation from a parent or school district. [(K)(2)(a)-(c)]

- *Development of IEP*: In developing each child's IEP, the IEP team must consider the results of the child's performance on any state or district-wide assessment programs, as appropriate. In the case of a child who is blind or visually impaired, the IEP team must ensure that the requirements for IEPs for children with visual impairments are implemented as provided in Revised Code Section 3323.011. [(L)(1)(a)(iv) and (b)(iii)*(b)*]

- *Amendment of IEP*: If the IEP team amends or modifies the child's current IEP, the annual review date for the amended or modified IEP does not change. The annual review date will change upon a complete review and revision of the child's IEP. When an IEP is amended, the school district shall send a copy of the amended IEP to the parent within thirty days of the date the IEP was amended. [(L)(1)(f)]

Rule 3301-51-08 Parentally Placed Nonpublic School Children

- *Written Affirmation*: If a nonpublic school chooses not to participate, the parent may contact the school district in which the nonpublic school is located to request equitable services for the child. [(G)(2)]

- *Development of the Services Plan and Location of Services*: The school district where the nonpublic school is located convenes the services plan meeting, conference call, or video conference for each eligible child who will receive special education and related services. The school district where the nonpublic school is located is required to and is responsible for conducting a meeting, conference call, or video conference at least annually to review and revise, if appropriate, each child's services plan. The school district where the nonpublic school is located will determine where services will be provided. [(J)(3)]

Rule 3301-51-09 Delivery of Services

- *Service Providers*: This rule addresses the role of preschool and school-age service providers; establishes service provider ratios for the delivery of services to children with disabilities; and specifies requirements for housing, facilities, materials, and equipment and supplies for preschool and school-age programs. [(G), (I), (J), and (K)]

Rule 3301-51-11 Preschool Special Education Requirements

- *Preschool Special Education Requirements*: This rule specifies preschool special education requirements for the following: interagency agreements as required by Revised Code Section 3323.05(B)(2); eligibility of preschool children three through five years of age; measuring a child's progress; center-based and itinerant teacher services; preschool services; and preschool service provider ratios. [(B), (C), (E), (F), (G), and (H)]

- *Developmental Delay*: This rule includes a definition of the term "developmental delay" which the Ohio Department of Education has adopted as authorized by 34 C.F.R § 300.111(b) and specifies the conditions for using the term. [(C)(6)]

3301-51-01 Applicability of requirements and definitions.

(A) Applicability of requirements

The purpose of Chapter 3301-51 of the Administrative Code is to ensure that all children with disabilities residing in Ohio between the ages of three and twenty-one years, inclusive, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE), as provided by Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 20 U.S.C. 1400 (Public Law 108-446 of the 108th Congress, December 3, 2004), related federal regulations at 34 C.F.R. Part 300 (October 13, 2006), Chapter 3323. of the Revised Code, the provisions of this chapter of the Administrative Code, and applicable state policies, procedures, and guidelines issued by the superintendent of public instruction.

(1) The provisions of this chapter shall provide that:

(a) Children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and

(b) The rights of children with disabilities and their parents are protected.

(2) School district of residence

(a) The child's school district of residence is responsible, in all instances, for ensuring that the requirements of paragraph (A) of this rule for making FAPE available are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, juvenile justice facility, or other facility, agency, department, or entity unless Chapter 3323. of the Revised Code, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of the IDEA.

(b) Notwithstanding paragraph (A)(2)(a) of this rule, a school district of residence is not required to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district made FAPE available to the child, and the parents elected to place the child in a nonpublic school or facility. However, the school district must include the child in the population whose needs are addressed consistent with the requirements of rule 3301-51-08 of the Administrative Code

(3) School district other than school district of residence

(a) Each school district is responsible for serving a child with a disability who is living in its school district, even though the school district is not the child's school district of residence. The child's school district of residence retains responsibility for making FAPE available to the child.

(b) "Serving a child with a disability" means educating the child which includes making special education and related services available to the child.

(i) The responsibility to serve a nonresident child with a disability living in the school district includes, but is not limited to, a child with a disability placed in a juvenile justice facility, institution, hospital, agency, department, home as defined in section 3313.64 of the Revised Code, or other facility or entity located in the school district.

(ii) The responsibility to serve a nonresident child with a disability does not apply to the school district in which the child is living if the child is already being served by another school district, a nonpublic school, county board of mental retardation and developmental disabilities (county board of MR/DD), other educational agency, a state or local agency or institution, or other provider, including an open enrollment school district, the Ohio department of youth services, or provider for the "Autism Scholarship Program" established by section 3310.41 of the Revised Code. However, if the child is placed in a nonpublic school in the school district, the school district must include the child in the population whose needs are addressed consistent with the requirements of rule 3301-51-08 of the Administrative Code.

(4) Funding for special education

No school district, county board of MR/DD, or other educational agency shall receive state or federal funds for special education and related services or provide special education and related services unless such special education and related services are provided in accordance with all applicable provisions of the IDEA and related federal regulations, Chapter 3323. of the Revised Code, this chapter of the Administrative Code, and related state policies, procedures, and guidelines issued by the superintendent of public instruction..

(5) Plan

Each school district, county board of MR/DD, or other educational agency, in providing for the education of children with disabilities within its jurisdiction,

must have in effect a plan, written policies and procedures, and programs that are consistent with the state's policies and procedures related to the implementation of Part B of the IDEA. The plan shall provide assurances to the superintendent of public instruction that the school district, county board of MR/DD, or other educational agency meets each of the applicable conditions in 34 C.F.R. 300.201 to 300.213 (October 13, 2006). Each school district's plan shall also meet the requirements of section 3323.08 of the Revised Code. Each school district, county board of MR/DD, or other educational agency shall submit its plan to the superintendent of public instruction as part of its comprehensive continuous improvement plan.

(6) Documentation and information

The superintendent of public instruction may require a state agency, school district, county board of MR/DD, or other educational agency to provide documentation that special education and related services for children with disabilities provided by the public agency are provided in compliance with the requirements specified in paragraph (A) of this rule.

(a) A school district, county board of MR/DD, or other educational agency must provide the superintendent of public instruction with information necessary to enable the superintendent to carry out the state's duties under Part B of the IDEA, including, information relating to the performance of children with disabilities participating in programs carried out under Part B of the IDEA.

(b) A school district, county board of MR/DD, or other educational agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the school district, county board of MR/DD, or other educational agency under Part B of the IDEA.

(c) A school district, county board of MR/DD, or other educational agency must cooperate in the secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965, as amended and specified in the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA) to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health, and educational information regarding those children.

(7) Ineligibility and opportunity for hearing

If the superintendent of public instruction determines that a state agency, school district, county board of MR/DD, or other educational agency is not eligible under

Part B of the IDEA for purposes of receiving assistance under Part B of the IDEA, the superintendent shall:

(a) Notify the state agency, school district, county board of MR/DD, or other educational agency of that determination; and

(b) Provide the state agency, school district, county board of MR/DD, or other educational agency with reasonable notice and an opportunity for a hearing.

(8) Effect of noncompliance on funding; notice to public

If the superintendent of public instruction, after reasonable notice and an opportunity for a hearing, finds that a state agency, school district, county board of MR/DD, or other educational agency that has been determined to be eligible under Part B of the IDEA is failing to comply with any requirement in Sections 34 C.F.R. 300.201 to 34 C.F.R. 300.213 (October 13, 2006):

(a) The superintendent of public instruction must reduce or must not provide any further payment to the state agency, school district, county board of MR/DD, or other educational agency until the state superintendent is satisfied that the state agency, school district, county board of MR/DD, or other educational agency is complying with that requirement.

(b) Any state agency, school district, county board of MR/DD, or other educational agency in receipt of a notice described in paragraph (A)(8)(a) of this rule must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the state agency, school district, county board of MR/DD, or other educational agency.

(B) Definitions

The following terms are defined as they are used in rules 3301-51-01 to 3301-51-09 and 3301-51-11 of the Administrative Code:

(1) "Act" or "IDEA" means the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 at 20 U.S.C. 1400, Public Law 108-446 of the 108th Congress, December 3, 2004 (IDEA).

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

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

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Average daily membership" means the number of children that are counted to generate state funds under the Ohio school foundation funding program.

(5) "Benchmark" means a specific statement of what the child should know and be able to do in a specified segment of the year. Benchmarks describe how far the child is expected to progress toward the annual goal and by when. Benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of the child's progress toward achieving the annual goals.

(6) "Braille," unless otherwise specified, means a tactile system of reading and writing for individuals with visual impairments commonly known as standard English braille.

(7) "Caseload for one preschool special education teacher" means the number of children who collectively comprise the full time equivalency for ratios or funding.

(8) "Charter school" or "community school" has the meaning given the term in Section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January

2002, 20 U.S.C. 6301 (ESEA). The term "charter school" does not have the same meaning as "chartered nonpublic school."

(9) "Chartered nonpublic school" means a school chartered by the state board of education pursuant to section 3301.16 of the Revised Code and that meets the minimum standards for chartered nonpublic schools cited in the "Operating Standards for Ohio's Elementary and Secondary Schools" (February 2006) in rule 3301-35-12 of the Administrative Code.

(10) "Child with a disability" means a child evaluated in accordance with rule 3301-51-06 of the Administrative Code as having a cognitive disability (mental retardation), a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this rule 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.

(a) Subject to paragraph (B)(10)(b) of this rule, if it is determined, through an appropriate evaluation under rule 3301-51-06 of the Administrative Code, that a child has one of the disabilities identified in this rule, but needs only a related service and not special education, the child is not a child with a disability under this rule.

(b) If, consistent with the definition of special education in paragraph (B)(58) of this rule, the individualized education program (IEP) team considers the related service required by the child to be special education rather than a related service under state standards, the child would be determined to be a child with a disability under this rule.

(c) Children aged three through five years who are experiencing developmental delays. "Child with a disability" for children aged three through five years, may, subject to the conditions described in rule 3301-51-03 of the Administrative Code for the use of the term developmental delay, include a child:

(i) Who is experiencing developmental delays, as defined by rule 3301-51-11 of the Administrative Code and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development as provided by rule 3301-51-11 of the Administrative Code; and

(ii) Who, by reason thereof, needs special education and related services.

(d) Definitions of disability terms. The terms used in this definition of a "child with a disability" are defined as follows:

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

(a) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (B)(10)(d)(v) of this rule.

(b) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (B)(10)(d)(i) of this rule are satisfied.

(ii) "Cognitive disability" (mental retardation) means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. This definition replaces the definition of mental retardation in 34 C.F.R. 300.8(c)(6) (October 13, 2006) and shall be used instead whenever the federal regulations at 34 C.F.R. Part 300 (October 13, 2006), state statutes at Chapter 3323. of the Revised Code, or the state rules in Chapter 3301-51 of the Administrative Code refer to mental retardation or cognitive disability.

(a) "Significantly subaverage general intellectual functioning" refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a school psychologist or a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgment, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five.

(b) "Deficits in adaptive behavior" means deficits in two or more applicable skill areas occurring within the context of the

child's environments and typical of the child's chronological age peers.

(c) A child who was identified by an Ohio school district as having a developmental handicap prior to July 1, 2002 shall be considered a child with a disability if the child continues to meet the definition of "developmentally handicapped" in paragraph "N." of former rule 3301-51-01 of the Administrative Code and the eligibility requirements of paragraph "F.1" of former rule 3301-51-04 of the Administrative Code that are both contained in the "Rules for the Education of Handicapped Children," which were effective July 1, 1982 and were rescinded July 1, 2002. A child who meets these provisions shall be eligible to receive special education and related services in accordance with the "Operating Standards for Ohio's Schools Serving Children with Disabilities" effective July 1, 2008.

(iii) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(iv) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(v) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(c) Inappropriate types of behavior or feelings under normal circumstances.

(d) A general pervasive mood of unhappiness or depression.

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(f) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (B)(10)(d)(v) of this rule.

(vi) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this rule.

(vii) "Multiple disabilities" means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. "Multiple disabilities" does not include deaf-blindness.

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

(ix) "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:

(a) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and tourette syndrome; and

(b) Adversely affects a child's educational performance.

(x) Specific learning disability.

(a) General. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think,

speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(b) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(xi) "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(xii) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or by other medical conditions, including but not limited to stroke, anoxia, infectious disease, aneurysm, brain tumors and neurological insults resulting from medical or surgical treatments. The injury results 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, as well as to other medical conditions that result in acquired brain injuries. The injuries result 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. This definition replaces the definition of traumatic brain injury in 34 C.F.R. 300.8(c)(12) (October 13, 2006) and shall be used instead whenever the federal regulations at 34 C.F.R. Part 300 (October 13, 2006), state statutes at Chapter 3323. of the Revised Code, or the state rules in Chapter 3301-51 of the Administrative Code refer to traumatic brain injury.

(xiii) "Visual impairment" including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. Visual impairment for any child means:

(a) A visual impairment, not primarily perceptual in nature, resulting in a measured visual acuity of 20/70 or poorer in the better eye with correction; or

(b) A physical eye condition that affects visual functioning to the extent that special education placement, materials and/or services are required in an educational setting.

(11) "Community school" means a public school, created in accordance with Chapter 3314. of the Revised Code, that is independent of any school district and part of the state's program of education. Community schools shall be considered school districts for the purposes of this chapter of the Administrative Code.

(12) "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(ii) 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).

(13) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. This term does not refer to "Ohio Core Curriculum."

(14) "County board of mental retardation and developmental disabilities" (county board of MR/DD) means a county board of mental retardation and developmental disabilities as provided by section 5126.02 of the Revised Code.

(15) "Day" means calendar day unless otherwise indicated as business day or school day.

(a) "Business day" means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day).

(b) "School day" means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

(16) "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(17) "Education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (July 1, 2005) (the regulations implementing the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA)). Under that definition, the term "education records" means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the type of records which are listed and described as records excluded from that definition under 34 C.F.R. 99.3(b)(1) to 34 C.F.R. 99.3(b)(5) (July 1, 2005).

(18) "Elementary school" means a nonprofit institutional day or residential school, including an elementary community school, that provides elementary education, as determined under state law.

(19) "Equipment" means:

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

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

(20) "Evaluation" means procedures used in accordance with rule 3301-51-06 of the Administrative Code for evaluations to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(21) "Evaluation team" means the IEP team and other qualified professionals.

(22) "Excess costs" means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(a) Amounts received:

(i) Under Part B of the IDEA;

(ii) Under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA); and

(iii) Under Parts A and B of Title III of the ESEA and;

(b) Any state or local funds expended for programs that would qualify for assistance under any of the acts described in paragraph (B)(22)(a) of this rule, but excluding any amounts for capital outlay or debt service. (See appendix A to Part 300 of the IDEA for an example of how excess costs must be calculated.)

(23) "Free appropriate public education" or FAPE means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Ohio department of education, including the requirements of this rule;

(c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and

(d) Are provided in conformity with an IEP that meets the requirements of rule 3301-51-07 of the Administrative Code for individualized education programs.

(24) "General curriculum" refers to the same curriculum that is used with children without disabilities.

(25) "General education" means a learning environment that provides a community of students with the opportunity to acquire skills and knowledge necessary to meet state and local performance objectives.

(26) "Help Me Grow" means a system of early intervention services for infants and toddlers with disabilities which are provided, in accordance with Part C of the IDEA, federal regulations, state law, and state rules, by the lead agency selected by the governor of the state.

(27) Highly qualified special education teacher:

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term "highly qualified" has

the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA) and 34 C.F.R. 200.56 (July 1, 2007), except that the requirements for highly qualified also:

(i) Include the requirements described in paragraph (B)(27)(b) of this rule; and

(ii) Include the option for teachers to meet the requirements of Section 9101 of the ESEA by meeting the requirements of paragraphs (B)(27)(c) and (B)(27)(d) of this rule.

(b) Requirements for special education teachers in general

(i) When used with respect to any public elementary school or secondary school special education teacher teaching in the state, highly qualified requires that:

(a) The teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except that when used with respect to any teacher teaching in a community school, "highly qualified" means that the teacher meets the certification or licensing requirements, if any, set forth in the state's community school law;

(b) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(c) The teacher holds at least a bachelor's degree.

(ii) A teacher will be considered to meet the standard in paragraph (B)(27)(b)(i)(a) of this rule if that teacher is participating in an alternative route to special education certification program under which:

(a) The teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(b) The state ensures, through its certification and licensure process, that the provisions in paragraph (B)(27)(b)(ii)(a) of this rule are met.

(iii) Any public elementary school or secondary school special education teacher teaching in Ohio, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (B)(27)(b)(i) or the requirements in paragraphs (B)(27)(b)(i)(c) and (B)(27)(b)(ii) of this rule.

(c) Requirements for special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 C.F.R. 200.1(d) (July 1, 2007), "highly qualified" means the teacher, whether new or not new to the profession, may either:

(i) Meet the applicable requirements of Section 9101 of the ESEA and 34 C.F.R. 200.56 (July 1, 2007) for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) Meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

(d) Requirements for special education teachers teaching multiple subjects

Subject to paragraph (B)(27)(e) of this rule, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, "highly qualified" means that the teacher may either:

(i) Meet the applicable requirements of Section 9101 of the ESEA and 34 C.F.R. 200.56(b) or (c) (July 1, 2007);

(ii) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 C.F.R. 200.56(c) (July 1, 2007) which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(iii) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 C.F.R. 200.56(c) (July 1, 2007), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers

Provided that any adaptations of the state's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers:

(i) A state may develop a separate HOUSSE for special education teachers; and

(ii) The standards described in paragraph (B)(27)(e)(i) of this rule may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this rule, nothing in this rule shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular Ohio department of education or school district employee to be highly qualified, or to prevent a parent from filing a complaint under rule 3301-51-05 of the

Administrative Code about staff qualifications with the Ohio department of education as provided for under this rule.

(g) Applicability of definition to ESEA; and clarification of new special education teacher

(i) A teacher who is highly qualified under this rule is considered highly qualified for purposes of the ESEA.

(ii) For purposes of paragraph (B)(27)(d)(iii) of this rule, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Nonpublic school teachers not covered

The requirements in this rule do not apply to teachers hired by nonpublic elementary schools and secondary schools including nonpublic school teachers hired or contracted by school districts to provide equitable services to parentally placed nonpublic school children with disabilities under rule 3301-51-08 of the Administrative Code.

(28) "Homeless children" has the meaning given the term homeless children and youths in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431.

(29) "Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(30) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question.

(31) "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with rule 3301-51-07 of the Administrative Code.

(32) "Individualized education program team" or IEP team means a group of individuals described in paragraph (I) of rule 3301-51-07 of the Administrative Code that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(33) "Institution of higher education" :

(a) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended and specified in the Higher Education Amendments of 1998, January 1998, 20 U.S.C. 1021 (HEA); and

(b) Also includes any community college receiving funds from the secretary of the interior under the Tribally Controlled Community College or University Assistance Act of 1978 (renamed Tribally Controlled College or University Assistance Act of 1978), October 1978, 25 U.S.C. 1801.

(34) "Itinerant services for a preschool child with a disability" means services provided by intervention specialists or related services personnel which occur in the setting where the child, the child and parent(s), or the child and caregiver are located as opposed to services provided at a centralized location.

(35) "Limited English proficient" has the meaning given the term in Section 9101(25) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(36) Native language:

(a) When used with respect to an individual who is limited English proficient, "native language" means the following:

(i) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (B)(36)(a)(ii) of this rule.

(ii) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

(37) "Non-chartered nonpublic school" means a school, that is not chartered or seeking a charter from the state board of education because of truly held religious beliefs. Such school shall annually certify in a report to the parents of its pupils that the school meets Ohio minimum standards for non-chartered, non-tax supported schools cited in the "Operating Standards for Ohio's Elementary and Secondary Schools" in paragraphs (A) to (H) of rule 3301-35-12 of the Administrative Code.

(38) "Nonpublic school" means a private school which is recognized by the Ohio department of education as either a chartered school as defined in section 3301.16 of the Revised Code or a non-chartered school as described in rule 3301-35-08 of

the Administrative Code. This definition shall apply whenever the term "private school" is used in the federal regulations at 34 C.F.R. Part 300 (October 13, 2006) or whenever the term "nonpublic school" is used in this chapter of the Administrative Code or in guidelines issued by the Ohio department of education for each school district to provide equitable services for children who are attending nonpublic schools located within the school district.

(39) "Objective" means a smaller, more manageable learning task that a child must master as a step toward achieving an annual goal. Objectives break the skills described in the annul goal into discrete components that, when mastered, allow the child to successfully obtain the goal.

(40) "Other educational agency" means a joint vocational school district; department; division; bureau; office; institution; board; commission; committee; authority; or other state or local agency, other than a school district or an agency administered by the department of mental retardation and developmental disabilities, that provides or seeks to provide special education or related services to children with disabilities.

(41) "Paraprofessional services" include services provided by school, county board of MR/DD, and other educational agency employees who are adequately trained to assist in the provision of special education and related services to children with disabilities. Paraprofessionals work under the supervision of teachers, intervention specialists, and/or related service providers. Other titles used to identify these service providers include teacher assistants, educational aides, school psychology aides, occupational therapy assistants, physical therapist assistants, and job coaches.

(42) "Parent" means:

(a) A biological or adoptive parent of a child but not a foster parent of a child;

(b) 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);

(c) 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

(d) A surrogate parent who has been appointed in accordance with rule 3301-51-05 of the Administrative Code.

(e) Except as provided in paragraph (B)(42)(f) of this rule, the biological or adoptive parent, when attempting to act as the parent under this rule and

when more than one party is qualified under this rule to act as a parent, must be presumed to be the parent for purposes of this chapter of the Administrative Code unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(f) If a judicial decree or order identifies a specific person or persons under paragraphs (B)(42)(a) to (B)(42)(c) of this rule to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

(43) "Parent mentor" means a parent of a child with a disability employed by a school district to assist education personnel and families by providing training, support, and information services.

