



# Special Education Question and Answer Compendium

Updated July 2018

This Question and Answer Compendium is a collection of frequently asked questions received by the Bureau of Special Education (BSE) regarding the implementation of Title 34 Part B Code of Federal Regulations and Title 22 PA Code Chapter 14 and 711 State Regulations. Questions related to this Compendium should be directed to the BSE.

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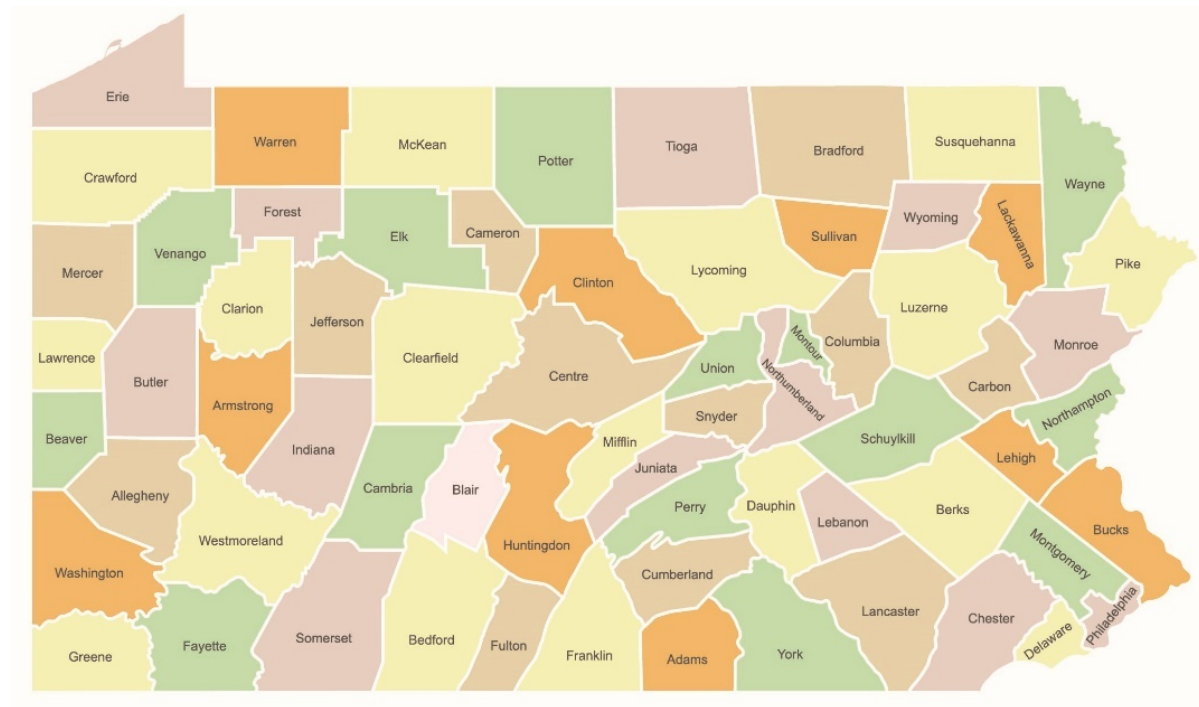
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# 1 PA Federal and State Regulations

## Title 34 Part B 300.1-300.818 Code of Federal Regulations

## Title 22 PA Code Chapter 14 and Chapter 711 State Regulations

This Question and Answer Compendium is a collection of frequently asked questions received by the Bureau of Special Education (BSE) regarding the implementation of Title 34 Part B Code of Federal Regulations and Title 22 PA Code Chapter 14 and 711 State Regulations. Questions related to this Compendium should be directed to the BSE.



## **2 Child Find**

### **2.1 Child Find**

#### **22 PA Code §14.121 and 22 PA Code §711.21**

##### **1. When are school districts responsible for child find for children parentally placed in private schools?**

School districts are responsible for child find and the offer of FAPE for all children who are residents and who are seeking eligibility for FAPE in the public schools. The intermediate units (IUs) are responsible for child find for children parentally placed in private schools for equitable participation only.