(44) "Parent training and information center" means a center assisted under Sections 671 or 672 of the IDEA.

(45) "Parentally placed nonpublic school children with disabilities" means children with disabilities enrolled by their parents in nonpublic, including religious, schools or facilities that meet the definition of elementary school or secondary school in this rule, other than children with disabilities in nonpublic schools who are placed or referred by public agencies.

(46) "Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

(47) "Personally identifiable" means information that contains:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(48) "Preschool child with a disability" means a child who:

(a) Is at least three years of age and not six years of age; and

(b) Meets the definition of a "child with a disability" in paragraph (B)(10) of this rule or, at the discretion of the school district, is a child who:

(i) Is experiencing developmental delays, as defined in rule 3301-51-11 of the Administrative Code and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, by reason thereof, needs special education and related services.

(49) "Public agency" includes the school districts, county boards of mental retardation and developmental disabilities, other educational agencies, community schools and any other political subdivisions of the state that are responsible for providing education to children with disabilities.

(50) "Qualified personnel" means personnel who have met Ohio department of education-approved or Ohio department of education-recognized certification, licensing, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(51) "Referral" means the date the public school district or community school receives a parent's, school district's, or other educational agency's request for an initial evaluation or reevaluation.

(52) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(a) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(i) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(ii) Nothing in paragraph (B)(52)(a)(i) of this rule:

(a) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in this rule) that are determined by the IEP team to be necessary for the child to receive FAPE.

(b) Limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in rule 3301-51-02 of the Administrative Code.

(b) Individual related services terms defined. The terms used in this rule are defined as follows:

(i) "Attendant services" are those that assist children with disabilities with personal health care needs.

(ii) "Audiology" includes:

(a) Identification of children with hearing loss;

(b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(c) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(d) Creation and administration of programs for prevention of hearing loss;

(e) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(f) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(iii) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(iv) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(v) "Interpreting services" includes:

(a) The following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as "communication access real-time translation (CART)," "C-Print," and "TypeWell"; and

(b) Special interpreting services for children who are deaf-blind.

(vi) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(vii) "Occupational therapy" :

(a) Means services provided by a qualified occupational therapist licensed under Chapter 4755. of the Revised Code; and

(b) Includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(viii) "Occupational therapy assistant services" means services provided by an occupational therapy assistant licensed under Chapter 4755. of the Revised Code and includes assisting in the practice of occupational therapy under the direction and supervision of an occupational therapist.

(ix) "Orientation and mobility services" :

(a) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(b) Includes teaching children the following, as appropriate:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(x) "Parent counseling and training" means:

(a) Assisting parents in understanding the special needs of their child;

(b) Providing parents with information about child development; and

(c) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(xi) "Physical therapy" means services provided by a qualified physical therapist licensed under Chapter 4755. of the Revised Code.

(xii) "Physical therapist assistant services" means services provided by a physical therapist assistant licensed under Chapter 4755. of the Revised Code who performs such services under the direction and supervision of a physical therapist.

(xiii) "Psychological services" :

(a) Include but are not limited to:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members to plan and develop school programs and interventions to meet the educational needs or special education needs of children or groups of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Conducting and monitoring interventions;

(vi) Diagnosing psychological disorders that effect learning and/or behavior;

(vii) Planning and managing a program of psychological services, including psychological counseling for children and parents;

(viii) Participating in the provision of a program of mental health services; and

(ix) Assisting in developing positive behavioral intervention strategies.

(b) The services of a school psychology aide shall be under the direct supervision of a school psychologist.

(c) The school psychologist intern program shall be organized under guidelines approved by the Ohio department of education, office for exceptional children.

(xiv) "Reader services" means assisting learners with visual impairments by orally reading written materials.

(xv) "Recreation" includes:

(a) Assessment of leisure function;

(b) Therapeutic recreation services;

(c) Recreation programs in schools and community agencies; and

(d) Leisure education.

(xvi) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended and specified in the Rehabilitation Act Amendments of 1998, August 1998, 29 U.S.C. 701.

(xvii) "School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(xviii) "Social work services in schools" includes:

(a) Preparing a social or developmental history on a child with a disability;

(b) Group and individual counseling with the child and family;

(c) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(d) Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

(e) Assisting in developing positive behavioral intervention strategies.

(xix) "Speech-language pathology services" includes:

(a) Identification of children with speech or language impairments;

(b) Diagnosis and appraisal of specific speech or language impairments;

(c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(e) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(xx) "Transportation" includes:

(a) Travel to and from school and between schools;

(b) Travel in and around school buildings; and

(c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(53) "School district" means a city, local, exempted village school district, or a community school.

(54) "School district of residence" means:

(a) The school district in which the child's parents reside;

(b) If the child is enrolled in a community school, the community school is considered to be the "school district of residence";

(c) If the school district specified in paragraph (B)(54)(a) or (B)(54)(b) of this rule cannot be determined, the last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown;

(d) If the school district specified in paragraph (B)(54)(c) of this rule cannot be determined, the school district determined by the court under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.

(e) Notwithstanding paragraphs (B)(54)(a) to (B)(54)(d) of this rule, if a school district is required by section 3313.65 of the Revised Code to pay

tuition for a child, that district shall be the child's school district of residence.

(55) "Scientifically based research" has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(56) "Secondary school" means a nonprofit institutional day or residential school, including a secondary community school that provides secondary education, as determined under state law, except that it does not include any education beyond grade twelve.

(57) "Services plan" means a written statement that describes the special education and related services the school district will provide to a parentally placed child with a disability enrolled in a nonpublic school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with rule 3301-51-08 of the Administrative Code, and is developed and implemented in accordance with rule 3301-51-08 of the Administrative Code.

(58) Special education:

(a) General.

(i) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

(a) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(b) Instruction in physical education.

(ii) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (B)(58)(a)(i) of this rule:

(a) Speech-language pathology services, or any other related service, if the IEP team considers the service special education rather than a related service under state standards;

(b) Travel training; and

(c) Vocational education.

(b) Individual special education terms defined. The terms in this rule are defined as follows:

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

(ii) "Physical education" means:

(a) The development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(b) Includes special physical education, adapted physical education, movement education, and motor development.

(iii) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this rule, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the school district that apply to all children.

(iv) "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(a) Develop an awareness of the environment in which they live; and

(b) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(v) "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(59) "Special class or center based services for a preschool child with a disability" means a classroom program that provides group educational experiences to children of similar ages or developmental levels on a regularly scheduled basis and in a central location.

(60) "Supervisory and coordinator services" includes providing information and explanation regarding state and federal laws, recommended practice, and other topics essential for the delivery of services to learners with disabilities; helping school district personnel evaluate the effectiveness of special education and related services; and providing in-service education to parents and personnel involved in educating children with disabilities.

(61) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the requirements for least restrictive environment in rule 3301-51-09 of the Administrative Code.

(62) "Transition from Part C early intervention services" means the transition of children from the Part C programs to preschool programs as specified in rule 3301-51-11 of the Administrative Code.

(63) "Transition services" :

(a) Means a coordinated set of activities for a child with a disability that:

(i) 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;

(ii) 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 provision of a functional vocational evaluation.

(iii) Shall be provided by individuals who have the competencies, experiences, and training required to meet the individual student's transition services needs, and may include job training coordinators, vocational special education coordinators, career assessment specialists, work-study coordinators or other qualified individuals.

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

(64) "Universal design" has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended and specified in the Assistive Technology Act of 2004, October 2004, 29 U.S.C. 3002.

(65) "Ward of the state" means a child who, as determined by the state where the child resides, is:

(a) A foster child;

(b) A ward of the state; or

(c) In the custody of a public child welfare agency.

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3301-51-02 Free appropriate public education.

(A) Each school district shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, ensuring that a free appropriate public education (FAPE) is made available to all children with disabilities between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school, for whom the school district is the child's school district of residence, as defined in paragraph (B)(54) of rule 3301-51-01 of the Administrative Code and as provided by rule 3301-51-01 of the Administrative Code.

(B) FAPE

(1) General

Each school district shall make FAPE available to all children between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in rule 3301-51-05 of the Administrative Code, for whom the school district is the child's school district of residence.

(2) FAPE for children beginning at age three

Each school district must ensure that:

(a) The obligation to make FAPE available to each eligible child for whom the school district is the child's school district of residence begins no later than the child's third birthday; and

(b) An individualized education program (IEP) is in effect for the child by that date, in accordance with rule 3301-51-07 of the Administrative Code.

(c) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

(3) Children advancing from grade to grade

(a) Each school district of residence must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(b) The determination that a child described in paragraph (B)(1) of this rule is eligible under this chapter of the Administrative Code, must be made on an individual basis by the group responsible within the child's school district of residence for making eligibility determinations.

(C) Limitation: exception to FAPE for certain ages

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

(1) Children with disabilities who have graduated from high school with a regular high school diploma;

(2) The exception in paragraph (C)(1) of this rule does not apply to children who have graduated from high school but have not been awarded a regular high school diploma;

(3) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with rule 3301-51-05 of the Administrative Code;

(4) As used in paragraphs (C)(1) to (C)(3) of this rule, the term regular high school diploma does not include an alternative degree that is not fully aligned with Ohio's academic content standards, such as a certificate or a general educational development credential; and

(5) Children with disabilities who are eligible under Subpart H of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), but who receive early intervention services under Part C of the IDEA.

(D) FAPE: methods and payments

(1) Each school district of residence shall use whatever state, local, federal, and private sources of support are available in the school district to meet the requirements of Part B of the IDEA. For example, if it is necessary to place a child with a disability in a residential facility, a school district of residence could use joint agreements between the agencies involved for sharing the cost of that placement.

(2) Nothing in this rule relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(3) Consistent with rule 3301-51-07 of the Administrative Code, each school district must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(E) Residential placement

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

(F) Assistive technology

(1) Each school district must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rule 3301-51-01 of the Administrative Code, are made available to a child with a disability if required as a part of the child's:

(a) Special education under rule 3301-51-01 of the Administrative Code;

(b) Related services under rule 3301-51-01 of the Administrative Code; or

(c) Supplementary aids and services under rule 3301-51-09 of the Administrative Code.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

(G) Extended school year services

(1) General

(a) Each school district must ensure that extended school year services are available as necessary to provide FAPE, consistent with this rule.

(b) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rule 3301-51-07 of the Administrative Code, that the services are necessary for the provision of FAPE to the child. Additionally, the school district shall consider the following when determining if extended school year services should be provided:

(i) Whether extended school services are necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child's educational goals; and

(ii) Whether extended school years services are necessary to avoid something more than adequately recoupable regression.

(c) In implementing the requirements of this rule, a school district shall not:

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(2) Definition

As used in this rule, the term "extended school year services" means special education and related services that:

(a) Are provided to a child with a disability:

(i) Beyond the normal school year of the school district;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(b) Meet the standards of the Ohio department of education.

(H) Nonacademic services

(1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

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

(I) Physical education

(1) General

Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the school district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(2) Regular physical education

Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

(a) The child is enrolled full time in a separate facility; or

(b) The child needs specially designed physical education, as prescribed in the child's IEP.

(3) Special physical education

If specially designed physical education is prescribed in a child's IEP, the school district responsible for serving the child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(4) Education in separate facilities

The school district responsible for serving a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this rule.

(J) Program options

Each school district must take steps to ensure that children with disabilities served by the school district have available to them the variety of educational programs and services available to nondisabled children in the area served by the school district, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(K) Routine checking of hearing aids and external components of surgically implanted medical devices

(1) Hearing aids

Each school district must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(2) External components of surgically implanted medical devices

(a) Subject to paragraph (K)(2)(b) of this rule, each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(b) For a child with a surgically implanted medical device who is receiving special education and related services under this chapter of the Administrative Code, a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device

that has been surgically implanted (or of an external component of the surgically implanted medical device).

(L) Placement of children by parents when FAPE is at issue

(1) General

This rule does not require a school district of residence to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility. However, the school district must include that child in the population whose needs are addressed consistent with rule 3301-51-08 of the Administrative Code.

(2) Disagreements about FAPE

Disagreements between the parents and a school district of residence regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rule 3301-51-05 of the Administrative Code.

(3) Reimbursement for nonpublic school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of the school district of residence, enroll the child in a nonpublic preschool, elementary school, or secondary school without the consent of or referral by the school district of residence, a court or a hearing officer may require the school district of residence to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district of residence had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards in this chapter of the Administrative Code that apply to education provided by the school districts.

(4) Limitation on reimbursement

The cost of reimbursement described in paragraph (L)(3) of this rule may be reduced or denied:

(a) If:

(i) At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not

inform the IEP team that they were rejecting the placement proposed by the school district of residence to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of residence of the information described in paragraph (L)(4)(a)(i) of this rule; or

(b) If prior to the parents' removal of the child from the public school, the school district of residence informed the parents, through the notice requirements described in rule 3301-51-05 of the Administrative Code, 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

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Exception

Notwithstanding the notice requirement in paragraph (L)(4)(a) of this rule, the cost of reimbursement:

(a) Must not be reduced or denied for failure to provide the notice if:

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to rule 3301-51-05 of the Administrative Code, of the notice requirement in paragraph (L)(4)(a) of this rule; or

(iii) Compliance with paragraph (L)(4)(a) of this rule would likely result in physical harm to the child.

(b) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (L)(4)(a) of this rule would likely result in serious emotional harm to the child.

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3301-51-03 Child find.

(A) Each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, that ensure all children with disabilities residing within the district, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated as required by the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) and federal regulations at 34 C.F.R. Part 300 (October 13, 2006) pertaining to child find, including the regulations at 34 C.F.R. 300.111 and 300.646 (October 13, 2006) and as required by the provisions of this rule.

(B) Child find

(1) General

The child find policies and procedures that each school district adopts and implements under this rule shall ensure that:

(a) All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(2) Use of the term developmental delay

The following provisions apply with respect to implementing the child find requirements of this rule:

(a) The Ohio department of education has adopted in rule 3301-51-11 of the Administrative Code a definition of "developmental delay" under 34 C.F.R. 300.8(b) (October 13, 2006) and under that section has determined in rule 3301-51-01 of the Administrative Code that the term applies to children aged three through five years;

(b) A school district is not required to adopt and use the term developmental delay for any children within its jurisdiction;

(c) If a school district uses the term developmental delay for children described in rule 3301-51-01 of the Administrative Code as experiencing developmental delays, the school district must conform to both the state's definition of that term in rule 3301-51-11 of the Administrative Code and to the age range of three through five years of age which is the age range subset that has been adopted by the Ohio department of education in rule 3301-51-01 of the Administrative Code.

(3) Other children in child find

Child find must also include:

(a) Children who are suspected of being a child with a disability under the definition of child with a disability in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code and in need of special education, even though they are advancing from grade to grade; and

(b) Highly mobile children, including migrant children.

(4) Construction

Nothing in the IDEA requires that children be classified by their disability so long as each child who has a disability that is listed in the definition of child with a disability in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the IDEA.

(C) Disproportionality

(1) General

The Ohio department of education and each school district must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the school districts of the state with respect to:

(a) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in the definition of "child with a disability" in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code;

(b) The placement in particular educational settings of these children; and

(c) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Review and revision of policies, practices, and procedures

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (C)(1) of this rule, the Ohio department of education must:

(a) Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.

(b) Require any school district identified under paragraph (C)(1) of this rule to reserve the maximum amount of funds under Section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve children in the school district, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (C)(1) of this rule; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under paragraph (C)(2)(a) of this rule.

(D) Data reporting

(1) Each school district shall maintain an education management information system and submit data to the Ohio department of education pursuant to rule 3301-14-01 of the Administrative Code.

(2) County boards of mental retardation and developmental disabilities and state institutions operated under the Ohio department of mental health, Ohio department of youth services, and the Ohio central school system shall submit data reports directly to the Ohio department of education on prescribed forms and in the prescribed manner.

(3) The collection and use of data to meet the requirements of this rule are subject to the confidentiality requirements in rule 3301-51-04 of the Administrative Code.

Replaces: 3301-51-03
Effective: 07/01/2008
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3301-51-04 Confidentiality.

(A) Each school district, county board of mental retardation and developmental disabilities (county board of MR/DD), and other educational agency shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, that afford parents the opportunity to examine records in accordance with the procedures of 34 C.F.R. 300.610 to 300.628 (October 13, 2006) and ensure protection of the confidentiality of any personally identifiable information in regard to the collection, use, storage, disclosure, retention, and destruction of that information.

(B) Definitions

The following terms are defined as they are used in this rule:

(1) "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Education records" means the type of records covered under the definition of education records in 34 C.F.R. Part 99 (July 1, 2005) (the regulations implementing the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA)).

(3) "Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Individuals with Disabilities Education Act, as amended and specified in the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA).

(C) Notice to parents

(1) The school district, county board of MR/DD, and other educational agency must give notice that is adequate to fully inform parents about the requirements to ensure that the school district, county board of MR/DD, and other educational agency comply with this rule related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA. The notice shall include:

(a) A description of the extent that the notice is given in the native languages of the various population groups in the school district, county, or other area served;

(b) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(c) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(d) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. Part 99 (July 1, 2005).

(2) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district, county board of MR/DD, or other area served of the activity.

(D) Access rights

(1) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this rule. The agency must comply with a request without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any hearing pursuant to rule 3301-51-05 of the Administrative Code or resolution session pursuant to rule 3301-51-05 of the Administrative Code, and in no case more than forty-five days after the request has been made.

(2) The right to inspect and review education records under this rule includes:

(a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent inspect and review the records.

(3) An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(E) Record of access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the

party, the date access was given, and the purpose for which the party is authorized to use the records.

(F) Records on more than one child

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

(G) List of types and locations of information

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(H) Fees

(1) Each participating agency may charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency shall not charge a fee to search for or to retrieve information under this rule.

(I) Amendment of records at parent's request

(1) A parent who believes that information in the education records collected, maintained, or used under this rule is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(2) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under this rule.

(J) Opportunity for a hearing

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(K) Result of hearing

(1) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(2) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(3) Any explanation placed in the records of the child under this rule must:

(a) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(b) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(L) Hearing procedures

A hearing held under this rule must be conducted according to the procedures in 34 C.F.R. 99.22 (July 1, 2005). The records hearing shall be held within a reasonable period of time after the school district, county board of MR/DD or other educational agency has received the request.

(1) The parents shall be given notice of the date, time, and place reasonably in advance of the hearing.

(2) The records hearing shall be conducted by any individual, including an official of the school district, county board of MR/DD or other educational agency who does not have a direct interest in the outcome of the hearing.

(3) The parents shall be afforded a full and fair opportunity to present evidence relevant to the content of the child's education records and the information the parent believes is inaccurate or misleading or violates the privacy or other rights of the child.

(4) The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including an attorney.

(5) The school district, county board of MR/DD or other educational agency shall make its decision in writing within a reasonable period of time after the hearing.

(6) The decision of the school district, county board of MR/DD or other educational agency shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(M) Consent

(1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with this rule, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99 (July 1, 2005).

The parent's consent must be in writing, signed, and dated and must:

(a) Specify the records to be disclosed;

(b) State the purpose of the disclosure; and

(c) Identify the party or class of parties to whom the disclosure may be made.

(2) Except as provided in paragraphs (M)(2)(a) and (M)(2)(b) of this rule, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this rule and 34 C.F.R. Part 300 (October 13, 2006).

(a) Parental consent, or the consent of an eligible child who has reached the age of majority under Ohio law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with rule 3301-51-07 of the Administrative Code.

(b) If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.

(N) Safeguards

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

(2) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures of the school district, county board of MR/DD, and other educational agency under 34 C.F.R. Part 99 (July 1, 2005).

(4) Each participating agency must maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(O) Destruction of information

(1) The public agency must inform parents when personally identifiable information collected, maintained, or used under this rule is no longer needed to provide educational services to the child.

(2) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

(P) Children's rights

(1) The school district, county board of MR/DD, and other educational agency must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(2) Under the regulations for FERPA in 34 C.F.R. 99.5(a) (July 1, 2005), the rights of parents regarding education records are transferred to the student at age eighteen.

(3) If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority, consistent with rule 3301-51-05 of the Administrative Code, the rights regarding education records under this rule must also be transferred to the student. However, the school district must provide any notice required under rule 3301-51-05 of the Administrative Code to the student and the parents.

(Q) Disciplinary information

(1) A school district, county board of MR/DD, and other educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(2) When a child transfers from one school, county board of MR/DD, or other educational agency to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

(3) The statement required in paragraphs (Q)(1) and (Q)(2) of this rule:

(a) Shall specify the circumstances that resulted in the disciplinary action and provide a description of the disciplinary action taken if the disciplinary action was taken because the child:

(i) Carried a weapon to or possessed a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district, county board of MR/DD, and other educational agency;

(ii) Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district, county board of MR/DD, and other educational agency; or

(iii) Inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district, county board of MR/DD, and other educational agency.

(b) Shall include any information that is relevant to the safety of the child and other individuals involved with the child; and

(c) May include a description of any other behavior engaged in by the child that required disciplinary action, and a description of the disciplinary action taken.

(R) Referral to and action by law enforcement and judicial authorities

(1) Rule of construction

Nothing in this rule prohibits a school district, county board of MR/DD, and other educational agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

(2) Transmittal of records

(a) A school district, county board of MR/DD, and other educational agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(b) A school district, county board of MR/DD, and other educational agency reporting a crime under this rule shall transmit copies of the child's special

education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA).

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3301-51-05 Procedural safeguards.

(A) Each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that children with disabilities and their parents are provided procedural safeguards.

(B) Each school district of residence shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that children with disabilities and their parents and public agencies are provided an opportunity to resolve disputes regarding identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE).

(C) Parental consent

(1) Parental consent for initial evaluation

(a) The school district proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under the definition of "child with a disability" in rule 3301-51-01 of the Administrative Code must, after providing notice consistent with the requirements of this rule, obtain informed consent, consistent with the definition of "consent" in rule 3301-51-01 of the Administrative Code, from the parent of the child before conducting the evaluation.

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

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(d) For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

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

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

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for

an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a child enrolled in a school district or seeking to be enrolled in a school district does not provide consent for initial evaluation under this rule, or the parent fails to respond to a request to provide consent, the school district of residence may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in Subpart E of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) (including the mediation procedures or the due process procedures under this rule).

The school district does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for evaluations if it declines to pursue the evaluation.

(2) Parental consent for services

(a) A school district of residence that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district of residence must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If the parent of a child fails to respond or refuses to consent to services under paragraph (C)(2)(a) of this rule, the school district of residence may not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures under this rule, in order to obtain agreement or a ruling that the services may be provided to the child.

(d) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district of residence:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the school district of residence requests consent; and

(ii) Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under rule 3301-51-07 of the Administrative Code for the child for the special education and related services for which the school district of residence requests such consent.

(3) Parental consent for reevaluations

(a) Subject to paragraph (C)(3)(b) of this rule, each school district:

(i) Must obtain informed parental consent, in accordance with paragraph (C)(1) of this rule, prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the school district of residence may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (C)(1)(e) of this rule.

(iii) The school district of residence does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for reevaluations if it declines to pursue the reevaluation.

(b) The informed parental consent described in paragraph (C)(3)(a) of this rule need not be obtained if the school district can demonstrate that:

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

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

(4) Parental consent for a change of placement

(a) A "change of placement" means a change from one option on the continuum of alternative placements to another.

(b) Informed parental consent must be obtained before making a change of placement of a child with a disability.

(c) Informed parental consent need not be obtained before:

(i) A change of placement if the school district of residence can demonstrate that it has made reasonable efforts, as described in rule 3301-51-07 of the Administrative Code, to obtain consent, and the child's parent has failed to respond.

(ii) A change of placement of a child with a disability that is the result of a disciplinary action taken in accordance with paragraph (K)(20) of this rule.

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

(iv) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(5) Other consent requirements

(a) A school district may not use a parent's refusal to consent to one service or activity under paragraphs (C)(1) or (C)(4)(b) of this rule to deny the parent or child any other service, benefit, or activity of the school district, except as required by this rule.

(b) To meet the reasonable efforts requirement in paragraphs (C)(1)(c), (C)(1)(d)(i), (C)(2)(b), (C)(3)(b)(i), and (C)(4)(c)(i) of this rule, the school district must document its attempts to obtain parental consent using the procedures in rule 3301-51-07 of the Administrative Code.

(D) Transfer of parental rights at age of majority

(1) When a child with a disability reaches the age of majority under Ohio law (eighteen years of age) that applies to all children (except for a child with a disability who has been determined to be incompetent under Ohio law):

(a) The school district of residence must provide the notice required by this rule to both the child and the parents;

(b) All rights accorded to parents under Part B of the IDEA and Chapter 3323. of the Revised Code transfer to the child; and

(c) All rights accorded to parents under Part B of the IDEA and Chapter 3323. of the Revised Code transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

(2) When a child with a disability (except for a child with a disability who has been determined to be incompetent under Ohio law) reaches eighteen years of age, the school district of residence must notify the child and the parents of the transfer of rights.

(E) Surrogate parents

(1) General

Each school district must ensure that the rights of a child are protected when:

(a) No parent (as defined in rule 3301-51-01 of the Administrative Code) can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The child is a ward of the state under the laws of Ohio; or

(d) The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431.

(2) Duties of the school district

The duties of a school district of residence under paragraph (E)(1) of this rule include the assignment of an individual to act as a surrogate for the parents.

This must include a method:

(a) For determining whether a child needs a surrogate parent; and

(b) For assigning a surrogate parent to the child.

(3) Wards of the state

In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (E)(4)(c)(i), (E)(4)(c)(iv), and (E)(5) of this rule.

(4) Criteria for selection of surrogate parents

(a) A surrogate parent shall be assigned as soon as possible but no later than thirty days of the date that it is determined that the child is in need of the surrogate.

(b) The school district of residence maintains the ultimate responsibility for the assignment of a surrogate parent. If requested by the school district of residence and mutually agreed upon, the school district of attendance, county board of mental retardation and developmental disabilities (county board of MR/DD), or other educational agency may appoint the surrogate parent.

(c) The school district of residence must ensure that a person selected as a surrogate parent:

(i) Is not an employee of the Ohio department of education, the school district, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents;

(iii) Has knowledge and skills that ensure adequate representation of the child; and

(iv) Has successfully completed the training prescribed by the Ohio department of education prior to acting on behalf of the child.

(5) Non-employee requirement; compensation

A person who is otherwise qualified to be a surrogate parent under paragraph (E)(4) of this rule is not an employee of the school district solely because the person is paid by the school district to serve as a surrogate parent.

(6) Civil damages

Pursuant to section 3323.051 of the Revised Code, neither the surrogate parent nor the authority that assigned the surrogate parent shall be liable in civil damages for acts of the surrogate parent unless such acts constitute willful or wanton misconduct,

(7) Appointment of surrogate by a judge

If a surrogate parent is appointed by a judge overseeing the child's case, upon the request of the judge, the school district of residence will confirm that the person appointed meets the requirements in paragraphs (E)(4)(c)(i), (E)(4)(c)(iv), and (E)(5) of this rule.

(8) Child who has reached age of majority

A child who has reached the age of majority may request a surrogate parent.

(9) Unaccompanied homeless youth

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents

without regard to paragraph (E)(4)(c)(i) of this rule, until a surrogate parent can be appointed that meets all of the requirements of paragraph (E)(4) of this rule.

(10) Surrogate parent responsibilities

The surrogate parent may represent the child in all matters relating to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(F) Opportunity to examine records; parent participation in meetings

(1) Opportunity to examine records

The parents of a child with a disability must be afforded, in accordance with the procedures of rule 3301-51-04 of the Administrative Code, an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(2) Parent participation in meetings

(a) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(b) Each school district must provide notice consistent with the parent participation requirements of rule 3301-51-07 of the Administrative Code to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (F)(2)(a) of this rule.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3) Parent involvement in placement decisions

(a) Each school district must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of paragraph (F)(3)(a) of this rule, the school district must use procedures consistent with the procedures described in the parent participation requirements of rule 3301-51-07 of the Administrative Code.

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

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

(G) Independent educational evaluation

(1) General

(a) The parents of a child with a disability have the right under this rule to obtain an independent educational evaluation of the child, subject to paragraphs (G)(2) to (G)(5) of this rule.

(b) Each school district of residence must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the district's criteria applicable for independent educational evaluations as set forth in paragraph (G)(5) of this rule.

(c) The following terms are defined as they are used in this rule:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question; and

(ii) "Public expense" means that the school district of residence either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with rule 3301-51-02 of the Administrative Code.

(2) Parent right to evaluation at public expense

(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district of residence, subject to the conditions in paragraphs (G)(2)(b) to (G)(2)(d) of this rule.

(b) If a parent requests an independent educational evaluation at public expense, the school district of residence must, without unnecessary delay, either:

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district of residence demonstrates in a hearing pursuant to paragraphs (K)(2) and (K)(7) to (K)(13) of this rule that the evaluation obtained by the parent did not meet district criteria.

(c) If the school district files a due process complaint notice to request a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(d) If a parent requests an independent educational evaluation, the school district of residence may ask for the parent's reason why the parent objects to the public evaluation. However, the school district may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(e) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(3) Parent-initiated evaluations

If the parent obtains an independent educational evaluation at public expense or shares with the school district an evaluation obtained at private expense, the results of the evaluation:

(a) Must be considered by the school district of residence, if it meets district criteria, in any decision made with respect to the provision of FAPE to the child; and

(b) May be presented by any party as evidence at a hearing on a due process complaint under Subpart E of Part B of the IDEA regarding that child.

(4) Requests for evaluations by hearing officers

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

(5) School district criteria

(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district of residence uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in paragraph (G)(5)(a) of this rule, a school district of residence may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(H) Prior notice by the school district; content of notice

(1) Notice

Written notice that meets the requirements of paragraph (H)(2) of this rule must be given to the parents of a child with a disability a reasonable time before the school district of residence:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) Content of notice

The notice required under paragraph (H)(1) of this rule must include:

(a) A description of the action proposed or refused by the school district;

(b) An explanation of why the school district proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action;

(d) A statement that the parents of a child with a disability have protection under the procedural safeguards of this rule and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the provisions of this rule;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the school district's proposal or refusal.

(3) Notice in understandable language

(a) The notice required under paragraph (H)(1) of this rule must be:

(i) Written in language understandable to the general public; and

(ii) 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.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule have been met.

(4) Additional notice requirements

(a) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability within thirty days of the date of referral.

(b) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability prior to a change of placement that is a result of a disciplinary action.

(c) The IEP shall serve as written notice unless the parent disagrees with the IEP. If the parent disagrees, written notice shall be provided prior to the implementation of the IEP.

(I) Procedural safeguards notice

(1) General

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

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first due process complaint under paragraph (K)(7) of this rule in a school year;

(c) In accordance with the discipline procedures in paragraph (K)(20) of this rule; and

(d) Upon request by a parent.

(2) Internet web site

A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists, but the school district must still provide parents a printed copy of the procedural safeguards notice.

(3) Contents of notice

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under rule 3301-51-02 of the Administrative Code, rule 3301-51-04 of the Administrative Code, and this rule including:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:

(i) The time period in which to file a complaint;

(ii) The opportunity for the school district of residence to resolve the complaint; and

(iii) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(f) The availability of mediation;

(g) The child's placement during the pendency of any due process complaint;

(h) Procedures for children who are subject to placement in an interim alternative educational setting;

(i) Requirements for unilateral placement by parents of children in nonpublic schools at public expense;

(j) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(k) State-level appeals;

(l) Civil actions, including the time period in which to file those actions; and

(m) Attorneys' fees.

(4) Notice in understandable language

The notice required under paragraph (I)(1) of this rule must meet the requirements of paragraph (H)(3) of this rule.

(J) Electronic mail

A parent of a child with a disability may elect to receive notices required by this rule by an electronic mail communication, if the school district makes that option available.

(K) Conflict Resolution

(1) Administrative reviews

(a) Administrative reviews are recommended, but cannot be used to delay or deny an impartial due process hearing that has been requested in writing or to deny any other rights afforded under this chapter of the Administrative Code.

(b) The child's parent or educational agency other than the school district may request an opportunity to present complaints to the superintendent.

(i) Within twenty school days of receipt of a complaint, the superintendent, or the superintendent's designee, without undue delay and at a time and place convenient to all parties, shall conduct a review, may hold an administrative hearing, and shall notify all parties in writing of the decision.

(ii) Every effort should be made in the review to resolve any disagreements.

(iii) All parties have the right to invite others to participate in the administrative review, including legal counsel.

(2) Model forms

(a) The Ohio department of education must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with paragraph (K)(7)(a) and (K)(8)(a) to (K)(8)(c) of this rule and to assist parents and other parties in filing a state complaint under paragraphs (K)(4) to (K)(6) of this rule. However, the Ohio department of education or school district of residence may not require the use of the model forms.

(b) Parents, school districts, public agencies, and other parties may use the appropriate model form described in paragraph (K)(2)(a) of this rule, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in paragraph (K)(8)(b) of this rule for filing a due process complaint, or the requirements in paragraph (K)(6)(b) of this rule for filing a state complaint.

(3) Mediation

(a) General

The Ohio department of education shall establish state mediation procedures. Additionally, each school district must ensure that procedures are established and implemented to allow parties to disputes involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements

The procedures must meet the following requirements:

(i) The procedures must ensure that the mediation process:

(a) Is voluntary on the part of the parties;

(b) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA; and

(c) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(ii) A school district of residence may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the IDEA; and

(b) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(iii) The Ohio department of education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(iv) The Ohio department of education shall select mediators on a random, rotational, or other impartial basis. Both parties to the mediation must be involved in selecting the mediators and agree with the selection.

(v) The Ohio department of education shall bear the cost of the mediation process, including the costs of meetings described in paragraph (K)(3)(b)(ii) of this rule.

(vi) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(vii) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the school district who has the authority to bind such school district.

(viii) A written, signed mediation agreement under this paragraph is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(ix) If the mediation requires changes in the IEP, the IEP team shall be convened to incorporate changes into the IEP within twenty school days following the mediation agreement or as agreed to in the mediation agreement.

(x) No part of the mediation discussion or sessions may be electronically recorded. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under the IDEA. The mediator may not be called as a witness in future proceedings related to the mediation sessions.

(c) Impartiality of mediator

(i) An individual who serves as a mediator under this rule:

(a) May not be an employee of the Ohio department of education or any school district or agency that is involved in the education or care of the child; and

(b) Must not have a personal or professional interest that conflicts with the person's objectivity.

(ii) A person who otherwise qualifies as a mediator is not an employee of a school district of residence or state agency that receives a subgrant under Section 611 of the IDEA solely because the person is paid by the agency to serve as a mediator.

(4) Adoption of state complaint procedures

(a) General

The Ohio department of education shall adopt written procedures for:

(i) Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of paragraph (K)(6) of this rule by:

(a) Providing for the filing of a complaint with the Ohio department of education; and

(b) At the Ohio department of education's discretion, providing for the filing of a complaint with a school district of residence and the right to have the Ohio department of education review the school district of residence's decision on the complaint; and

(ii) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under paragraphs (K)(4) to (K)(6) of this rule.

(b) Remedies for denial of appropriate services

In resolving a complaint in which the Ohio department of education has found a failure to provide appropriate services, the Ohio department of education, pursuant to its general supervisory authority under Part B of the IDEA, must address:

(i) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(ii) Appropriate future provision of services for all children with disabilities.

(5) Minimum state complaint procedures

(a) Time limit; minimum procedures

The Ohio department of education shall include in its complaint procedures a time limit of sixty days after a complaint is filed under paragraph (K)(6) of this rule to:

(i) Carry out an independent on-site investigation, if the Ohio department of education determines that an investigation is necessary;

(ii) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) Provide the school district of residence with the opportunity to respond to the complaint, including, at a minimum:

(*a*) At the discretion of the school district of residence, a proposal to resolve the complaint; and

(*b*) An opportunity for a parent who has filed a complaint and the school district of residence to voluntarily engage in mediation consistent with paragraph (K)(3) of this rule;

(iv) Review all relevant information and make an independent determination as to whether the school district is violating a requirement of Part B of the IDEA or of this rule; and

(v) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(a) Findings of fact and conclusions; and

(b) The reasons for the Ohio department of education's final decision.

(b) Time extension; final decision; implementation

The Ohio department of education's procedures described in paragraph (K)(5)(a) of this rule also shall:

(i) Permit an extension of the time limit under paragraph (K)(5)(a) of this rule only if:

(a) Exceptional circumstances exist with respect to a particular complaint; or

(b) The parent and the school district of residence involved agree to extend the time to engage in mediation pursuant to paragraph (K)(5)(a)(iii)(b) of this rule, or to engage in other alternative means of dispute resolution, including, but not limited to, an administrative review; and

(ii) Include procedures for effective implementation of the Ohio department of education's final decision, if needed, including:

(a) Technical assistance activities;

(b) Negotiations; and

(c) Corrective actions to achieve compliance.

(c) Complaints and due process hearings filed under this rule

(i) If a written complaint is received that is also the subject of a due process hearing under this rule, or contains multiple issues of which one or more are part of that hearing, the Ohio department of education shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (K)(5)(a) and (K)(5)(b) of this rule.

(ii) If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties:

(a) The due process hearing decision is binding on that issue; and

(b) The Ohio department of education shall inform the complainant to that effect.

(iii) A complaint alleging a school district of residence's failure to implement a due process hearing decision shall be resolved by the Ohio department of education.

(6) Filing a complaint

(a) An organization or individual may file a signed written complaint under the procedures described in paragraphs (K)(4) to (K)(5) of this rule.

(b) The complaint must include:

(i) A statement that a school district of residence has violated a requirement of Part B of the IDEA or of this rule;

(ii) The facts on which the statement is based;

(iii) The signature and contact information for the complainant; and

(iv) If alleging violations with respect to a specific child:

(a) The name and address of the residence of the child;

(b) The name of the school the child is attending;

(c) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431), available contact information for the child, and the name of the school the child is attending;

(d) A description of the nature of the problem of the child, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with paragraph (K)(4) of this rule.

(d) The party filing the complaint must forward a copy of the complaint to the school district of residence at the same time the party files the complaint with the Ohio department of education.

(7) Filing a due process complaint

(a) General

(i) A parent or a school district, county board of MR/DD, or other educational agency may file a due process complaint on any of the matters described in paragraphs (H)(1)(a) and (H)(1)(b) of this rule relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

(ii) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in paragraph (K)(10)(f) of this rule apply to the timeline in this paragraph.

(b) Information for parents

The school district of residence must inform the parent of any free or low-cost legal and other relevant services available in the area if:

(i) The parent requests the information; or

(ii) The parent or the school district files a due process complaint under this rule.

(c) Hearing requested by someone other than parent

If a hearing has been requested by someone other than the child's parent, the parent shall be informed in writing of the request. The parent shall be invited to participate in the proceedings and shall be provided copies of all communications between the parties.

(8) Due process complaint

(a) General

(i) The Ohio department of education shall establish state due process procedures. Additionally, the school district or public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(ii) The party filing a due process complaint must forward a copy of the due process complaint to the Ohio department of education.

(b) Content of complaint

The due process complaint required in paragraph (K)(8)(a)(i) of this rule must include:

(i) The name of the child;

(ii) The address of the residence of the child;

(iii) The name of the school the child is attending;

(iv) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431), available contact information for the child, and the name of the school the child is attending;

(v) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(vi) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (K)(8)(b) of this rule.

(d) Appointment of hearing officer

Upon receipt of a request for a due process hearing, the Ohio department of education, office for exceptional children, will appoint an impartial hearing officer from a list of attorneys maintained by the office for exceptional children.

(e) Sufficiency of complaint

(i) The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (K)(8)(b) of this rule.

(ii) The appointed hearing officer shall handle all phases of the due process request, including, but not limited to, whether a determination of insufficiency should result in the amendment or dismissal of a due process complaint.

(iii) Within five days of receipt of the notification under paragraph (K)(8)(e)(i) of this rule, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (K)(8)(b) of this rule, and must immediately notify the parties in writing of that determination.

The hearing officer shall review the sufficiency issues in accordance with the following:

(a) The hearing officer shall make a determination on the face of the due process complaint no later than five days after receipt of the notification under paragraph (K)(8)(e)(i) of this rule;

(b) The hearing officer shall notify all parties of that written determination on the same date the determination is made;

(c) If the due process complaint is determined to be insufficient, the determination shall include:

(i) The reasons for the determination of insufficiency;

(ii) A statement in clear language that the case has not been dismissed;

(iii) The case cannot go to hearing until a due process notice is filed which meets the requirements of paragraph (K)(8)(b) of this rule; and

(iv) Notice of resources to assist parents without counsel in completing due process complaints and in correcting deficiencies included in the finding of insufficiency by the hearing officer, including, but not limited to, the identity and contact information of the employee at the Ohio department of education who is qualified to answer parents' questions about the required information specified in paragraph (K)(8)(b) of this rule that must be included in a due process complaint notice.

(iv) A party may amend its due process complaint only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to paragraph (K)(9) of this rule; or

(b) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(v) If a party files an amended due process complaint, the timelines for the resolution meeting in paragraph (K)(9)(a) of this rule and the time period to resolve in paragraph (K)(9)(b) of this rule begin again with the filing of the amended due process complaint.

(f) School district of residence response to a due process complaint

(i) If the school district of residence has not sent a prior written notice under paragraph (H) of this rule to the parent regarding the subject matter contained in the parent's due process complaint, the school district of residence must, within ten days of receiving the due process complaint, send to the parent a response that includes:

(*a*) An explanation of why the school district of residence proposed or refused to take the action raised in the due process complaint;

(*b*) A description of other options that the IEP team considered and the reasons why those options were rejected;

(*c*) A description of each evaluation procedure, assessment, record, or report the school district of residence used as the basis for the proposed or refused action; and

(*d*) A description of the other factors that are relevant to the school district of residence's proposed or refused action.

(ii) A response by a school district of residence under paragraph (K)(8)(f)(i) of this rule shall not be construed to preclude the school district from asserting that the parent's due process complaint was insufficient, where appropriate.

(g) Other party response to a due process complaint

Except as provided in paragraph (K)(8)(f) of this rule, the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(9) Resolution process

(a) Resolution meeting

(i) Within fifteen days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under paragraph (K)(10) of this rule, the school district of residence must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(a) Includes a representative of the school district of residence who has decision-making authority on behalf of that district; and

(b) May not include an attorney of the school district of residence unless the parent is accompanied by an attorney.

(ii) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district of residence has the opportunity to resolve the dispute that is the basis for the due process complaint.

(iii) Discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(iv) The meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule need not be held if:

(a) The parent and the school district of residence agree in writing to waive the meeting; or

(b) The parent and the school district of residence agree to use the mediation process described in paragraph (K)(3) of this rule.

(v) The parent and the school district of residence determine the relevant members of the IEP team to attend the meeting.

(b) Resolution period

(i) If the school district has not resolved the due process complaint to the satisfaction of the parent within thirty days of the receipt of the due process complaint, the due process hearing may occur.

(ii) Except as provided in paragraph (K)(9)(c) of this rule, the timeline for issuing a final decision under paragraph (K)(15) of this rule begins at the expiration of this thirty-day period.

(iii) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (K)(9)(b)(i) and (K)(9)(b)(ii) of this rule, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(iv) If the school district of residence is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in rule 3301-51-07 of the Administrative Code), the

school district of residence may, at the conclusion of the thirty-day period, request that a hearing officer dismiss the parent's due process complaint.