## **3 Communication Plan**

### **3.1 Communication Plan**

#### **22 PA Code §14.131**

#### **1. Is a communication plan required for students who have a hearing loss?**

If the IEP team has identified the student as Deaf or Hard of Hearing and checked “Deaf or Hard of Hearing” in the special consideration section of the IEP, then a Communication Plan must be developed for those students to address the appropriate 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 assistive technology devices and services.

#### **2. If a student with a documented hearing loss is determined eligible for special education service as a student with a speech/language impairment, must a communication plan be developed as part of the IEP?**

If the IEP team has documented the student as Deaf or Hard of Hearing and checked “Deaf or Hard of Hearing” in the special consideration section of the IEP, then a communication plan must be developed for those students to address the appropriate 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 assistive technology devices and services. In addition, a communication plan may be necessary to provide FAPE for an IDEA-eligible student with a hearing loss who has not been identified as Deaf or Hard of Hearing if the hearing loss is preventing the student from making meaningful educational progress.

#### **3. Does the communication plan requirement apply to children in preschool programs?**

No. The requirement for a communication plan applies only to school-age children.

#### **4. Does the communication plan requirement apply to children with disabilities enrolled in Charter Schools?**

No. Charter Schools are covered under Chapter 711, which does not include a requirement for the use of the communication plan. However, use of the communication plan to guide the IEP team in the development of an IEP for a student who is deaf, hard of hearing or deafblind, is highly recommended even though it is not a required component of the IEP for students attending one of Pennsylvania’s Charter Schools.

## **4 Discipline/Thought-to-be-Eligible**

### **4.1 Manifestation Determination**

#### **34 CFR §300.530(e)**

##### **1. What is a manifestation determination?**

A manifestation determination is a process of answering a series of questions contained in a document required by the Individuals with Disabilities Education Act (IDEA) when considering the exclusion of a student with a disability that constitutes a disciplinary change of placement. The local education agency (LEA), parent, and relevant members of the Individualized Education Program (IEP) team conduct a review to determine whether the behavior that is subject to disciplinary action is directly related to the student's disability.

##### **2. Does an FBA replace the manifestation determination meeting?**

No. The FBA does not replace the requirement to conduct a manifestation determination review.

## 4.2 Suspension/Expulsion

22 PA Code §§14.143 and 711.61; 34 CFR §300.530

### 1. Can a student with an Intellectual disability be suspended from school?

A removal from school is considered a change in placement for a student who is identified with an Intellectual disability, except if the student's actions are consistent with 34 CFR 300.530(g)(1)-(3) (relating to authority of school personnel). It is recommended that if a student with an Intellectual disability is suspended from school, a manifestation determination review is conducted and a *PWN/NOREP* is issued resulting from the change in placement.

If a discipline problem involving a student eligible for special education with an intellectual disability is immediate or so severe as to warrant immediate action, the LEA must first contact the parents to see if they will agree to the change in educational placement. If the parents agree, the LEA issues notice to the parents. If there is no agreement, the LEA may contact the Pennsylvania Department of Education's (PDE) Bureau of Special Education at 717-783-6134 to request permission to impose a disciplinary exclusion, which would be a change in educational placement. When the PDE approves the change in educational placement, the LEA must issue notice to the parents. The PDE cannot approve requests for a change in placement that would continue beyond 10 consecutive days. (BEC: Disciplinary Exclusions of Students Who Are Eligible for Special Education)



## 5 Dual Enrollment

### 24 PS § 5-502

#### 1. Where is “dual enrollment” found in the Pennsylvania School Code?

“Dual enrollment” is not specifically mentioned in the School Code. Dual enrollment is a concept that arises out of the interpretation of 24 P.S. §5-502: “...No pupil shall be refused admission to the courses in these additional schools or departments, by reason of the fact that his elementary or academic education is being or has been received in a school other than a public school....” Since the student cannot be refused admission to the school district of residence, the school district must allow the student to be dually enrolled.

#### 2. Does dual enrollment fall under general education? If so, why does a school district have to provide services?

Dual enrollment is a general principle of education that applies to general, special, and vocational education. For dual enrollment to occur, a student need not be identified as a student with a disability.

Dual enrollment is distinct from a school district’s responsibility to provide a free, appropriate public education (FAPE) to a student with a disability. A student with a disability that is enrolled in a private/nonpublic school may be dually enrolled for purposes of receiving a service from the school district or attending a school district class or program.