(v) If the school district of residence fails to hold the resolution meeting specified in paragraph (K)(9)(a) of this rule within fifteen days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to thirty-day resolution period

The forty-five-day timeline for the due process hearing in paragraph (K)(15)(a) of this rule starts the day after one of the following events:

(i) Both parties agree in writing to waive the resolution meeting;

(ii) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(iii) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district of residence withdraws from the mediation process.

(d) Written settlement agreement

If a resolution to the dispute is reached at the meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule, the parties must execute a legally binding agreement that:

(i) States that all discussions that occurred during the resolution process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil procedure;

(ii) Is signed by both the parent and a representative of the school district of residence who has the authority to bind the district; and

(iii) Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(e) Agreement review period

If the parties execute an agreement pursuant to paragraph (K)(9)(d) of this rule, a party may void the agreement within three business days of the agreement's execution.

(10) Impartial due process hearing

(a) General

Whenever a due process complaint is received under paragraph (K)(7) or (K)(22) of this rule, the parents or the school district of residence involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in paragraphs (K)(7) to (K)(9) of this rule.

(b) School district responsible for conducting the due process hearing

The hearing described in paragraph (K)(10)(a) of this rule must be conducted by the school district of residence as provided by section 3323.05 of the Revised Code, the provisions of this rule, and procedures of the Ohio department of education.

(c) Impartial hearing officer

(i) At a minimum, a hearing officer:

(a) Must not be:

(i) An employee of the Ohio department of education or the school district that is involved in the education or care of the child; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(b) Must possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

(e) Must be an attorney licensed to practice law in Ohio who has successfully completed all training required by the Ohio department of education.

(ii) A person who otherwise qualifies to conduct a hearing under paragraph (K)(10)(c)(i) of this rule is not an employee of the school district solely because the person is paid by the school district of residence to serve as a hearing officer.

(iii) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(iv) The Ohio department of education, office for exceptional children may require any and all current hearing or state level review officers to reapply for eligibility to remain on the list. Training sessions are a mandatory requirement to remain eligible for appointments. In addition, being on the list of possible hearing or state level review officers should not be considered a guarantee or expectation of appointment.

(d) Subject matter of due process hearings

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under paragraph (K)(8)(b) of this rule, unless the other party agrees otherwise.

(e) Timeline for requesting a hearing

A parent or public agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

(f) Exceptions to the timeline

The timeline described in paragraph (K)(10)(e) of this rule does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(i) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or

(ii) The school district's withholding of information from the parent that was required under this rule to be provided to the parent.

(11) Hearing rights

(a) General

Any party to a hearing conducted pursuant to paragraphs (K)(2) and (K)(7) to (K)(13) of this rule or paragraphs (K)(20) to (K)(24) of this rule, or an appeal conducted pursuant to paragraph (K)(14) of this rule, has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(iv) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information

(i) At least five business days prior to a hearing conducted pursuant to paragraph (K)(10)(a) of this rule, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(ii) A hearing officer may bar any party that fails to comply with paragraph (K)(11)(b)(i) of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings

Parents involved in hearings must be given the right to:

(i) Have the child who is the subject of the hearing present;

(ii) Open the hearing to the public; and

(iii) Have the record of the hearing and the findings of fact and decisions described in paragraphs (11)(a)(iv) and (11)(a)(v) of this rule provided at no cost to parents.

(12) Responsibility of hearing officer

The impartial hearing officer has the responsibility of:

(a) Notifying all parties of the date, time and location of the hearing;

(b) Arranging a disclosure conference at least five business days prior to the hearing to assure that information to be presented at the hearing is disclosed;

(c) Issuing a subpoena or a subpoena duces tecum when relevant, necessary, and material, with fees and mileage paid by the party requesting the subpoena;

(i) Either party may request subpoenas to compel the attendance of witnesses at the hearing. Either party may request subpoenas duces tecum to compel the witnesses to bring specified documents to the hearing. Requests for subpoenas duces tecum are submitted to the hearing officer. The hearing officer signs the subpoenas.

(ii) A subpoena may be served by an attorney at law, or by any person who is not a party and over the age of eighteen. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence. Service of subpoenas is solely the responsibility of the party requesting the subpoena and shall not be assumed by the impartial hearing officer.

(d) Ruling on procedural issues presented at the hearing; and

(e) Arriving at a written decision based solely on evidence and testimony presented at the hearing and mailing such decision, by certified mail, to the parties involved and the Ohio department of education, office for exceptional children.

(13) Hearing decisions

(a) Decision of hearing officer on the provision of FAPE

(i) Subject to paragraph (K)(13)(a)(ii) of this rule, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

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

(*a*) Impeded the child's right to FAPE;

(*b*) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

(*c*) Caused a deprivation of educational benefit.

(iii) Nothing in paragraph (K)(13)(a) of this rule shall be construed to preclude a hearing officer from ordering a school district to comply with procedural requirements under this rule.

(b) Construction clause

Nothing in paragraphs (K)(2) and (K)(7) to (K)(13) of this rule shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the Ohio department of education.

(c) Separate request for a due process hearing

Nothing in this rule shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public

The Ohio department of education, after deleting any personally identifiable information, must:

(i) Transmit the findings and decisions referred to in paragraph (K)(11)(a)(v) of this rule to the state advisory panel which is hereby established and shall be maintained in accordance with section 3323. 06 of the Revised Code; and

(ii) Make those findings and decisions available to the public.

(14) Finality of decision; appeal; impartial review

(a) Finality of hearing decision

A decision made in a hearing conducted pursuant to this rule is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraphs (K)(14)(b) and (K)(17) of this rule.

(b) Appeal of decisions; impartial review

(i) Any party aggrieved by the findings and decision in the hearing may appeal the findings and decision in writing to the Ohio department of education within forty-five days of receipt of the hearing decision.

(a) The notice shall set forth the order appealed and the grounds of the party's appeal; and

(b) A party filing an appeal shall notify the other party of the filing of the appeal.

(ii) If there is an appeal, the Ohio department of education must conduct an impartial review of the findings and decision appealed. Upon receipt of an appeal, the Ohio department of education shall appoint a state level review officer who will conduct the review.

(iii) The official conducting the review must:

(a) Examine the entire hearing record;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, the rights in paragraph (K)(11) of this rule apply;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(e) Make an independent decision on completion of the review; and

(f) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public

The Ohio department of education, after deleting any personally identifiable information, must:

(i) Transmit the findings and decisions referred to in paragraph (K)(14)(b)(iii)(f) of this rule to the state advisory panel established under this rule and maintained in accordance with section 3323.06 of the Revised Code; and

(ii) Make those findings and decisions available to the public.

(d) Finality of review decision

The decision made by the reviewing official is final unless a party brings a civil action under paragraph (K)(17) of this rule.

(15) Timelines and convenience of hearings and reviews

(a) The Ohio department of education must ensure that not later than forty-five days after the expiration of the thirty-day period under paragraph (K)(9)(b) of this rule, or the adjusted time periods described in paragraph (K)(9)(c) of this rule:

(i) A final decision is reached in the hearing; and

(ii) A copy of the decision is mailed to each of the parties.

(b) The Ohio department of education must ensure that not later than thirty days after the receipt of a request for a review:

(i) A final decision is reached in the review; and

(ii) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (K)(15)(a) and (K)(15)(b) of this rule at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(16) Cost of hearings

(a) The school district of the child's residence shall provide one copy of the written, or at the option of the parents, an electronic verbatim record of the hearing and findings of fact and decisions to the parent at no cost.

(b) All other cost incurred in impartial due process hearings requested by the parent shall be assumed by the school district of the child's residence, except as follows:

(i) Expert testimony, outside medical evaluation, witness fees, subpoena fees, and cost of counsel will be paid by the party requesting the services; and

(ii) If requested by the parents or their attorney, additional copies of the record of the hearing and findings of fact and decisions.

(c) When a school district, county board of MR/DD, or other educational agency providing special education and related services to a child requests the impartial due process hearing, the district, county board of MR/DD, or other educational agency will share equally the costs of the hearing with the school district of residence, except those costs included in paragraph (K)(16)(b) of this rule.

(d) School districts shall compensate hearing officers upon invoice at an hourly rate not higher than that established for special counsel for the state of Ohio. School districts shall compensate hearing officers for no more than fifty hours of actual hearing time, excluding work done outside of the hearing, for any due process request unless the hearing officer submits to the Ohio department of education, office for exceptional children a written rationale for a hearing to exceed fifty hours of hearing time.

(e) The Ohio department of education shall compensate state level review officers upon invoice at an hourly rate not higher than that established for special counsel for the state of Ohio.

(17) Civil action

(a) General

Any party aggrieved by the findings and decision under paragraph (K)(14)(b) of this rule, has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under paragraph (K)(7) or paragraphs (K)(20) to (K)(22) of this rule. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation

The party bringing the action shall have ninety days from the date of the decision of the state review official, to bring a civil action in the district court of the United States, or shall within forty-five days of notification of the decision of the state review official, appeal the final order to the common pleas court of the county of the child's district of residence as provided by section 3323.05 of the Revised Code.

(c) Additional requirements

In any action brought under paragraph (K)(17)(a) of this rule, the court:

(i) Receives the records of the administrative proceedings;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts

The district courts of the United States have jurisdiction of actions brought under Section 615 of the IDEA without regard to the amount in controversy.

(e) Rule of construction

Nothing in this rule restricts or limits the rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act of 1990, January 1990, Title V of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998, August 1998, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures under paragraphs (K)(7) and (K)(14) of this rule must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

(18) Attorneys' fees

(a) In general

In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is the Ohio department of education or a school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing Ohio department of education or school district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Prohibition on use of funds

(i) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the IDEA and Subpart E of Part B of the IDEA.

(ii) Paragraph (K)(18)(b)(i) of this rule does not preclude the Ohio department of education or a school district from using funds under Part B of the IDEA for conducting an action or proceeding under Section 615 of the IDEA.

(c) Award of fees

A court awards reasonable attorneys' fees under Section 615(i)(3) of the IDEA consistent with the following:

(i) Fees awarded under Section 615(i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(ii) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(*a*) The offer is made within the time prescribed by rule 68 of the "Federal Rules of Civil Procedure" or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(*b*) The offer is not accepted within ten days; and

(*c*) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(iii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in paragraph (K)(3) of this rule.

(iv) A meeting conducted pursuant to paragraph (K)(9) of this rule shall not be considered:

(*a*) A meeting convened as a result of an administrative hearing or judicial action; or

(*b*) An administrative hearing or judicial action for purposes of this rule.

(v) Notwithstanding paragraph (K)(18)(c)(ii) of this rule, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(vi) Except as provided in paragraph (K)(18)(c)(vii) of this rule, the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the IDEA, if the court finds that:

(*a*) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(*b*) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(*c*) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(*d*) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with paragraph (K)(8) of this rule.

(vii) The provisions of paragraph (K)(18)(c)(vi) of this rule do not apply in any action or proceeding if the court finds that the state or school district unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the IDEA.

(19) Child's status during proceedings

(a) Except as provided in paragraph (K)(23) of this rule, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under paragraph (K)(7) of this rule, unless the state or school district of residence and the parents of the child agree otherwise, the child involved in the complaint must remain in the child's current educational placement.

(b) If the complaint involves an application for initial admission to the school district, the child, with the consent of the parents, must be placed in the school district until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this rule from a child who is transitioning from Part C of the IDEA to Part B of the IDEA and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under rule 3301-51-06 of the Administrative Code, then the school district must provide those special education and related services that are not in dispute between the parent and the school district of residence.

(d) If the state level review officer in an administrative appeal conducted by the Ohio department of education agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of paragraph (K)(19)(a) of this rule.

(20) Authority of school personnel

(a) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

(b) General

(i) School personnel under this rule may remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under paragraph (K)(26) of this rule).

(ii) After a child with a disability has been removed from the child's current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under paragraph (K)(20)(d) of this rule.

(c) Additional authority

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (K)(20)(e) of this rule, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (K)(20)(d) of this rule.

(d) Services

(i) A child with a disability who is removed from the child's current placement pursuant to paragraphs (K)(20)(c) or (K)(20)(g) of this rule must:

(a) Continue to receive educational services, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(ii) The services required by paragraph (K)(20)(d)(i), (K)(20)(d)(iii), (K)(20)(d)(iv), and (K)(20)(d)(v) of this rule may be provided in an interim alternative educational setting.

(iii) A school district is only required to provide services during periods of removal to a child with a disability who has been removed from the child's current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(iv) After a child with a disability has been removed from the child's current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under this rule, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(v) If the removal is a change of placement under this rule, the child's IEP team determines appropriate services under paragraph (K)(20)(d)(i) of this rule.

(e) Manifestation determination

(i) Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(ii) The conduct must be determined to be a manifestation of the child's disability if the school district, the parent, and relevant members of the child's IEP team determine that a condition in either paragraph (K)(20)(e)(i)(a) or (K)(20)(e)(i)(b) of this rule was met.

(iii) If the school district, the parent, and relevant members of the child's IEP team determine the condition described in paragraph (K)(20)(e)(i)(b) of this rule was met, the school district must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation

If the school district, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

(i) Either:

(a) Start to conduct a functional behavioral assessment within ten days of the manifestation determination and complete the assessment as soon as practicable, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(b) If a behavioral intervention plan already has been developed, within ten days of the manifestation determination, review the behavioral intervention plan and the implementation of the plan, and modify it, as necessary, to address the behavior subject to disciplinary action; and

(ii) Except as provided in paragraph (K)(20)(g) of this rule, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances

School personnel may remove a child to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

(i) 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 Ohio department of education or a school district;

(ii) 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 Ohio department of education or a school district; or

(iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ohio department of education or a school district.

(h) Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (I) of this rule.

(i) The following terms are defined as they are used in this rule:

(a) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act as amended and specified in the Anabolic Steroids Control Act of 1990, November 1990, 21 U.S.C. 812(c).

(b) "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18, United States Code.

(d) "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code.

(21) Determination of setting

The child's IEP team determines the interim alternative educational setting for services under paragraph (K)(20) of this rule.

(22) Appeal

(a) General

The parent of a child with a disability who disagrees with any decision regarding placement under paragraphs (K)(20) and (K)(21) of this rule, or the manifestation determination under paragraph (K)(20)(e) of this rule, or a school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to paragraphs (K)(7) and (K)(8) of this rule.

(b) Authority of hearing officer

(i) A hearing officer under paragraph (K)(10) of this rule hears and makes a determination regarding an appeal.

(ii) In making the determination under paragraph (K)(22)(b)(i) of this rule, the hearing officer may:

(a) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of paragraph (K)(20) of this rule or that the child's behavior was a manifestation of the child's disability; or

(b) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(iii) The procedures under paragraphs (K)(22)(a), (K)(22)(b)(i), and (K)(22)(b)(ii) of this rule may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing

(i) Whenever a hearing is requested under paragraph (K)(22)(a) of this rule, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of this rule, except as provided in paragraphs (K)(7), (K)(8)(a) to (K)(8)(d), and (K)(9) to (K)(14) of this rule.

(ii) The Ohio department of education or the school district of residence is responsible for arranging the expedited due process hearing, which must occur within twenty school days of the date

the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing.

(iii) Unless the parents and school district of residence agree in writing to waive the resolution meeting described in paragraph (K)(22)(c)(iii)(a) of this rule, or agree to use the mediation process described in paragraph (K)(3) of this rule:

(a) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(b) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process complaint.

(iv) The Ohio department of education may establish different state-imposed procedural rules for expedited due process hearings conducted under this rule than it has established for other due process hearings, but, except for the timelines as modified in paragraph (K)(22)(c)(iii) of this rule, the state must ensure that the requirements in paragraphs (K)(9) to (K)(14) of this rule are met.

(v) The decisions on expedited due process hearings are appealable consistent with paragraph (K)(14) of this rule.

(d) Procedures for expedited due process hearings

(i) If a parent requests an expedited due process hearing, school district of residence personnel must contact the Ohio department of education, office for exceptional children, before the end of the next business day following receipt of the parent's request.

(ii) If a school district initiates an expedited due process hearing under this rule, school district of residence personnel must contact the Ohio department of education, office for exceptional children, on the day the expedited due process hearing is requested. The school district shall provide the parents with notification of the request for the hearing and procedural safeguards no later than the end of the next business day.

(iii) An impartial hearing officer will be appointed by the Ohio department of education, office for exceptional children, before the end of the next business day from the day the school district of residence informs the office for exceptional children.

(a) The impartial hearing officer shall meet the qualifications set forth in paragraph (K)(10)(c) of this rule.

(b) The impartial hearing officer shall contact both parties of the hearing.

(iv) The expedited due process hearing shall be conducted in accordance with paragraphs (K)(12) and (K)(15) of this rule, except that no extensions of time shall be granted, and the hearing will occur within twenty school days of the date the complaint requesting the hearing was filed. The hearing officer's decision will be completed within ten days of the conclusion of the hearing.

(v) The decision of the hearing officer is final, unless a party to the expedited due process hearing appeals the decision to the Ohio department of education, within forty-five calendar days of the notification of the decision. In consideration of the issues that are the basis of the expedited appeal, the appeal should be filed as soon as possible.

(a) The state level review officer will be appointed in accordance with paragraph (K)(14)(b) of this rule;

(b) The state level review will be conducted in accordance with paragraphs (K)(14) and (K)(15) of this rule, except that no extensions of time shall be granted, and the written decision shall be issued no later than thirty days from the date the Ohio department of education receives the request.

(c) The final order of the state level review officer may be appealed to the courts in accordance with paragraph (K)(17) of this rule.

(23) Placement during appeals

When an appeal under paragraph (K)(22) of this rule has been made by either the parent or the school district of residence, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in paragraphs (K)(20)(c) or (K)(20)(g) of this rule, whichever occurs first, unless the parent and the Ohio department of education or school district agree otherwise.

(24) Protections for children not determined eligible for special education and related services

(a) General

A child who has not been determined to be eligible for special education and related services under this chapter of the Administrative Code and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this rule if the school district had knowledge (as determined in accordance with paragraph (K)(24)(b) of this rule) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge

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

(i) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) The parent of the child requested an evaluation of the child pursuant to rule 3301-51-06 of the Administrative Code; or

(iii) The teacher of the child, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the school district or to other supervisory personnel of the school district.

(c) Exception

A school district would not be deemed to have knowledge under paragraph (K)(24)(b) of this rule if:

(i) The parent of the child:

(a) Has not allowed an evaluation of the child pursuant to rule 3301-51-06 of the Administrative Code; or

(b) Has refused services under this chapter of the Administrative Code; or

(ii) The child has been evaluated in accordance with rule 3301-51-06 of the Administrative Code and determined to not be a child with a disability under this chapter.

(d) Conditions that apply if no basis of knowledge

(i) If a school district does not have knowledge that a child is a child with a disability (in accordance with paragraphs (K)(24)(b) and (K)(24)(c) of this rule) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (K)(24)(d)(ii) of this rule.

(ii) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (K)(20) of this rule, the evaluation must be conducted in an expedited manner.

(iii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iv) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district of residence and information provided by the parents, the school district of residence must provide special education and related services in accordance with this chapter of the Administrative Code, including the requirements of paragraphs (K)(20) to (K)(26) of this rule and Section 612(a)(1)(A) of the IDEA.

(25) Referral to and action by law enforcement and judicial authorities

Rule of construction. Nothing in this rule prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability. Transmittal of records shall be done in accordance with paragraph (R)(2) of rule 3301-51-04 of the Administrative Code.

(26) Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under paragraphs (K)(20) to (K)(25) of this rule, a change of placement occurs if:

(i) The removal is for more than ten consecutive school days; or

(ii) The child has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

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

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3301-51-06 Evaluations.

(A) General

(1) Each school district shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, to ensure that a referral process is employed to determine whether or not a child is a child with a disability. The school district of residence shall ensure that initial evaluations are conducted and that reevaluations are completed.

(2) Consistent with rule 3301-35-06 of the Administrative Code, each school district shall provide interventions to resolve concerns for any preschool or school-age child who is performing below grade-level standards.

(3) A school district may not use interventions to delay unnecessarily a child's being evaluated to determine eligibility for special education services. If such interventions have not been implemented prior to referral for evaluation, appropriate interventions should be implemented during the same sixty-day time frame during which the school district conducts a full and individual evaluation.

(4) Each school district shall use data from interventions to determine eligibility for special education services, appropriate instructional practices, and access to the general curriculum. In the case of a preschool-age child, data collected through interventions is part of the differentiated referral process.

(B) Initial evaluations

(1) General

Each school district of residence must conduct a full and individual initial evaluation, in accordance with this rule, before the initial provision of special education and related services under Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) to a child with a disability residing in the school district.

(2) Request for initial evaluation

Consistent with the consent requirements in rule 3301-51-05 of the Administrative Code, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(3) A school district of residence will, within thirty days of receipt of a request for an evaluation from either a parent of a child or a public agency, either obtain parental consent for an initial evaluation or provide to the parents prior written notice

stating that the school district does not suspect a disability and will not be conducting an evaluation.

(4) Procedures for initial evaluation

The initial evaluation:

(a) Must be conducted within sixty days of receiving parental consent for the evaluation; and

(b) Must consist of procedures:

(i) To determine if the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code; and

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

(5) Exception

The time frame described in paragraph (B)(4)(a) of this rule does not apply to a school district if:

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

(b) A child enrolls in a new school district of residence after the relevant time frame in paragraph (B)(4)(a) of this rule has begun, and prior to a determination by the child's previous school district of residence as to whether the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code.