#### 3. When a student is identified as eligible for special education and the school district offers FAPE, does the school district have an obligation to provide services?

The school district and the IU have an ongoing child find obligation requiring the location and identification of all children thought to be eligible for special education that reside within the school district’s boundaries or the IU’s service area. The child find obligation includes those students who are parentally enrolled in nonpublic/private schools.

A school district, however, is not required “... to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if [the school district] made FAPE available to the child and the parents elected to place the child in a private school or facility.” 34 CFR §300.148(a).

While IDEA states that parentally-placed private school students do not have a right to special education and related services, 24 P.S. §5-502 requires districts to provide access to programs and services under the auspices of dual enrollment. However, there are limitations, such as:

- the student, not the public school, must adjust his/her schedule;
- the school district has no obligation to modify or alter any course prerequisites; and,
- the school district has no duty to provide services at the private school.

**4. If the student attends a private school, must the school district permit the parent to enroll the student in the public school even though the parent does not intend to have the student attend public school on a full-time basis (the student attends specific services or programs)?**

Yes, a student who resides in the school district may be enrolled in the school district even though the student will continue to attend the private school.

**5. Can the school district refuse to dually enroll the student in the public school?**

The public school cannot prohibit a parentally-placed private school student from enrolling in the school district to receive services and/or participate in programs. A school district, however, does not have to rearrange schedules to make programs or services available to any individual student in a private school. A school district also does not have to modify or alter any course prerequisites for nonpublic school students. Under circumstances such as these, the service and/or program may not be available to the student.

**6. If the school district provides services, where are those services provided?**

Any services provided would be provided at the public school.

**7. If the student attends private school and is dually enrolled in the public school, must the school district conduct a timely reevaluation?**

No. Dual enrollment is not special education.

**8. If the parent keeps the student in private school, when is the student no longer considered eligible for special education services?**

The student retains his/her eligibility status even though the parents refused FAPE. The student continues to be included for purposes of Equitable Participation (EP) as long as the student meets the two-prong eligibility requirements for special education. The student would no longer be included in EP if a reevaluation determined that the student no longer meets the two-prong eligibility requirement, graduates, or ages out.

**9. Does the school district have a duty to inform the parent that services are available under dual enrollment?**

No. When the parent declines FAPE, the school district has a responsibility to inform the parent about possible services under EP services that may be provided through the IU. The duty falls on the parents to dually enroll the student and request services.

**10. What services must a school district provide for a dually enrolled student and are there limits?**

A court decision suggests that when a school district is providing a service to public school children and there is no real financial burden that would deprive public school children of services, the school district would be required to provide the service. The court in *Veschi* indicated that if there is a significant

financial burden or no room in the program for private school children, the school district may not have to provide the service. The burden would fall on the school district to substantiate this claim. The limitations mentioned elsewhere in this FAQ – related to scheduling, prerequisites, and location – apply. See *Veschi v. Northwestern Lehigh School District*, 772A.2d 469 (Cmwlth. Ct. 2001).

**11. Does the *Veschi* decision pertain to services for students who have been parentally placed in a private school and determined eligible for special education and related services (The parents refused FAPE in the public school and elected to have the student remain in the private school)?**

Yes. This decision pertains to special education and related services.

**12. Does the *Veschi* decision pertain to services for students who have been parentally placed in a private school and determined eligible for Section 504 services (The parents refused FAPE in the public school and elected to have the student remain in the private school)?**

In *Doe*, the court applied *Veschi* to Section 504 services. In the *Doe* decision, the Pennsylvania Supreme Court determined that Section 5-502 of the Pennsylvania School Code, 24 P.S. §5-502, supports the concept that dually enrolled students can obtain the Section 504 services at the public school. See, *Lower Merion School District v. Doe*, 931 A.2d 640 (Pa. 2007).

**13. What happens if a school district refuses to dually enroll a student and provide services?**

There is no entitlement under IDEA; therefore, neither due process nor filing a written complaint with Bureau of Special Education is an option for the parents. The parents may contact the Division of School Services within the Pennsylvania Department of Education.