(6) The exception in paragraph (B)(5)(b) of this rule applies only if the subsequent school district of residence is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

(C) Screening for instructional purposes is not evaluation

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

(D) Reevaluations

(1) General

A school district of residence must ensure that a reevaluation of each child with a disability is conducted in accordance with paragraphs (E) to (J) of this rule:

(a) If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation; or

(c) When a child transitions from preschool to school-age services; or

(d) In order to make a change in disability category.

(2) Limitation

A reevaluation conducted under paragraph (D)(1) of this rule:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(E) Evaluation procedures

(1) Notice

The school district of residence must provide notice to the parents of a child with a disability, in accordance with rule 3301-51-05 of the Administrative Code, that describes any evaluation procedures the school district proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the school district must:

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

(i) Whether the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code; and

(ii) The content of the child's individualized education program (IEP), including information related to enabling the child to be involved

in and progress in the general education curriculum (or for a preschool child to participate in appropriate activities);

(b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

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

(3) Other evaluation procedures

Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a child under this rule:

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

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information about what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

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

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

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

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

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

(d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(e) Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with paragraphs (B)(5)(b) and (B)(6) of this rule, to ensure prompt completion of full evaluations.

(f) In evaluating each child with a disability under paragraphs (E) to (G) of this rule, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

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

(h) Medical consultation shall be encouraged for a preschool or school-age child on a continuing basis, especially when school authorities feel that there has been a change in the child's behavior or educational functioning or when new symptoms are detected; and

(i) For preschool-age children, as appropriate, the evaluation shall include the following specialized assessments:

(i) Physical examination completed by a licensed doctor of medicine or doctor of osteopathy in cases where the disability is primarily the result of a congenital or acquired physical disability;

(ii) Vision examination conducted by an eye care specialist in cases where the disability is primarily the result of a visual impairment; and

(iii) An audiological examination completed by a certified or licensed audiologist in cases where the disability is primarily the result of a hearing impairment.

(F) Additional requirements for evaluations and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation, if appropriate, and as part of any reevaluation under this rule, the evaluation team shall develop an evaluation plan that will provide for the following and be summarized in an evaluation team report:

(a) Review existing evaluation data on the child, including:

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

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

(iii) Observations by teachers and related services providers;

(iv) Data about the child's progress in the general curriculum or, for the preschool-age child, data pertaining to the child's growth and development;

(v) Data from previous interventions, including:

(a) Interventions required by rule 3301-35-06 of the Administrative Code; and

(b) For the preschool child, data from early intervention, community or preschool program providers; and

(vi) Any relevant trend data beyond the past twelve months, including the review of current and previous IEPs; and

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

(i) Whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, and the educational needs of the child; or

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

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

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

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

(vi) 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.

(2) Conduct of review

The group described in paragraph (F)(1) of this rule may conduct its review without a meeting.

(3) Source of data

The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (F)(1) of this rule.

(4) Requirements if additional data are not needed

(a) If the evaluation team or the IEP team, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the school district must notify the child's parents of:

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

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

(b) The school district is not required to conduct the assessment described in paragraph (F)(4)(a)(ii) of this rule unless requested to do so by the child's parents.

(5) Evaluations before change in eligibility

(a) Except as provided in paragraph (F)(5)(b) of this rule, a school district must evaluate a child with a disability in accordance with paragraphs (E) to (J) of this rule before determining that the child is no longer a child with a disability.

(b) The evaluation described in paragraph (F)(5)(a) of this rule is not required before the termination of a child's eligibility under this rule due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a free appropriate public education (FAPE) under state law.

(c) For a child whose eligibility terminates under circumstances described in paragraph (F)(5)(b) of this rule, a school district must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(G) Determination of eligibility

(1) General

Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, in accordance with paragraph (G)(2) of this rule and the educational needs of the child; and

(b) The school district provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(i) The written evaluation team report shall include:

(a) A summary of information obtained during the evaluation process; and

(b) The names, titles and signatures of each team member, including the parent, and an indication of whether or not they are in agreement with the eligibility determination. Any team member who is not in agreement with the team's determination of disability shall submit a statement of disagreement.

(ii) The school district must provide a copy of the evaluation team report and the documentation of determination of eligibility or continued eligibility to the parents prior to the next IEP meeting and in no case later than fourteen days from the date of eligibility determination.

(2) Special rule for eligibility determination

A child must not be determined to be a child with a disability under this rule:

(a) If the determinant factor for that determination is:

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965, as amended and specified in the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the child does not otherwise meet the eligibility criteria under paragraph (B)(10) of rule 3301-51-01 of the Administrative Code.

(3) Procedures for determining eligibility and educational need

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code, and the educational needs of the child, each school district must:

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, state and districtwide assessments, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

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

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with rule 3301-51-07 of the Administrative Code.

(H) Additional procedures for identifying children with specific learning disabilities

(1) Specific learning disabilities

(a) General

The Ohio department of education adopts in this rule, criteria for determining whether a child has a specific learning disability as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code. The criteria adopted by the state in this rule:

(i) Do not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a

specific learning disability, as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code;

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

(iii) Permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code.

(b) Consistency with state criteria

A school district must use the state criteria adopted in this rule pursuant to paragraph (H)(1) of this rule in determining whether a child has a specific learning disability.

(2) Additional group members

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, must be made by the child's parents and a team of qualified professionals which must include:

(a) The child's regular teacher; or

(b) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of the child's age; or

(c) For a child of less than school-age, an individual qualified by the Ohio department of education to teach a child of the child's age; and

(d) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(3) Determining the existence of a specific learning disability

(a) The group described in paragraph (G) of this rule may determine that a child has a specific learning disability, as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code, if:

(i) 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.

(ii) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (H)(3)(i) of this rule when using a process based on the child's response to scientific, research-based intervention; or

(iii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with paragraphs (E) and (F) of this rule; and

(iv) The group determines that its findings under paragraphs (H)(3)(a)(i) to (H)(3)(a)(iii) of this rule are not primarily the result of:

(a) A visual, hearing, or motor disability;

(b) Mental retardation;

(c) Emotional disturbance;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in paragraphs (E) to (G) of this rule:

(i) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The school district must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the time frames described in paragraphs (B) and (D) of this rule, unless the time frames are extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in paragraph (G)(1)(a) of this rule:

(i) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule; and

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

(d) An evaluation may utilize a process based on the child's response to scientific, research-based intervention to determine whether a child has a specific learning disability. This process:

(i) Begins when sufficient data have been gathered and analyzed under conditions of targeted and intensive individualized intervention conditions, when there is evidence of an inadequate response to intervention on the part of the child, and the group determines that the child's needs are unlikely to be met without certain specialized instruction in addition to the regular classroom instruction;

(ii) Employs interventions that are scientifically-based and provided at appropriate levels of intensity, frequency, duration, and integrity, relative to the child's identified needs;

(iii) Is based on results of scientifically-based, technically adequate assessment procedures that assess ongoing progress while the child is receiving scientifically-based instruction, and that have been reported to the child's parents;

(iv) Includes the analysis of data described in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule to determine whether a discrepancy is present between actual and expected performance, in both the child's rate of progress in developing skills, and in the child's level of performance on measures assessing one or more of the academic areas listed in paragraph (H)(3)(a)(i) of this rule;

(v) May not be used to delay unnecessarily a child's being evaluated to determine eligibility for special education services.

(e) A school district may use alternative, research-based procedures for determining whether a 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, if prior approval of the procedures has been granted by the Ohio department of education.

(f) The school district must develop written procedures for the implementation of any method used to determine the existence of a specific learning disability that, at a minimum, incorporate guidelines developed by the Ohio department of education as specified in this rule.

(4) Observation

(a) The school district must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in paragraph (G) of this rule, in determining whether a child has a specific learning disability, must decide to:

(i) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(ii) Have at least one member of the group described in paragraph (G) of this rule conduct an observation of the child's academic performance in the regular classroom after the child has been

referred for an evaluation and parental consent, consistent with rule 3301-51-05 of the Administrative Code, is obtained.

(c) In the case of a child of less than school-age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(5) Specific documentation for the eligibility determination

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in paragraph (G)(1)(b) of this rule, must contain a statement of:

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

(ii) The basis for making the determination, including an assurance that the determination has been made in accordance with paragraph (G)(3)(a) of this rule;

(iii) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

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

(v) Whether:

(a) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with paragraph (H)(3)(a)(i) of this rule; and

(b) The child does not make sufficient progress to meet age or state-approved grade-level standards consistent with paragraph (H)(3)(a)(ii) of this rule; 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 consistent with paragraph (H)(3)(a)(iii) of this rule;

(vi) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

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

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

(b) The documentation that the child's parents were notified about:

(i) 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;

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

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

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

(I) Additional procedures for identifying children with multiple disabilities

A group of qualified professionals and the parents of the child may determine the child has multiple disabilities if the child exhibits:

(1) A combination of two or more areas of disability as defined in rule 3301-51-01 of the Administrative Code, except for a combination that includes a specific learning disability; and

(2) A severe or profound deficit in communication or adaptive behavior documented through the use of individually administered standardized instruments which have been validated for the specific purpose of measuring communication or adaptive behavior.

(J) Additional procedures for identifying children with deafness or hearing impairment

A group of qualified professionals and the parents of the child may determine the child has deafness or a hearing impairment if the child exhibits:

(1) An average pure tone hearing loss of fifty decibels or greater, according to the "American Speech-Language-Hearing Association (ASHA) Guidelines for the Audiologic Assessment of Children From Birth to Five Years of Age" (2004) for children from birth to five years of age or according to the "American Speech-Language-Hearing Association (ASHA) Guidelines for Manual Pure-Tone

Threshold Audiometry" (2005) for children six through twenty-one years of age, for the frequencies five hundred, one thousand, and two thousand hertz in the better ear; [The guidelines referenced in paragraph (J)(1) of this rule are available at www.asha.org.]

(2) An average pure tone hearing loss of twenty-five decibels or greater (ASHA) for the frequencies five hundred, one thousand, and two thousand hertz in the better ear, which has an adverse effect upon the child's educational performance related to documented evidence of:

(a) A more severe hearing loss during the developmental years than is currently measured;

(b) A history of chronic medical problems that have resulted in fluctuating hearing, presently or in the past; or

(c) A delay in diagnosis, provision of amplification, or initiation of special programming.

(3) A hearing loss in excess of twenty-five decibels (ASHA) for the frequencies one thousand hertz through eight thousand hertz in the better ear, resulting in such poor auditory discrimination that it has an adverse effect upon the child's educational performance.

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3301-51-07 Individualized education program (IEP).

(A) Each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, that ensure an individualized education program (IEP) is developed and implemented for each child with a disability.

(B) The county boards of mental retardation and developmental disabilities (county boards of MR/DD) and other educational agencies shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, that ensure services identified in the child's IEP are provided as agreed upon with the child's school district of residence.

(C) The child's school district of residence is responsible for ensuring that the requirements of this rule are met regardless of which school district, county board of MR/DD, or other educational agency implements the child's IEP. This includes the responsibility for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

(D) Children in other districts or agencies

(1) The school district of residence is responsible for ensuring that an IEP is developed and implemented for each child with a disability residing in the school district. When providing special education services for a child with a disability in another school district, county board of MR/DD, or other educational agency, the school district of residence must follow the same procedural safeguards as it does for all children with disabilities and have on file a copy of the current evaluation team report and the IEP.

(2) Each school district will cooperate with other districts, county boards of MR/DD, and other educational agencies that serve children with disabilities in institutions or other care facilities to ensure that these children have access to an education in a regular public school setting, when appropriate and as specified in the IEP.

(E) IEPs

(1) The state must ensure that an IEP that meets the requirements of Section 636(d) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), is developed, reviewed, and revised for each child with a disability in accordance with paragraphs (H) to (L) of this rule, except as provided in paragraph (C)(2)(d)(ii) of rule 3301-51-05 of the Administrative Code.

(2) Paragraphs (F) to (G) of this rule apply only to children with disabilities who are or have been placed in or referred to a nonpublic school or facility by a public school district as a means of providing special education and related services.

(F) Responsibility of the Ohio department of education

The Ohio department of education must ensure that a child with a disability who is placed in or referred to a nonpublic school or facility by a public school district:

(1) Is provided special education and related services:

(a) In conformance with an IEP that meets the requirements of paragraphs (H) to (M) of this rule; and

(b) At no cost to the parents;

(2) Is provided an education that meets the standards that apply to education provided by the Ohio department of education and school districts including the requirements of this rule, except for paragraph (B)(27) of rule 3301-51-01 of the Administrative Code and paragraph (H) of rule 3301-51-09 of the Administrative Code; and

(3) Has all of the rights of a child with a disability who is served by a public school district.

(G) Implementation by the Ohio department of education

In implementing paragraph (F) of this rule, the Ohio department of education must:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each nonpublic school and facility to which a school district has referred or placed a child with a disability; and

(3) Provide an opportunity for those nonpublic schools and facilities to participate in the development and revision of state standards that apply to them.

(H) Definition of individualized education program

(1) General

As used in this rule, the term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with paragraphs (H) to (L) of this rule and that must include:

(a) A statement that discusses the child’s future

The IEP team shall ensure that the family and child's preferences and interests are an essential part of the planning process. The IEP team will document planning information on the IEP;

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

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

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

(c) A statement of measurable annual goals, including academic and functional goals and benchmarks or short-term objectives designed to:

(i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

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

(d) A description of:

(i) How the child's progress toward meeting the annual goals described in paragraph (H)(1)(c) of this rule will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

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

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (H)(1)(b) of this rule, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

(f) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (H)(1)(e) of this rule;

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the IDEA;

(h) If the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

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

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

(i) The projected date for the beginning of the services and modifications described in paragraph (H)(1)(e) of this rule and the anticipated frequency, location, and duration of those services and modifications.

(2) Transition services

(a) For each child with a disability, beginning at age fourteen (or younger, if determined appropriate by the IEP team), the IEP shall include a statement, updated annually, of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program).

(b) Beginning not later than the first IEP to be in effect when the child turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

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

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

(3) Transfer of rights at age of majority

Beginning not later than one year before the child reaches eighteen years of age, which is the age of majority under Ohio law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the IDEA that will transfer to the child on reaching the age of majority, as specified in rule 3301-51-05 of the Administrative Code.

(4) Construction

Nothing in this rule shall be construed to require:

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

(b) The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(I) IEP team

(1) General

The school district must ensure that the IEP team for each child with a disability includes:

(a) The parents of the child;

(b) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(c) Not less than one special education teacher of the child or, where appropriate, not less then one special education provider of the child;

(d) A representative of the school district who:

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

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

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (I)(1)(b) to (I)(1)(f) of this rule;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

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

(2) Transition services participants

(a) In accordance with paragraph (I)(1)(g) of this rule, the school 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 under paragraph (H)(2) of this rule.

(b) If the child does not attend the IEP team meeting, the school 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, in implementing the requirements of paragraph (I)(2)(a) of this rule, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) Determination of knowledge and special expertise

The determination of the knowledge or special expertise of any individual described in paragraph (I)(1)(f) of this rule must be made by the party (parents or school district) who invited the individual to be a member of the IEP team.

(4) Designating a school district representative

A school district may designate a school district member of the IEP team to also serve as the district representative, if the criteria in paragraph (I)(1)(d) of this rule are satisfied.

(5) IEP team attendance

(a) A member of the IEP team described in paragraphs (I)(1)(b) to (I)(1)(e) of this rule is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in paragraph (I)(5)(a) of this rule may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the school district consent to the excusal; and

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

(6) Initial IEP team meeting for child under Part C

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

(J) Parent participation

(1) School district responsibility

Each school district must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:

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

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

(2) Information provided to parents

(a) The notice required under paragraph (J)(1)(a) of this rule must:

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

(ii) Inform the parents of the provisions in paragraphs (I)(1)(f) and (I)(3) of this rule (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and paragraph (I)(6) of this rule (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the IDEA).

(b) For a child with a disability, beginning not later than the first IEP to be in effect when the child turns fourteen, or younger if determined appropriate by the IEP team, the notice also must:

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the child; and

(ii) Indicate that the school district will invite the child.

(c) For a child with a disability, beginning not later than the first IEP to be in effect when the child turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(i) Indicate:

(a) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with paragraph (H)(2)(b) of this rule; and

(b) That the school district will invite the child; and

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

3) Other methods to ensure parent participation

If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with paragraph (O) of this rule (related to alternative means of meeting participation).

(4) Conducting an IEP team meeting without a parent in attendance

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

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

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

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

(5) Use of interpreters or other action, as appropriate

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

(6) Parent copy of child's IEP

Within thirty calendar days after the IEP meeting, the school district must give the parent a copy of the child's IEP at no cost to the parent.

(K) When IEPs must be in effect

(1) General

By the child's third birthday and at the beginning of each subsequent school year, each school district must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in paragraph (H) of this rule. The IEP shall be implemented as soon as possible following the IEP meeting.

(2) The initial IEP must be developed within whichever of the following time periods is the shortest:

(a) Within thirty calendar days of the determination that the child needs special education and related services;

(b) Within ninety calendar days of receiving parental consent for an evaluation; or

(c) Within one hundred twenty calendar days of the receipt of a request for an evaluation from a parent or school district.

(3) Initial IEPs; provision of services

Each school district must ensure that:

(a) A meeting to develop an IEP for a child is conducted within thirty days of a determination that the child needs special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(4) Accessibility of child's IEP to teachers and others

Each school district must ensure that:

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

(b) Each teacher and provider described in paragraph (K)(4)(a) of this rule is informed of:

(i) The teacher's and provider's specific responsibilities related to implementing the child's IEP; and

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

(5) IEPs for children who transfer school districts in the same state

If a child with a disability (who had an IEP that was in effect in a previous school district in the same state) transfers to a new school district of residence in the same state, and enrolls in a new school within the same school year, the new school district of residence (in consultation with the parents) must provide a free and appropriate public education (FAPE) to the child (including services comparable to those described in the child's IEP from the previous school district of residence), until the new school district of residence either:

(a) Adopts the child's IEP from the previous school district of residence; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in paragraphs (H) to (L) of this rule.

(6) IEPs for children who transfer from another state

If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to a new school district of residence in Ohio, and enrolls in a new school within the same school year, the new school district of residence (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district of residence), until the new school district of residence:

(a) Conducts an evaluation pursuant to paragraphs (E) to (G) of rule 3301-51-06 of the Administrative Code (if determined to be necessary by the new school district of residence); and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in paragraphs (H) to (L) of this rule.

(7) Transmittal of records

To facilitate the transition for a child described in paragraphs (K)(5) and (K)(6) of this rule:

(a) The new school district of residence in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district of residence in which the child was enrolled, pursuant to 34 C.F.R. 99.31(a)(2) (July 1, 2005); and

(b) The previous school district of residence in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district of residence.

(L) Development, review, and revision of IEP

(1) Development of IEP

(a) General

In developing each child's IEP, the IEP team must consider:

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child;

(iv) The results of the child's performance on any state or districtwide assessment programs, as appropriate; and

(v) The academic, developmental, and functional needs of the child.

(b) Consideration of special factors

The IEP team must:

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired:

(*a*) Provide for instruction in braille and the use of braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in braille or the use of braille), that instruction in braille or the use of braille is not appropriate for the child; and

(*b*) Ensure that the requirements for IEPs for children with visual impairments are implemented as provided in section 3323.011 of the Revised Code;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

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

(c) Requirement with respect to regular education teacher

A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

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

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (H)(1)(e) of this rule.

(d) Agreement

(i) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the school district may agree not to convene an IEP team meeting for the purposes of making those changes, and instead

may develop a written document to amend or modify the child's current IEP.

(ii) If the IEP team amends or modifies the child's current IEP, as described in paragraph (L)(1)(d)(i) of this rule, the annual review date for the amended or modified IEP does not change. The annual review date will change upon a complete review and revision of the child's IEP as outlined in paragraph (L)(2) of this rule.

(iii) If changes are made to the child's IEP in accordance with paragraph (L)(1)(d)(i) of this rule, the school district must ensure that the child's IEP team is informed of those changes.

(e) Consolidation of IEP team meetings

To the extent possible, the school district must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

(f) Amendments

Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in paragraph (L)(1)(d) of this rule, by amending the IEP rather than by redrafting the entire IEP. When an IEP is amended the school district shall send a copy of the amended IEP to the parent within thirty days of the date the IEP was amended.

(2) Review and revision of IEPs

(a) General

Each school district must ensure that, subject to paragraphs (L)(2)(b) and (L)(2)(c) of this rule, the IEP team:

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

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

(a) Any lack of expected progress toward the annual goals described in paragraph (H)(1)(c) of this rule, and in the general education curriculum, if appropriate;

(b) The results of any reevaluation conducted under rule 3301-51-06 of the Administrative Code;

(c) Information about the child provided to, or by, the parents, as described under paragraph (F)(1)(b) of rule 3301-51-06 of the Administrative Code;

(d) The child's anticipated needs; or

(e) Other matters.

(b) Consideration of special factors

In conducting a review of the child's IEP, the IEP team must consider the special factors described in paragraph (L)(1)(b) of this rule.

(c) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP team, must, consistent with paragraph (L)(1)(c) of this rule, participate in the review and revision of the IEP of the child.

(3) Failure to meet transition objectives

(a) Participating agency failure

If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with paragraph (H)(2) of this rule, the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(b) Construction

Nothing in this rule relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(4) Children with disabilities in adult prisons

(a) Requirements that do not apply

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirements contained in Section 612(a)(16) of the IDEA and paragraph (H)(1)(g) of this rule (relating to participation of children with disabilities in general assessments).

(ii) The requirements in paragraph (H)(2) of this rule (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b) Modifications of IEP or placement

(i) Subject to paragraph (L)(4)(b)(ii) of this rule, the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of paragraphs (E) and (H) of this rule do not apply with respect to the modifications described in paragraph (L)(4)(b)(i) of this rule.

(M) Nonpublic school placements by public school districts

(1) Developing IEPs

(a) Before a public school district places a child with a disability in, or refers a child to, a nonpublic school or facility, the district must initiate and conduct a meeting to develop an IEP for the child in accordance with paragraphs (H) and (L) of this rule.

(b) The district must ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the district must use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls.

(2) Reviewing and revising IEPs

(a) After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public school district.

(b) If the nonpublic school or facility initiates and conducts these meetings, the public school district must ensure that the parents and a district representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(3) Responsibility

Even if a nonpublic school or facility implements a child's IEP, responsibility for compliance with this rule remains with the public school district and the Ohio department of education.

(N) Educational placements

Consistent with rule 3301-51-04 of the Administrative Code, each school district must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(O) Alternative means of meeting participation

When conducting IEP team meetings and placement meetings pursuant to this rule, and Subpart E of Part B of the IDEA, and carrying out administrative matters under Section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

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3301-51-08 Parentally placed nonpublic school children.

(A) Children's rights to services

Each school district is required to provide equitable services and participation for eligible children who are attending a chartered or non-chartered nonpublic school located within the district's geographical boundaries. The school district must have timely and meaningful consultation with the chartered and non-chartered nonpublic school officials to determine if any children attending those nonpublic schools are eligible for equitable services.

(B) Child find for parentally placed nonpublic school children with disabilities

(1) General

Each school district must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district, in accordance with paragraphs (B)(2) to (B)(5) of this rule and with rules 3301-51-01 and 3301-51-03 of the Administrative Code.

(2) Child find design

The child find process must be designed to ensure:

(a) The equitable participation of parentally placed nonpublic school children; and

(b) An accurate count of those children.

(3) Activities

In carrying out the requirements of this rule, the school district where the nonpublic school is located must undertake activities similar to the activities undertaken for the district's public school children.

(4) Cost

The cost of carrying out the child find requirements in this rule, including individual evaluations, shall not be considered in determining if a school district has met its obligation under paragraph (E) of this rule. The proportionate share of Part B funds set aside to serve children with disabilities in nonpublic schools cannot be used for child find activities, including individual evaluations.

(5) Completion period

The child find process must be completed in a time period comparable to that for students attending the school district where the nonpublic school is located consistent with rules 3301-51-03 and 3301-51-06 of the Administrative Code.

(6) Determination of eligibility

The school district where the nonpublic school is located shall conduct, either directly or through contract, a full and individual initial evaluation in accordance with rule 3301-51-06 of the Administrative Code for children suspected of having a disability.

(a) If the parents do not make clear their intention to keep their child enrolled in the nonpublic school, then the school district where the nonpublic school is located shall provide the parents of children who are determined eligible for services under rule 3301-51-06 of the Administrative Code written documentation stating that the child's school district of residence is responsible for making a free appropriate public education (FAPE) available to the child.

(b) A copy of this documentation shall be sent to the child's school district of residence, provided the school district where the nonpublic school is located receives written parental consent for this information to be released to the child's school district of residence.

(7) School district of residence

(a) A school district of residence is not required to pay for the cost of FAPE of a child with a disability at a nonpublic school or facility if:

(i) The school district of residence made FAPE available to the child in the public school; and

(ii) The parents elected to place the child in the nonpublic school or facility.

(b) However, the school district of residence must include the child described in paragraph (B)(7)(a) of this rule in the population whose needs are addressed consistent with the requirements of this rule.

(c) If the parents make clear their intention to keep their child with a disability enrolled in a nonpublic school then the school district of residence need not develop an individualized education program (IEP) for the child. If the child with a disability who is in need of special education and related services enrolls or re-enrolls in the school district of residence, the school district of residence must make FAPE available.

(8) Confidentiality requirements

When conducting child find, evaluation and service activities, the school district where the nonpublic school is located must be in compliance with all confidentiality requirements of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), and the Family Education Rights and Privacy Act of 1974, August 1974 (FERPA).

(a) If a child is enrolled or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.

(b) The school district where the nonpublic school is located shall follow all the IDEA and the FERPA confidentiality requirements when serving children with disabilities attending chartered and non-chartered nonpublic schools.

(9) Continued determination of eligibility

Children with disabilities enrolled by their parents in nonpublic schools and receiving special education and any related services must be reevaluated by the school district where the nonpublic school is located:

(a) Not more frequently than once a year, unless the parent and the district agree otherwise; and

(b) At least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

(10) Out-of-state children

Each school district in which nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally placed nonpublic school children who reside in a state other than the state in which the nonpublic schools that they attend are located.

(C) Provision of services for parentally placed nonpublic school children with disabilities: basic requirement

(1) General

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district, provision is made for the participation of those children in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with this rule.

(2) Services plan for parentally placed nonpublic school children with disabilities

In accordance with paragraph (C)(1) and paragraphs (I) to (K) of this rule, a services plan must be developed and implemented for each nonpublic school child with a disability who has been designated by the school district in which the nonpublic school is located to receive special education and related services under this rule.

(D) Reporting requirements

(1) The following children with disabilities, who are enrolled by their parents in nonpublic schools, shall be counted and reported to the Ohio department of education by the school district where the nonpublic school is located, during the October education management information system (EMIS) reporting period:

(a) Children identified as eligible to receive special education services under the IDEA, but who do not have a services plan; and

(b) Children who are suspected of having a disability who are enrolled by their parents in nonpublic schools and who are evaluated and determined not eligible to receive special education and related services under the IDEA.

(2) Children with disabilities who are receiving special education services in accordance with a services plan funded through Part B of the IDEA or auxiliary services funds shall be counted for the December 1 child count report by the school district where the nonpublic school is located to generate Part B special education funds.

(E) Expenditures

(1) Formula

The school district where the nonpublic school is located must spend the following on providing special education and related services (including direct services) to parentally placed nonpublic school children with disabilities:

(a) For children between the ages of three and twenty-one, inclusive, an amount that is the same proportion of the school district's total subgrant

under Section 611(f) of the IDEA as the number of nonpublic school children between the ages of three and twenty-one, inclusive, who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district, is to the total number of children with disabilities in its jurisdiction between the ages of three and twenty-one, inclusive.

(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the IDEA as the number of parentally placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (E)(1)(a)(i) of this rule, children aged three through five are considered to be parentally placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in rule 3301-51-01 of the Administrative Code.

(b) If the school district where the nonpublic school is located has not expended for equitable services all of the funds described in paragraphs (E)(1)(a) of this rule by the end of the fiscal year for which congress appropriated the funds, the school district must obligate the remaining funds for special education and related services (including direct services) to parentally placed nonpublic school children with disabilities during a carry-over period of one additional year.

(2) Calculating proportionate amount

(a) In calculating the proportionate amount of federal funds to be provided for parentally placed nonpublic school children with disabilities, the school district where the nonpublic school is located, after timely and meaningful consultation with representatives of nonpublic schools under paragraph (F) of this rule, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending nonpublic schools located in the school district.

(b) The annual count of the number of parentally placed nonpublic school children with disabilities must be used to determine the amount that the school district where the nonpublic school is located must spend on providing special education and related services to parentally placed

nonpublic school children with disabilities in the next subsequent fiscal year.

(3) Supplement, not supplant

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed nonpublic school children with disabilities under this rule.

(4) Use of federal funds provided through the IDEA

The amount of special education IDEA Part B and early childhood special education flow-through benefits that the school district where the nonpublic school is located must allocate for eligible nonpublic school children is determined as follows:

(a) The proportionate share allocation is calculated as specified in appendix B "Proportionate Share Calculation" to 34 C.F.R. Part 300 (October 13, 2006). For purposes of the calculation of the proportionate share under appendix B, "LEA" means the school district in which the nonpublic school is located and "private school" means nonpublic school as defined in paragraph (B)(38) of rule 3301-51-01 of the Administrative Code

(b) The calculation of the proportionate share of IDEA Part B special education funds is based upon a number of factors including child count, public and nonpublic population counts and the number of children within the district living in poverty. Due to these factors, each school district's calculation will vary based on its individual data and a statewide per-child allocation cannot be determined.

(5) Use of state funds and provision of auxiliary services

(a) Opportunity for participation

Auxiliary services funds are generated for each school district based upon the number of children attending chartered nonpublic elementary or secondary schools within the district. Auxiliary services funds may be used to provide services to children with disabilities who are attending chartered nonpublic schools within the boundaries of a given school district (sections 3317.024 and 3317.06 of the Revised Code).

(b) Approval of services to be provided

The school district within whose boundaries the chartered nonpublic school is located has the responsibility for approving the chartered

nonpublic school's request for services prior to the provision of such services.

(c) Location of services

Personnel funded with auxiliary services funds may provide services either on or off the premises of the chartered nonpublic school to children enrolled in a religiously affiliated or nonsectarian school. If services are provided in the public school or in public centers, transportation to and from such facilities shall be provided by the school district in which the chartered nonpublic school is located (division (I) of section 3317.06 of the Revised Code).

(d) Documentation of services

If a child is unilaterally placed by the child's parents in a chartered nonpublic school and the child will be receiving special education and related services using both Part B funds and auxiliary funds or using auxiliary funds only, the services provided by auxiliary funds must be clearly marked as auxiliary services on the child's services plan. These services are not subject to the IDEA complaint or due process procedures.

(F) Consultation

To ensure timely and meaningful consultation, the school district where the nonpublic school is located must consult with nonpublic school representatives and representatives of parents of parentally placed nonpublic school children with disabilities during the design and development of special education and related services for the children regarding the following:

(1) Child find

The child find process, including:

(a) How parentally placed nonpublic school children suspected of having a disability can participate equitably; and

(b) How parents, teachers, and nonpublic school officials will be informed of the process.

(2) Proportionate share of funds

The determination of the proportionate share of federal funds available to serve parentally placed nonpublic school children with disabilities under paragraph (E) of this rule, including the determination of how the proportionate share of those

funds was calculated. Consultations shall take into consideration the number of these children and their needs and location.

(3) Consultation process

The consultation process among the school district where the nonpublic school is located, nonpublic school officials, and representatives of parents of parentally placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(4) Provision of special education and related services

How, where, and by whom special education and related services will be provided for parentally placed nonpublic school children with disabilities, including a discussion of:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed nonpublic school children; and

(c) How and when those decisions will be made.

(5) Written explanation by the school district regarding services

How, if the school district where the nonpublic school is located disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district where the nonpublic school is located shall provide to the nonpublic school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

(G) Written affirmation

(1) When timely and meaningful consultation has occurred, the school district where the nonpublic school is located must obtain a written affirmation signed by the representatives of participating nonpublic schools.

(2) If the representatives do not provide the affirmation within a reasonable period of time or choose not to participate, the school district where the nonpublic school is located must document its consultation attempts and forward documentation of the consultation process to the Ohio department of education. If a nonpublic

school chooses not to participate, the parent may contact the school district in which the nonpublic school is located to request equitable services for the child.

(H) Compliance

(1) General

A nonpublic school official has the right to submit a complaint to the Ohio department of education, office for exceptional children, alleging that the school district where the nonpublic school is located:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the nonpublic school official.

2) Procedure

(a) If the nonpublic school official wishes to submit a complaint, the official must provide to the Ohio department of education, office for exceptional children the basis of the noncompliance by the school district with the applicable nonpublic school provisions in this rule; and

(b) The school district where the nonpublic school is located must forward the appropriate documentation to the Ohio department of education, office for exceptional children, in accordance with paragraph (L) of this rule.

(c) If the nonpublic school official is dissatisfied with the decision of the Ohio department of education, office for exceptional children, the official may submit a complaint to the secretary of the U.S. department of education by providing the information on noncompliance described in paragraph (H)(2)(a) of this rule. The Ohio department of education, office for exceptional children shall forward the appropriate documentation to the secretary of the U.S. department of education.

(I) Equitable services determined

(1) No individual right to special education and related services

No parentally placed nonpublic school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(2) Decisions

(a) Decisions about the services that will be provided to parentally placed nonpublic school children with disabilities under this rule must be made in accordance with paragraphs (I)(3) and (F)(3) of this rule.

(b) The school district where the nonpublic school is located must make the final decisions with respect to the services to be provided to eligible parentally placed nonpublic school children with disabilities.

(3) Services plan for each child served under this rule

If a child with a disability is enrolled in a religious or other nonpublic school by the child's parents and will receive special education or related services from the school district where the nonpublic school is located, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with paragraph (J)(2) of this rule; and

(b) Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district where the nonpublic school is located shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

(J) Equitable services provided

(1) General

(a) The services provided to parentally placed nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally placed nonpublic school children with disabilities do not have to meet the highly qualified special education teacher requirements of rule 3301-51-01 of the Administrative Code.

(b) Parentally placed nonpublic school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(2) Services provided in accordance with a services plan

(a) Each parentally placed nonpublic school child with a disability who has been designated to receive services under paragraph (C) of this rule must have a services plan that describes the specific special education and related services that the public school district where the nonpublic school is located will provide to the child in light of the services that the district

has determined, through the process described in this rule, it will make available to parentally placed nonpublic school children with disabilities.

(b) The services plan must:

(i) Be developed to meet IEP requirements as outlined in paragraph (H) of rule 3301-51-07 of the Administrative Code, to the extent appropriate;

(ii) Be individually developed for each participating child using the services plan form, i.e., IEP form, included in the school district's approved forms; and

(iii) Be developed, reviewed, and revised consistent with paragraphs (I) to (L) of rule 3301-51-07 of the Administrative Code.

(3) Development of the services plan

(a) The school district where the nonpublic school is located, whether or not it is the child's school district of residence, convenes the services plan meeting, conference call, or video conference for each eligible child who will receive special education and any related services.

(b) A nonpublic school representative must participate in the development or revision of the services plan.

(c) The school district where the nonpublic school is located is required to and is responsible for conducting a meeting, conference call, or video conference at least annually to review and revise, if appropriate, each child's services plan.

(d) Neither the IDEA nor state law makes provisions for nonpublic schools to develop student services plans. Any written plan developed by a nonpublic school will not be recognized as a services plan under federal or state laws.

(4) Provision of equitable services

(a) The provision of services pursuant to paragraphs (K) to (O) of this rule must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(b) Special education and related services provided to parentally placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(K) Location of services and transportation

(1) Services on nonpublic school premises

(a) Services to parentally placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

(b) The school district where the nonpublic school is located will determine where services will be provided. Services may be provided at the nonpublic school with the permission of the nonpublic school.

(2) Transportation

(a) General

(i) If necessary for the child to benefit from or participate in the services provided under this rule, a parentally placed nonpublic school child with a disability must be provided transportation:

(a) From the child's school or the child's home to a site other than the nonpublic school; and

(b) From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

(b) Transportation for parentally placed chartered nonpublic school children

(i) Notwithstanding the provisions of paragraph (K)(2)(a) of this rule, a child with a disability who is parentally placed in a chartered nonpublic school shall be entitled to transportation to the same degree as any child without disabilities who is attending a chartered nonpublic school even though transportation is not necessary for the child to benefit from or participate in the services provided under this rule.

(ii) A child with a disability parentally placed in a chartered nonpublic school in grades kindergarten through eight who lives more than two miles from the chartered nonpublic school will be transported by the school district of residence unless one of the following applies:

(a) The direct travel time, as measured by riding in a school bus, exceeds thirty minutes from the public school building to which the child with a disability would be assigned if attending the public school to the chartered nonpublic school the child is attending; or

(b) Where it is impractical to transport a pupil by school conveyance, a board of education may offer payment in lieu of providing such transportation in accordance with section 3327.02 of the Revised Code.

(iii) Children with disabilities who are parentally placed in a chartered nonpublic school and are in grades nine through twelve may be offered transportation by their school district of residence in accordance with the above rules, but are not entitled to transportation.

(iv) No transportation of any pupils shall be provided by any board of education to or from any school which in the selection of pupils, faculty members or employees, practices discrimination against any person on the grounds of race, color, religion or national origin.

(c) Cost of transportation

The cost of the transportation described in paragraph (K)(2)(a)(i) of this rule may be included in calculating whether the school district where the nonpublic school is located has met the requirements of paragraph (E) of this rule.

(L) Due process complaints and state complaints

(1) The right to request a due process hearing does not apply to the provision of special education and related services the school district has agreed to provide through a services plan. However, a parent of a child with a suspected disability, or a child identified as having a disability, who is enrolled in a nonpublic school may initiate a due process hearing regarding child find for parentally placed nonpublic school children with disabilities, including location, identification, evaluation and reevaluation of the child.

(2) Child find complaints: to be filed with the school district in which the nonpublic school is located.

(a) The due process and mediation procedures in rule 3301-51-05 of the Administrative Code apply to complaints that the school district where the nonpublic school is located has failed to meet the child find requirements

in paragraph (B) of this rule, including the requirements for location, identification, evaluation and reevaluation of the child.

(b) Any due process complaint regarding the child find requirements as described in paragraph (L)(2)(a) of this rule must be filed with the school district in which the nonpublic school is located and a copy must be forwarded to the Ohio department of education, office for exceptional children.

(3) Complaint rights of parents of children with disabilities placed in nonpublic schools

The parents of a child with a disability, who have unilaterally placed the child in a nonpublic school, have the right to file a formal written complaint under the IDEA with the Ohio department of education, office for exceptional children. In accordance with applicable law and regulations, complaints may be filed regarding:

(a) The provision of services, as stated on the child's services plan;

(b) The amount of funds, including the calculation of the proportionate share, child count and non-supplanting provisions, for parentally placed children with disabilities enrolled in nonpublic schools;

(c) The required consultation for parentally placed children with disabilities enrolled in nonpublic schools;

(d) Written affirmation signed by the representatives of participating nonpublic schools;

(e) Determination of equitable services for the group of parentally placed children with disabilities enrolled in nonpublic schools;

(f) Provision of equitable services for the group of parentally placed children with disabilities enrolled in nonpublic schools;

(g) Location of services and transportation for parentally placed children with disabilities enrolled in nonpublic schools;

(h) Requirement that federal funds not benefit a nonpublic school;

(i) Use of personnel, including use of public school personnel and nonpublic school personnel for parentally placed children with disabilities enrolled in nonpublic schools;

(j) Prohibition of separate classes on the basis of school enrollment or religion if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in nonpublic schools;

(k) The use of property, equipment and supplies purchased with IDEA Part B funds for the benefit of parentally placed nonpublic school children with disabilities enrolled in nonpublic schools.

(4) State complaints

(a) Any complaint that the Ohio department of education or the school district where the nonpublic school is located has failed to meet the requirements in this rule must be filed in accordance with the procedures described in rule 3301-51-05 of the Administrative Code.

(b) A complaint filed by a nonpublic school official under paragraph (H)(1) of this rule must be filed with the Ohio department of education, office for exceptional children, in accordance with the procedures in paragraph (H)(2) of this rule.

(M) Requirement that funds not benefit a nonpublic school

(1) A school district may not use funds provided under Section 611 or 619 of the IDEA to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

(2) The school district where the nonpublic school is located must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally placed nonpublic school children with disabilities, but not for meeting:

(a) The needs of a nonpublic school; or

(b) The general needs of the students enrolled in the nonpublic school.

(N) Use of personnel

(1) Use of public school personnel

A school district may use funds available under Sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:

(a) To the extent necessary to provide services under this rule for parentally placed nonpublic school children with disabilities; and

(b) If those services are not normally provided by the nonpublic school.

(2) Use of nonpublic school personnel

A school district may use funds available under Sections 611 and 619 of the IDEA to pay for the services of an employee of a nonpublic school to provide services under this rule if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(O) Separate classes prohibited

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

(1) The classes are at the same site; and

(2) The classes include children enrolled in public schools and children enrolled in nonpublic schools.

(P) Property, equipment, and supplies

(1) A school district must control and administer the funds used to provide special education and related services under paragraphs (I) to (K) of this rule, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.

(2) The school district may place equipment and supplies in a nonpublic school for the period of time needed for the Part B program.

(3) The school district must ensure that the equipment and supplies placed in a nonpublic school:

(a) Are used only for Part B purposes; and

(b) Can be removed from the nonpublic school without remodeling the nonpublic school facility.

(4) The school district must remove equipment and supplies from a nonpublic school if:

(a) The equipment and supplies are no longer needed for Part B purposes; or

(b) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(5) No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of nonpublic school facilities.

(Q) State assessment considerations

(1) Children with disabilities who are parentally placed in chartered nonpublic schools are required to take and pass the tenth grade Ohio graduation test (OGT), as outlined in rule 3301-13-01 of the Administrative Code, in order to receive an Ohio high school diploma unless the child is excused from the consequences of the testing requirement as set forth in paragraph (Q)(2) of this rule. It is expected that most children with disabilities will take and pass state assessments including the OGT.

(2) If a child has a disability that requires a curriculum that is modified substantially from what the state assessment measures, the child may be excused from taking one or more of the state assessments as outlined in rule 3301-13-01 of the Administrative Code. The IDEA requirements for alternate assessment do not apply to children with disabilities enrolled in chartered nonpublic schools.

(3) A child, parentally placed in a chartered nonpublic school, may receive allowable accommodations when taking state assessments or may be excused from the consequences of state assessments as outlined in rule 3301-13-01 of the Administrative Code if one of the following conditions apply:

(a) A current services plan, documenting that the child is excused from the consequences of the state assessment, is in place. This plan has been developed by the services plan team, including the parent, and special education services are being provided by federally funded personnel or auxiliary personnel or a combination of both federally funded and auxiliary funded personnel; or

(b) A current services plan, documenting that the child will receive allowable accommodations on the state assessment, is in place. This plan has been developed by the services plan team, including the parent, and special education services are being provided by federally funded personnel or auxiliary personnel or a combination of both federally funded and auxiliary funded personnel; or

(c) The chartered nonpublic school has developed a written plan, documenting that the child is excused from the consequences of the state assessment. The written plan must meet all of the requirements of rule 3301-13-10 of the Administrative Code; or

(d) The chartered nonpublic school has developed a written plan, documenting that the child will receive allowable accommodations on the state assessment. The written plan must meet all of the requirements of rule 3301-13-10 of the Administrative Code.

(4) Chartered nonpublic school personnel cannot prohibit children with disabilities from taking any state assessment that children without disabilities of the same age and grade level are required to take.

(5) Chartered nonpublic school personnel cannot force a child who would otherwise take an alternate assessment to take any state assessment that children without disabilities of the same age and grade level are required to take.

(6) Chartered nonpublic school personnel cannot deny a diploma to a child with a disability who has been excused from the consequences of the state assessment or who would otherwise take an alternate assessment if all other requirements for graduation have been met.

(R) Autism scholarship program considerations

(1) Children who are participating in the "Autism Scholarship Program" (ASP), established by section 3310.41 of the Revised Code, and attending either a chartered or non-chartered nonpublic school are eligible to participate in the special education IDEA Part B and early childhood special education flow-through benefits if the children meet the eligibility requirements as outlined in this rule.

(a) The district where the chartered or non-chartered nonpublic school is located is responsible for the evaluation of these children as well as a determination of whether or not these children will receive services through a services plan, as outlined in paragraphs (B) and (C) of this rule. The services plan for these children must provide special education and related services that are not already covered by ASP funds.

(b) The school district of residence shall create the IEP that is required for these children to participate in the ASP. The school district where the nonpublic school is located shall complete the evaluation and develop a services plan, if appropriate.

(2) Children who are attending a chartered nonpublic school and are receiving services under the ASP may also receive special education and related services through auxiliary services funds, provided the services paid for by auxiliary services funds are not the same services that are being paid for with ASP funds. The auxiliary services fund must provide special education and related services that are in addition to the services funded by the ASP.

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3301-51-09 Delivery of services.

(A) Least restrictive environment (LRE)

Each school district shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or nonpublic institutions or other care facilities, are educated with children who are nondisabled.

(B) LRE requirements

General

(1) Except as provided in rule 3301-51-07 of the Administrative Code regarding children with disabilities in adult prisons, each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that the school district meets the LRE requirements of this rule.

(2) Each school district must ensure that:

(a) To the maximum extent appropriate, children with disabilities, including children in public or nonpublic institutions or other care facilities, are educated with children who are nondisabled; and

(b) 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.

(C) Continuum of alternative placements

(1) Each school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(2) The continuum required in paragraph (C)(1) of this rule must:

(a) Include the alternative placements listed in the definition of special education under rule 3301-51-01 of the Administrative Code (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(b) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(D) Placements

In determining the educational placement of a child with a disability, including a preschool child with a disability, each school district must ensure that:

(1) The placement decision:

(a) Is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(b) Is made in conformity with the LRE provisions in paragraphs (B) to (E) of this rule.

(2) The child's placement:

(a) Is determined at least annually;

(b) Is based on the child's individualized education program (IEP); and

(c) Is as close as possible to the child's home;

(3) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if nondisabled;

(4) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs; and

(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(E) Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 3301-51-02 of the Administrative Code, each school district must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The school 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 nonacademic settings.

(F) Length of school day and school year

Each child with a disability shall be ensured:

(1) A school day consistent with rule 3301-35-06 of the Administrative Code and consistent in length to that provided nondisabled children, with special education and related services being provided during the regular school day unless otherwise indicated on the IEP; and

(2) A school year consistent with rule 3301-35-06 of the Administrative Code and consistent in length to that provided to nondisabled children with special education and related services being implemented at the beginning of each school year.

(G) Role of preschool and school-age service providers

(1) The school district shall ensure that preschool and school-age service providers for children with disabilities participate in the district's strategic planning process as described in paragraph (A)(9) of rule 3301-35-03 of the Administrative Code.

(2) The school district shall assign early childhood, and school-age intervention specialists, or related service specialists to meet the unique educational needs of each child with a disability. The school-age service provider may provide indirect or direct services in one or any combination of instructional groupings, including large group, small group, individual instruction, or parent and teacher training and consultation.

(3) The school district shall ensure early childhood and school-age intervention specialists, or related service specialists:

(a) Serve children with disabilities to assure a free appropriate public education (FAPE) and may serve children who are not disabled where needs for these services are identified;

(b) Support regular education teachers in serving and/or consulting about children with and without disabilities so that the regular education personnel, in partnership with the special education service providers, can implement the child's IEP in the least restrictive environment;

(c) Assist in organizing and facilitating supplemental supports provided within the regular classroom;

(d) Design parent involvement activities; and

(e) Implement educational interventions and specially designed instruction which means adapting, as appropriate, to the needs of the eligible child, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access to the general curriculum so that the child can meet the educational standards adopted by the state board of education that apply to all children.

(4) The school district shall ensure services of paraprofessionals and related service assistants are supervised in accordance with Ohio law.

(H) Personnel qualifications and personnel development

(1) General

The school district must ensure that all personnel necessary to carry out the purposes of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) shall be employed and shall be appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Personnel shall have appropriate certification or licensure as defined by Chapter 3301-24 of the Administrative Code.

(2) Related services personnel and paraprofessionals

The qualifications under paragraph (H)(1) of this rule must include qualifications for related services personnel and paraprofessionals that:

(a) Are consistent with state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(b) Ensure that related services personnel who deliver services in their discipline or profession:

(i) Meet the requirements of paragraph (H)(2)(a) of this rule; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this rule, to be used to assist in the provision of special education and related services under this rule to children with disabilities.

(a) Paraprofessionals providing services to children with disabilities shall hold an educational aide permit or associate

license and meets requirements under paragraph (L) of rule 3301-24-05 of the Administrative Code. Any school district that employs a paraprofessional shall have written policies and procedures outlining:

(i) Criteria for staff selection;

(ii) A planned sequence of continuing education;

(iii) The process for direct continuing supervision and evaluation of the services of such personnel; and

(iv) A job description of the role and function of a paraprofessional.

(b) Personnel serving as school psychology interns shall hold a temporary pupil service license as required by paragraph (A)(5) of rule 3301-23-44 of the Administrative Code and shall be enrolled in school psychologist preparation programs while completing the program internship.

(c) Require that personnel serving as physical therapists are licensed pursuant to Chapter 4755. of the Revised Code to practice physical therapy; physical therapist assistants are licensed pursuant to Chapter 4755. of the Revised Code to assist in the provision of physical therapy services under the supervision of a licensed physical therapist; and physical therapists and physical therapist assistants practice in accordance with sections 4755.40 to 4755.56 of the Revised Code and Chapters 4755-21 to 4755-29 of the Administrative Code.

(d) Require that personnel serving as occupational therapists are licensed pursuant to Chapter 4755. of the Revised Code to practice occupational therapy; occupational therapy assistants are licensed pursuant to Chapter 4755. of the Revised Code to assist in the provision of occupational therapy services under the supervision of a licensed occupational therapist; and occupational therapists and occupational therapy assistants practice in accordance with sections 4755.04 to 4755.13 of the Revised Code and Chapters 4755-1 to 4755-9 of the Administrative code.

(3) Qualifications for special education teachers

The qualifications described in paragraph (H)(1) of this rule must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Section

1119(a)(2) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(4) Qualifications for supervisory personnel

Personnel with supervisory responsibilities for the delivery of special education services shall be appropriately licensed.

(5) Policy

(a) School districts in the state shall take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this rule to children with disabilities.

(b) Personnel shall be provided professional development that aligns with school district goals and objectives and meets the changing needs of children as required by paragraph (A)(8) of rule 3301-35-05 of the Administrative Code.

(6) Rule of construction

Notwithstanding any other individual right of action that a parent or child may maintain under this rule, nothing in this rule shall be construed to create a right of action on behalf of an individual child or a class of children for the failure of a particular Ohio department of education or school district employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the Ohio department of education as provided for under this rule.

(I) Service provider ratios for delivery of services

(1) The school district, county board of mental retardation and developmental disabilities (county board of MR/DD), and other educational agencies shall determine ratios for an individual service provider by considering scheduling and time demands of preschool or school-age service providers, including but not limited to the following:

(a) All areas of service provided to children with and without disabilities, including screening, assessment, consultation, counseling, training, and related duties in the school setting, intervention design, and educational interventions.

(b) The severity of each eligible child's need, and the level and frequency of services necessary for children to attain IEP goals and objectives.

(c) Time needed for planning in accordance with paragraph (A)(9) of rule 3301-35-05 of the Administrative Code.

(d) Additional time for diagnostic testing and classroom observation; coordination of the program; parent, staff and agency conferences concerning individual children; staff development activities; and follow-up; and the demands of an itinerant schedule, including the number of buildings, the distance between the buildings, and travel.

(2) School-age service providers will provide direct services in accordance with the following ratios:

(a) An intervention specialist shall serve no more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four children at the high school level with cognitive disabilities.

(i) No more than twelve children at the elementary, middle, or junior high school levels, or no more than sixteen children at the senior high school level shall be served during any one instruction period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(b) An intervention specialist shall serve no more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four children at the high school level with specific learning disabilities.

(i) No more than twelve children shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(c) An intervention specialist shall serve no more than ten children with hearing impairments, visual impairments, orthopedic impairments, and/or other health impairments.

(i) No more than eight children shall be served during any one instructional period.

(ii) The age range shall not exceed forty-eight months within any one instructional period.

(d) An intervention specialist shall serve no more than twelve children with emotional disturbances.

(i) No more than ten children shall be served during any one instructional period.

(ii) The age range shall not exceed forty-eight months within any one instructional period.

(iii) There should be a plan on file and in operation in the school district to provide appropriate classroom management and crisis intervention support.

(iv) In the absence of a plan, the school district shall employ at least one full-time paraprofessional in each special class for these children.

(e) An intervention specialist shall serve no more than eight children with multiple disabilities.

(i) No more than eight children shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(iii) There shall be at least one full-time paraprofessional in each special class for children with multiple disabilities.

(f) An intervention specialist shall serve no more than six children with autism, deaf-blindness and/or traumatic brain injury.

(i) The age range shall not exceed sixty months within any one instructional period; and

(ii) There shall be at least one full-time paraprofessional in each special class for these children.

(g) An intervention specialist may serve multiple categories of children with disabilities. The ratio for this service shall be determined in accordance with paragraph (I)(1) of this rule and shall not exceed sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four at the high school level.

(i) No more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty four children at the high school level shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(iii) Indirect and direct services shall be provided in accordance with each child's IEP.

(3) Related service providers for preschool and school-age children with disabilities shall provide direct services in accordance with the following ratios. Additionally, consideration shall be given to paragraph (I)(1) of this rule. Indirect and direct services shall be provided in accordance with each child's IEP.

(a) An adapted physical education specialist shall provide services to no more than one hundred children with disabilities.

(b) An audiologist shall provide services to no more than one hundred school-age children with disabilities or no more than seventy-five preschool children with disabilities.

(c) An occupational therapist shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities. An occupational therapy assistant who provides occupational therapy techniques must do so under the general supervision of an occupational therapist as required by rules 4755-7-01 and 4755-7-03 of the Administrative Code.

(d) An orientation and mobility instructor shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities.

(e) A physical therapist shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities. A physical therapist assistant who assists in the provision of physical therapy services must do so under the supervision of a physical therapist as required by Chapter 4755-27 of the Administrative Code.

(f) A speech and language pathologist shall provide services to no more than eighty school-age children with disabilities; or no more than fifty school-age children with multiple disabilities, hearing impairments, or orthopedic/other health impairments; or no more than fifty preschool children with disabilities. Each school district shall provide services at a ratio of one speech and language pathologist per two thousand children as required by division (F) of section 3317.15 of the Revised Code.

(g) A school psychologist shall provide services to no more than one hundred twenty-five school-age children with disabilities and no more than seventy-five preschool children with disabilities. Psychological services are defined in paragraph (B)(52)(b)(xiii) of rule 3301-51-01 of the Administrative Code. Each school district shall provide services at a ratio

of one school psychologist per two thousand five hundred children as required by division (F) of section 3317.15 of the Revised Code.

(4) Transition services

(a) A work-study coordinator shall provide services to seventy-five children with disabilities.

(b) A vocational special education coordinator shall provide services to fifty children with disabilities.

(5) Supervisory services

(a) A supervisor shall provide services to twenty intervention specialists who are providing services to children with disabilities; or

(b) A supervisor shall provide services to twenty speech and language pathologists; or

(c) A supervisor shall provide services to twenty school psychologists.

(d) An occupational therapy assistant must be supervised as required by rule 4755-7-01 of the Administrative Code.

(e) A physical therapist assistant must be supervised as required by Chapter 4755-27 of the Administrative Code.

(J) Housing, facilities, materials, and equipment and supplies for preschool and school-age programs

(1) Children and service providers must have a service area that will accommodate the special needs of the children in attendance and shall be large enough to accommodate the use and storage of special equipment and teaching materials. Service areas used for special education classrooms must be equivalent to those used for general education classrooms.

(2) Each service provider must have access to an office or room space suitable for private consultation or intervention; access to a telephone in an area where scheduling, parent contacts, and confidential conversations regarding children can be completed; and adequate office equipment including a locking file cabinet with a key and supplies.

(3) Service areas must be equipped with the appropriate materials, equipment, and facilities necessary to identify children with disabilities and to implement the child's IEP and meet the educational, physical, developmental, and learning needs of children within the area.

(4) The service areas for intervention specialists shall be located in the section of the building that houses regular education children of comparable age.

(5) The service areas must provide a work environment that supports service providers and is conducive to children's learning consistent with rule 3301-35-05 of the Administrative Code. Instructional materials, equipment, and technology shall be provided to support each child's progress toward meeting educational objectives as required in paragraph (I)(1) of rule 3301-35-06 of the Administrative Code.

(6) Evaluation and instructional materials and equipment shall be provided to enable the child with a disability to progress in the general curriculum or in the case of preschool, developmentally appropriate activities, and meet both IEP and performance objectives.

(7) Children with disabilities shall have the same access to textbooks, educational materials, and computer technology that is provided to regular education children.

(8) Additional materials and/or technology must be provided to allow children with disabilities access to the materials used in the general curriculum.

(9) Equipment that is utilized for children with disabilities shall be adequately maintained and promptly repaired.

(K) Waiver

(1) If a school district, county board of MR/DD or other educational agency exceeds the ratio requirements in paragraph (I) of this rule a waiver request must be filed with the Ohio department of education, office for exceptional children. A school district, county board of MR/DD or other educational agency may be granted a waiver for individual service provider ratios or for age-range per instructional period as required by this rule.

(2) Requests must be submitted in writing to the Ohio department of education, office for exceptional children or office of early learning and school readiness. The written request shall include, but not be limited to, the following:

(a) Identification of the specific rule for which a waiver is being requested;

(b) Specific period of time for which the waiver is requested; and

(c) Rationale for the request.

(3) Each school district, county board of MR/DD or other educational agency shall annually review the reason for its request as it plans for the delivery of services

through the strategic planning process as required by paragraph (A)(9) of rule 3301-35-03 of the Administrative Code.

(L) Prohibition on mandatory medication

(1) General

School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act as amended and specified in the Anabolic Steroids Control Act of 1990, November 1990, 21 U.S.C. 812(c) for a child as a condition of attending school, receiving an evaluation under rule 3301-51-06 of the Administrative Code, or receiving services under this rule.

(2) Rule of construction

Nothing in paragraph (L)(1) of this rule shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a child's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under rules 3301-51-03 and 3301-51-06 of the Administrative Code.

Replaces: 3301-51-09
Effective: 07/01/2008
R.C. 119.032 review dates: 07/01/2013
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Rule Amplifies: 3323.02, 3323.04, 3323.07, 3323.11
Prior Effective Dates: 7/1/2002

3301-51-10 Transportation of children with disabilities.

(A) Definitions.

(1) The term disabilities includes the following: autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness.

(2) Special transportation means vehicle transportation service directly related to the child's disability and required by the individualized education program or any applicable state or federal law.

(3) Transportation means travel to and from school, between schools, and in and around school buildings, and may include the following:

(a) Travel to and from school, between schools, and in and around school buildings during normal school hours and outside of normal school hours if included on the individual education program.

(b) Specialized equipment, such as special or adapted vehicles, lifts, and ramps, if required to provide special transportation for a child with disabilities.

(c) Fitting and/or retrofitting vehicles with specialized equipment, such as car seats, securement systems, and harnesses.

(d) Employment of aides for particular special education vehicles if deemed necessary by the school district.

(e) Other travel that may be arranged by the school district with no reimbursement from the state.

(4) School district means city, local, exempted village, county board of education, or county board of mental retardation and developmental disabilities, for purposes of this rule.

(5) Children with disabilities in this rule refers to those aged three through twenty-one.

(6) Weekend travel means two trips on one weekend.

(7) Department means the Ohio department of education.

(B) State residential schools.

(1) This section refers to the Ohio state school for the blind and the Ohio state school for the deaf.

(2) Reimbursement for transportation to and from the school district of residence shall be approved by the department, center of school finance, for eligible children with disabilities placed in the Ohio state school for the blind and the Ohio state school for the deaf.

(3) Reimbursement claims for weekend travel and/or daily travel are to be submitted on the appropriate department, center of school finance form.

(C) Eligibility.

(1) Reimbursement for special transportation may be approved by the department, center of school finance, for children with disabilities attending a special education program approved by the department, office for exceptional children, and/or attending a regular class in a public school.

(2) School district transportation personnel shall be consulted in the preparation of the individualized education program when transportation is required as a related service and when the child's needs are such that information to ensure the safe transportation and well-being of the child is necessary to provide such transportation.

(3) When required by the individualized education program, specialized service and door-to-door transportation will be provided based upon the unique needs of an individual child.

(4) A community school governing board shall provide or arrange transportation free of any charge for any disabled student enrolled in the school for whom the student's individualized education program specifies transportation.

(5) For transportation purposes, a child with disabilities attending a nonpublic school, placed by parent, guardian, or others, shall be entitled to transportation the same as any child without disabilities attending a nonpublic school in accordance with section 3327.01 of the Revised Code.

(D) General requirements.

(1) Each school district shall establish its own reasonable travel time. Travel time is defined as beginning at the initial pickup of the child and ending with the final arrival at the school destination.

The school district shall develop its travel time standard, approved by the individual board of education, and shall consider the following factors: age of

child, condition of disability, geographic size of school district, location of special education class, traffic patterns, and roadway conditions.

(2) Those who transport eligible children with disabilities must comply with the appropriate provisions of the rules 3301-83-03 to 3301-83-22 of the Administrative Code.

(3) Drivers and transportation aides must have access to appropriate information about the child to the degree that such information might affect safe transportation and medical wellbeing while being transported. This information must be available in the vehicle or readily accessible in the school transportation office and is confidential.

(4) Emergency evacuation and other pertinent safety precautions must be considered by school districts deciding upon the appropriate transportation services for children with disabilities.

(5) All vehicles used must be authorized vehicles as defined in rule 3301-83-19 of the Administrative Code. A privately owned vehicle utilized to transport a pupil of the family is not subject to regulation other than that required by state law.

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3301-51-11 Preschool students with disabilities.

(A) Preschool special education programs and related services operated by school districts, county boards of mental retardation and developmental disabilities (county boards of MR/DD), and other education agencies shall be provided in accordance with this chapter of the Administrative Code.

(B) Interagency agreements

Each school district shall develop and annually review interagency agreements with all partners to ensure a free appropriate public education (FAPE) is provided to all preschool children with disabilities between the ages of three through five residing in the school district. At a minimum, agreements with the following partners are required:

(1) "Head Start" programs within the school district's service delivery area that provide for:

(a) Service coordination for preschool children with disabilities, three through five years of age, in a manner consistent with the state interagency agreement for service coordination with "Head Start"; and

(b) Transition of children eligible for special education and related services as a preschool child at age three.

(2) The county family and children first council responsible for the "Help Me Grow" service delivery system that provides for the transition of children from early intervention services to preschool special education and related services at age three in a manner consistent with the state interagency agreement for service coordination with "Head Start". The agreement must include, but is not limited to, the following requirements:

(a) A process by which strategies are evaluated for effectiveness and appropriate revisions to the agreement are made;

(b) A process by which "Help Me Grow" refers children who are forty-five days or less from their third birthdays and are suspected of having disabilities. These children must have an evaluation completed within sixty days of parental consent for evaluation, but an individualized education program (IEP) is not required by their third birthdays;

(c) Shared responsibilities for evaluating children suspected of having disabilities referred through "Help Me Grow" at least forty-six days before their third birthdays but not more than ninety days before their third birthdays;

(d) Shared responsibilities for child find, including locating, evaluating, and identifying children with disabilities birth through age five; and

(e) Timelines and processes for sharing information about children who may be transitioning as a preschool child with a disability from "Help Me Grow" early intervention services to special education and related services.

(3) County boards of MR/DD for identification, service delivery, and financial responsibilities to adequately serve preschool children with disabilities three through five years of age.

(C) Eligibility

Each school district of residence must conduct a full and individual evaluation in accordance with rule 3301-51-06 of the Administrative Code before the initial provision of special education and related services to a preschool child with a disability residing in the district.

(1) Sufficient information shall be obtained using a variety of information sources to confirm that a disability exists.

No single source of information shall be used to determine if a preschool child is eligible or not eligible for special education and related services. Eligibility for special education and related services as a preschool child shall be determined on the basis of multiple sources of information, including, but not limited to:

(a) Information from Part C for children transitioning from early intervention services;

(b) Structured observations in more than one setting and in multiple activities;

(c) Information provided by the parent or caregiver; and

(d) Criterion-referenced and norm-referenced evaluations.

(2) Based on the variety of sources of information listed in paragraphs (C)(1)(a) to (C)(1)(d) of this rule, a group of qualified professionals and the parent of the child shall determine if the child has a disability and is eligible for special education and related services as a preschool child with a disability.

(3) The following developmental areas must be assessed with at least one source of information listed in paragraphs (C)(1)(a) to (C)(1)(d) of this rule:

(a) Adaptive behavior;

(b) Cognition;

(c) Communication;

(d) Hearing;

(e) Vision;

(f) Sensory/Motor function;

(g) Social-emotional functioning;

(h) Behavioral functioning.

(4) A school district must ensure that sufficient resources are available to conduct evaluations during the summer months.

(5) A preschool child with a disability is a child who has one of the following disabilities, as defined in rule 3301-51-01 of the Administrative Code, based upon the evidence required in paragraphs (C)(1) to (C)(3) of this rule, and who, by reason thereof, needs special education and related services:

(a) Autism;

(b) Cognitive disability;

(c) Deaf-blindness;

(d) Deafness;

(e) Emotional disturbance;

(f) Hearing impairment;

(g) Multiple disabilities;

(h) Orthopedic impairment;

(i) Other health impairment;

(j) Specific learning impairment;

(k) Speech or language impairment;

(l) Traumatic brain injury;

(m) Visual impairment; or

(n) Developmental delay, as defined in paragraph (C)(6) of this rule.

(6) A school district may choose to use the term "developmental delay" under the following conditions for children ages three through five who are experiencing developmental delays and who, by reason thereof, need special education and related services:

(a) The applicability of the term shall be based upon the individual needs of the child as determined by the evaluation team or the IEP team and other qualified professionals;

(b) In addition to the assessments required in paragraph (C)(1) of this rule, results of appropriate diagnostic instruments and procedures may also be used to help make the determination that a child has a "developmental delay." A developmental delay may be substantiated by a delay of two standard deviations below the mean in one or more of the areas of development or 1.5 standard deviations below the mean in two or more of the areas of development listed in paragraphs (C)(6)(b)(i) to (C)(6)(b)(v) of this rule. The results shall not be used as the sole factor in making the determination that a child has a developmental delay.

"Developmental delay" means a child of three to five years who is experiencing a delay as determined by an evaluation team, IEP team, and other qualified professionals in one or more of the following areas of development:

(i) Physical development;

(ii) Cognitive development;

(iii) Communication development;

(iv) Social or emotional development; or

(v) Adaptive development.

(c) The term "developmental delay" may be used only after considering the applicability of the categories provided in paragraphs (C)(5)(a) to (C)(5)(m) of this rule; and

(d) The term "developmental delay" may be used in place of the following disability categories:

(i) Cognitive disability;

(ii) Emotional disturbance;

(iii) Speech or language impairment. (A child with a developmental delay that requires special education and related services may be determined in accordance with this rule to be a child with a disability.)

(7) A preschool child with a disability shall be at least age three and not age six.

(a) School-age services must be considered during the IEP process for a child who will be age six by December first of the current calendar year.

(b) A preschool child with a disability shall have a grade level of preschool. A child enrolled in kindergarten shall be considered to be a school-age child and not a preschool child.

(c) A child younger than three years of age may meet the age requirement if the child will be three by December first of the current calendar year and may participate in special education and related services as a preschool child before December first of the current calendar year.

(D) Transition from Part C early intervention

A school district is responsible for the following activities related to transition for a child receiving "Help Me Grow" early intervention services under Part C of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA):

(1) If invited by a representative of the Part C system, a school district representative shall attend a conference to discuss transition from early intervention services to preschool for a child suspected of having a disability. This conference may occur up to nine months before a child's third birthday. The school district shall document participation in the conference.

(2) At the parent's request, the school district shall invite the Part C service coordinator to the initial IEP meeting.

(3) If there is a suspected disability and the child is eligible for special education and related services as a preschool child, the school district shall work with the family to ensure an IEP is in place and implemented by the child's third birthday. The dates for the initiation and duration of services shall be determined by the evaluation team or the IEP team and other qualified professionals.

(4) A school district must consider extended school year services as part of the IEP process for children transitioning from Part C services. Based upon data available

from the Part C system, the evaluation team or the IEP team and other qualified professionals shall determine if extended school year services are required as outlined in paragraph (G) of rule 3301-51-02 of the Administrative Code.

(5) A school district determined by the Ohio department of education to be noncompliant with the transition timeline to have an IEP in place by an eligible child's third birthday:

(a) Shall develop a corrective action plan in addition to the interagency agreement. The corrective action plan must include the signature of a representative of the family and children first council responsible for "Help Me Grow" Part C services; and

(b) May have funds reduced or terminated by the Ohio department of education.

(E) Measuring child progress

A school district shall measure a child's progress using multiple sources of information. Information must be obtained across multiple settings, representing a variety of interactions and input from parents and staff involved with the child.

(1) Information shall be analyzed to evaluate the conditions under which desired behaviors occur and if the desired behavior is not demonstrated, an analysis of contributing factors shall be conducted, and changes in the environment, curriculum, and instruction shall be considered.

(2) Information on a child's progress shall be reported in the manner prescribed by the Ohio department of education.

(F) Center-based and itinerant teacher services

A continuum of service delivery options that includes the options of center-based or itinerant teacher services shall be considered when determining the least restrictive environment.

(1) Adapted physical education (APE) or related services, as appropriate, shall be considered in conjunction with center-based or itinerant teacher services. When determining services, the school district shall consider the following factors:

(a) The child's ability to participate and progress in the general early childhood curriculum; and

(b) The child's socialization needs; and

(c) The child's educational and developmental progress.

(2) Itinerant services may be delivered in the home, in a preschool program administered by a public school, or in a community-based preschool or child care program that meets the requirements of Chapter 5104. of the Revised Code.

(3) Center-based classroom services may be delivered in an integrated facility, such as team teaching within a community-based program, or a separate facility.

(4) Center-based options must include opportunities for services in settings that are considered to be early childhood settings as the term is used by the United States department of education.

(5) A "change of placement" is defined as a change in the service delivery option (center-based or itinerant teacher).

(6) Center-based environments meeting the federal definition of an early childhood setting shall be considered during the IEP meeting.

(7) Up to eight age-eligible, nondisabled peers may be enrolled in a preschool special education classroom. In such cases, no more than sixteen children shall be present at any one time. The maximum number of children enrolled in any class shall be appropriate for the severity of disabilities and needs of the children enrolled.

(G) Preschool services

Special education and related services shall be provided in accordance with the following:

(1) Unless otherwise specified in the IEP, preschool children with disabilities are considered to be receiving full-day center-based services if twenty or more hours of center-based services are provided per week;

(2) Unless otherwise specified in the IEP, a minimum of four hours of services per month shall be provided for each child by an itinerant teacher and a minimum of ten hours of services per week shall be provided for each child served by a center-based teacher:

(a) Preschool children with disabilities are considered to be .50 full-time equivalency (FTE) if ten hours of center-based preschool special education services are provided per week.

(b) Preschool children with disabilities receiving itinerant teacher services are considered to be .50 FTE.

(3) Services may be provided directly to the child or provided to the child using a consultative model. Consultative services may include all staff involved with the preschool child with a disability;

(4) All staff involved in service delivery shall contribute to planning instruction and monitoring progress;

(5) Service delivery may be done through a team teaching or transdisciplinary model in conjunction with "Head Start", public preschools, community preschools, or child care; and

(6) A school year consistent with section 3313.48 of the Revised Code shall be provided to preschool children with disabilities.

(H) Preschool service provider ratios

Preschool service providers will provide direct or consultative services, including sufficient supervision, during all activities in accordance with the following ratios:

(1) Center-based preschool special education classrooms shall serve no more than eight preschool children with disabilities in any one class session. If a teacher is responsible for two half-day class sessions, no more than sixteen children shall be served per teacher;

(2) A full-time staff member shall be provided when there are six full-day or twelve half-day preschool children with disabilities enrolled in a center-based program;

(3) A teacher providing both center-based and itinerant services shall serve no more than twenty children, and each child will be considered .50 FTE;

(4) An itinerant teacher shall serve no more than twenty children, and each child will be considered .50 FTE;

(5) Staff ratios of one teacher for six children shall be maintained at all times for a center-based teacher, and a second adult shall be present when there are seven or more children, including nondisabled peers, enrolled in a class session; and

(6) Sufficient staff shall be available at all times when preschool children with disabilities are enrolled so that in emergency situations when help must be summoned, ratios shall be maintained, and children shall be sufficiently supervised during all activities;

(7) APE and related services shall be counted as one FTE based upon the following number of eligible preschool children with disabilities served:

(a) An APE staff member at one FTE shall have a caseload of no more than one hundred eligible preschool children with disabilities;

(b) A preschool attendant at one FTE shall have a caseload of no more than three eligible preschool children with disabilities;

(c) An audiologist at one FTE shall have a caseload of no more than seventy-five eligible preschool children with hearing disabilities;

(d) An occupational therapist at one FTE shall have a caseload of no more than forty eligible preschool children with disabilities;

(e) An orientation and mobility specialist at one FTE shall have a caseload of no more than forty eligible preschool children with vision disabilities;

(f) A physical therapist at one FTE shall have a caseload of no more than forty eligible preschool children with disabilities;

(g) A school psychologist at one FTE shall have a caseload of no more than seventy-five eligible preschool children with disabilities or on the basis of one thousand children, ages three through five, an average daily membership as authorized by section 3317.15 of the Revised Code; and

(h) A speech and language pathologist at one FTE shall have a caseload of no more than fifty eligible preschool children with disabilities.

(8) Staff serving children with disabilities ages three through five and six through twenty-one will have FTE apportioned on the basis of the number of children served in each age category and the percentages totaling one hundred per cent.

(9) The number of hours for FTE shall not exceed the total number of days per year that the preschool special education program is legally in session.

(10) The caseloads in this rule will be used to determine state unit funding in accordance with state law. Fractional FTEs will be computed using caseload numbers in this rule. Related services may be reimbursed at an hourly rate and calculated in accordance with state law.

(I) Preschool personnel qualifications

Personnel providing preschool services shall be appropriately credentialed.

(1) Personnel providing preschool services shall hold one of the following licenses in accordance with Chapter 3301-24 of the Administrative Code:

(a) A valid Ohio special education teaching certificate or license with validation for preschool special needs or pre-kindergarten;

(b) A valid pre-kindergarten teaching certificate with validation for preschool special needs;

(c) A valid early childhood intervention specialist license;

(d) A valid intervention specialist license in accordance with paragraph (C)(5)(b) or (C)(5)(c) of rule 3301-24-05 of the Administrative Code if the only children served are preschool children with disabilities who are at least five years of age;

(e) A valid intervention specialist license in accordance with paragraph (C)(5)(d) of rule 3301-24-05 of the Administrative Code if the children served are preschool children with visual impairments; or

(f) A valid intervention specialist license in accordance with paragraph (C)(5)(e) of rule 3301-24-05 of the Administrative Code if the children served are preschool children with hearing impairments.

(2) Preschool special education teachers who are assigned to categorical classrooms for children with visual or hearing impairments must have the special education certificate required for the categorical area.

(3) Preschool special education teachers whose caseloads include children with visual and/or hearing impairments shall be provided assistance from a teacher or other specialist licensed in the area for that sensory impairment.

(4) School districts may contract for APE and related services and receive state unit funding for the following services:

(a) APE and related services contracted for in accordance with section 3323.08 of the Revised Code may be reimbursed at an hourly rate. Reimbursed services must be provided during the regular school day and only for the days that the preschool special education program was legally in session.

(b) If two or more agencies provide services to the same child, both agencies cannot receive state funding for providing the same service to the child.

(c) If two or more agencies provide different services to the same child, both entities may be eligible to receive state funding for providing services to the child.

(J) Preschool supervisory services

(1) A preschool special education supervisor's services shall include but are not limited to:

(a) Providing assistance to early childhood personnel in the provision of developmentally and exceptionality appropriate practices for preschool children with disabilities;

(b) Facilitating the provision of comprehensive early childhood delivery systems for young children with disabilities including the integration of:

(i) Education;

(ii) Health;

(iii) Social services; and

(iv) Parent education components.

(c) Participating in the development and evaluation of professional development plans and induction programs that apply to early childhood personnel and as outlined in proposed teacher education and licensure standards;

(d) Assisting with the implementation and evaluation of proposed standards that apply to early childhood programs;

(e) Collaborating with "Head Start" in activities as outlined in the interagency agreement;

(f) Collaborating with local family and children first councils in activities that apply to both early intervention and preschool programs as outlined in the interagency agreement;

(g) Collaborating with the regional state support team in the provision of training and technical assistance responsive to the needs of early learning personnel within the assigned service region;

(h) Collaborating with the Ohio department of education, office of early learning and school readiness, as appropriate; and

(i) Providing leadership to early childhood educators within the assigned service region.

(2) The early childhood supervisor shall meet the following minimum qualifications:

(a) Have at least three years experience teaching young children birth through age eight and one of the following licenses or certificates:

(i) A valid professional early childhood intervention specialist license (ECIS);

(ii) A valid professional early childhood education teacher license (ECE); or

(iii) A valid teaching certificate/license with early education of the handicapped or preschool special needs as a teaching area; or

(b) Have at least three years experience teaching special education and one of the following licenses or certificates:

(i) A valid administrative specialist license;

(ii) A valid supervisor certificate/license;

(iii) A valid principal certificate/license; or

(iv) A valid superintendent certificate/license.

(3) Preschool special education supervisors responsible for ten classroom teachers are eligible for one FTE in state unit funding.

(K) Preschool transportation

Transportation shall be listed as a related service on a preschooler's IEP if the IEP team determines that transportation is required to help the child benefit from special education.

Replaces: 3301-51-11
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Please note that rule 3301-51-20 is scheduled for Rule Review by 1/16/2009. Refer to Lawriter (http://codes.ohio.gov/) or contact ODE for the most recent version of the rule.

3301-51-20 Standard for admission, transfer, suspension, and expulsion - the Ohio state school for the blind and the Ohio school for the deaf.

(A) Admission

(1) Assessment -

(a) All children referred for placement at the Ohio school for the deaf or the Ohio state school for the blind will be given a multifactored evaluation.

(b) The superintendent of the residential school may request a multifactored evaluation by the residential school's educational clinic if the information provided by the school district of residence does not satisfy the criteria needed for placement consideration.

(2) Placement -

(a) The superintendent of the school district of residence shall make a placement decision within fifteen days of receipt of the placement team conference report and shall notify the parents of the decision.

(b) The placement decision shall be based on the eligibility requirements contained in the appropriate state board of education program standards for special education.

(3) Eligibility criteria – The actual enrollment will be determined by the following:

(a) The child must meet the eligibility requirements as outlined in standards 3301-51-01 for hearing impaired or 3301-51-03 for visually impaired.

(b) There must be adequate space in the facility and/or program.

(c) Enrollment in the deaf-blind program will be determined by the child's meeting the federal definition of "deaf-blind" as stated in Public Law 91-230, appropriate state standards for special education programs, and the availability of adequate space in the facility and/or program.

(d) The child must have the potential for physical and social maturity to adjust to the discipline of formal instruction and group living.

(4) Appeal procedure – If the residential school superintendent objects to the placement decision by the referring school district superintendent, then the following procedures shall be followed:

(a) The residential school superintendent shall make a written objection to the superintendent of the school district of residence stating the specific

reasons for objecting to the placement. The superintendent of the school district of residence shall conduct a review, hold a hearing, and shall notify in writing all parties involved of his decision within twenty days.

(b) If the superintendent of the school district of residence and the residential school superintendent cannot resolve their disagreement over placement of a child, then a representative of the Ohio department of education will conduct an administrative review of the facts of the case, may hold an informal hearing with those involved, issue a placement decision within twenty days of the conference and communicate that decision in writing to the superintendent of the school district of residence and the residential school superintendent.

(c) The superintendent of the school district of residence or the residential school superintendent may present a formal objection in writing within twenty days to the board of education and the superintendent of the school district of residence and request an impartial due process hearing.

(d) An independent hearing officer, mutually selected by personnel from the school district of residence and objecting residential school superintendent from a list prepared by the state department of education, shall conduct a hearing to review the placement decision.

(i) The educational status of the child will not be changed unless the hearing officer decides that the health and safety of the child or others would be endangered, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in a public school program until all such proceedings have been completed.

(ii) Procedures set forth in due process standards (D)(4)(d) shall be followed during the impartial due process hearing. In accordance with section 3323.04 of the Revised Code, the decision of the hearing officer shall be final, except for the appeal procedures available to the child or his parent under section 3323.05 of the Revised Code.

(iii) Cost incurred in the impartial due process hearing procedure will be divided equally between the referring school district and the receiving state residential school (section 3323.04 of the Revised Code).

(B) Dismissal program

(1) If, in the judgement of the residential school superintendent, the program is not appropriate for the child, he shall inform the superintendent of the school district

of residence and the parent in writing of his intention to dismiss the child from the residential school in accordance with the authority contained in section 3325.03 of the Revised Code. Such written notice shall state the reasons supporting the residential school superintendent's intention to dismiss the child.

(2) The residential school superintendent may request a multi-factored evaluation. Results of the evaluation will be provided to the residential school superintendent, the superintendent of the school district of residence, and the parents.

(3) If the superintendent of the school district of residence or the parent of the child objects to this intention, steps (A)(4)(a) through (A)(4)(e) of the appeal procedure identified above shall be followed. The educational status of the child shall not change until all appeal proceedings are completed.

(C) Suspension, expulsion and temporary removal

(1) Suspension, expulsion or temporary removal may result from one or more of the following: damaging or attempting to damage property on or off campus; disrupting school or other campus and cottage activities; any acts of violence, force, coercion, extortion or threat; assault or attempted assault on other pupils or employees; possessing, using, transmitting or concealing any weapon, alcohol or drug; arson or attempted arson; theft; reckless operation of a vehicle on or near campus; truancy; or any other personal and/or social behavior deemed unacceptable by the superintendent or principal.

(2) All suspensions and expulsions will be formalized by the residential school superintendent and shall be in accordance with the procedures identified below:

(a) Suspension shall not exceed ten school days. Prior to suspension, the child shall be given:

(i) Written notice of and reasons for the intended suspension.

(ii) An opportunity to appear at an informal hearing before the residential school superintendent or his designee and challenge the reasons for the intended suspension.

(b) Expulsion may not go beyond the current semester. Prior to expulsion the child and his parent, guardian or custodian shall be given:

(i) Written notice of and reasons for the intention to expel the child.

(ii) Provide them an opportunity to appear before the residential school superintendent or his designee to challenge the reasons. The time and place of the hearing shall be designated in the notice.

(c) Temporary removal -

(i) A child who poses a continuing danger to persons or property or an ongoing threat of disrupting academic or extracurricular activities, may be removed by the residential school superintendent or his designee without the notice and hearing requirements.

(ii) Children temporarily removed shall be given written notice of the reasons for removal as soon as practicable after the removal.

(iii) A hearing shall be held within seventy-two hours from the time of the removal order.

(3) Suspension and expulsion notice shall be sent to the child's parent, guardian or custodian, a representative of the Ohio department of education, and the superintendent of the school district of residence. The notice shall include reasons for suspension or expulsion and the right of appeal to a representative of the state department of education. Notice shall be given within twenty-four hours after the suspension or expulsion.

(D) Appeal

(1) A child and/or his parent, guardian or custodian may appeal his expulsion or suspension by the residential school superintendent and have the right to invite others to participate in the appeal proceedings, including legal counsel and shall be granted a hearing before a representative of the Ohio department of education or his designee. The representative of the Ohio department of education may affirm the order or may reverse, vacate or modify the order.

(2) A written or electronic verbatim record of the appeal hearing shall be made.

R.C. 119.032 review dates: 01/16/2004 and 01/16/2009
Promulgated Under: 119.03
Statutory Authority: 3301.07
Rule Amplifies: 3301.07, 3323.04, 3323.08, 3325.011, 3325.02
Prior Effective Dates: 7/4/1977

Please note that rule 3301-51-20 is scheduled for Rule Review by 1/16/2009. Refer to Lawriter (http://codes.ohio.gov/) or contact the ODE for the most recent version of the rule.

3301-51-21 Rule for providing braille translation computer media for schoolbooks that are listed for sale by publishers with the superintendent of public instruction.

(A) Definitions

Except as otherwise specified, the following definitions are used in this rule.

(1) "Newly adopted schoolbook" shall mean schoolbooks available for purchase by a school board that are new editions to a series or volume of that schoolbook.

(2) "Current technology" shall mean the scientific method or process currently existing for translating schoolbooks to the American standard code for information interchange, or another approved computer language, so that the text of the schoolbook may be translated into braille.

(C) Publishers who list schoolbooks with the superintendent of public instruction shall be responsible for providing the wholesale price of computer media for translating the text of schoolbooks into braille, for only those schoolbooks that will be newly adopted by a school board. Publishers shall not be responsible for providing the wholesale price of computer media for schoolbooks that have been previously adopted, and reordered by a school board.

(D) Nothing in this rule shall be deemed to obligate publishers to provide to the superintendent of public instruction the wholesale price of computer media for schoolbooks published before the effective date of section 3329.01 of the Revised Code.

(E) Publishers shall provide computer media for translating the text of schoolbooks into braille to school districts within sixty days of receiving written notice that computer media are needed.

(F) Publishers shall provide computer media for translating the text of schoolbooks into braille, for all newly adopted schoolbooks listed with the superintendent of public instruction for which current technology exists for translating that schoolbook into braille. Publishers shall not be responsible for providing computer media for schoolbooks for which no technology exists for translation into braille.

(G) Publishers shall endeavor to stay abreast of new developments in braille translation technology.

(H) As new technology becomes available, publishers shall be responsible for providing computer media for those schoolbooks for which no translation technology existed previously.

R.C. 119.032 review dates: 06/18/2008 and 06/18/2013
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Statutory Authority: 3301.07, 3323.02
Rule Amplifies: 3323.02, 3329.01
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