**14. Can a student be enrolled in a charter/cyber charter school and be dually enrolled in the resident public school?**

No. Section 502 applies only to dual enrollment in school districts. Students who attend a nonpublic/private school and plan to enroll in a charter/cyber charter school must withdraw/disenroll from the current school of enrollment in order to enroll in the charter/cyber charter school. The School Code does not provide students with the option to be dually enrolled in the charter/cyber charter school and another public, nonpublic, or private school.

**15. If the student attends private school and is dually enrolled in the school district, must the school district conduct an annual review of the IEP?**

No. There is no IEP for dual enrollment. The special education procedures and process do not apply to students with disabilities who are dually enrolled. The district determines the schedule for services, what is to be provided to the student, and the location within the public school.

**16. Must the resident school district provide mid-day transportation for dually enrolled students?**

Yes, based on the *Woodland Hills v. Department of Education* decision, the resident district must provide mid-day transportation. See, *Woodland Hills v. Department of Education*, 516 A.2d 875 (Cmwlth. Ct. 1986)

## 6 Evaluation

### 6.1 Initial Evaluation

#### 22 PA Code §14.123, 34 CFR §300.301

#### 1. Are there circumstances under which school entities may decide not to conduct an initial evaluation or a reevaluation?

##### *Initial Evaluation*

Yes, LEAs need not conduct an initial evaluation of a child if his or her parent fails or refuses to produce the child for the evaluation or the child enrolls in a school or another public agency. If the LEA has a reasonable basis to believe that the child does not have a disability, then the LEA may refuse to conduct an initial evaluation, but it must issue a *Notice of Recommended Educational Placement/Prior Written Notice* (NOREP/PWN) stating the reasons for the refusal. 34 CFR §300.503

##### *Reevaluation*

LEAs need not conduct an initial evaluation of a child if his or her parent fails or refuses to produce the child for the evaluation or the child enrolls in a school or another public agency. If the LEA has a reasonable basis to believe that the child does not have a disability, then the LEA may refuse to conduct an initial evaluation, but it must issue a *Notice of Recommended Educational Placement/Prior Written Notice* (NOREP/PWN) stating the reasons for the refusal. 34 CFR §300.503

LEAs do not have to conduct a reevaluation if the parent agrees in writing, through the *Agreement to Waive Reevaluation*, that a reevaluation is not necessary. If the parent does not agree to waive the reevaluation, it must be completed. 34 CFR §300.303 (b)(2)

Students with intellectual disability must be reevaluated every two years. 22 Pa. Code 14 §14.124(c) 22 Pa. Code 711 §711.22(c)

#### 2. What is the definition of school term for the evaluation and a student aging out of special education?

School term is determined by each individual LEA's calendar. For the purposes of the evaluation, the clock will begin to run on the first staff day and stop on the last staff day for each school term. If the student turns 21 on or after the first staff day, then the student with a disability is entitled to FAPE for the whole school term.

#### 3. If a *Prior Written Notice/Consent for Evaluation* is issued, must a full evaluation be completed or can you just, for instance, do a speech evaluation and only address the areas that speech affects?"

The LEA must ensure that:

- 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.
- In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related service

needs, whether or not commonly linked to the disability category in which the child has been classified.

**4. Is a psychological evaluation required for a child requiring an articulation evaluation by a speech-language therapist?**

A student suspected of having only a speech and language impairment does not require a certified school psychologist to be part of the initial evaluation or reevaluation team. 22 Pa. Code §711.24 (a)

**5. What does “informed written consent” mean?**

This phrase means the parent has been fully informed of all information relevant to the proposed action to be taken regarding the child and that information was provided in his or her native language, or other mode of communication, and that the parent/guardian agrees in writing to the school entity carrying out of the proposed action for which his or her consent is being sought. 34 CFR §300.9

**6. Does a request for an initial evaluation sent via email count as “in writing request?”**

Whether or not a request sent electronically will count as a request for an evaluation will be left to LEA policy.

**7. Should an IEP team meeting be convened within 30 calendar days upon completion of the evaluation or reevaluation?**

Yes, an IEP meeting must be convened within 30 calendar days upon completion of the evaluation or reevaluation. 34 CFR §300.323 (c)(1)

**8. Are evaluation team members’ signatures required on the evaluation and reevaluation reports for a student with a specific learning disability (SLD)?**

Yes. The federal special education regulations require each member of the evaluation team to certify in writing, including a signature or initials, whether they are in agreement or disagreement with a SLD determination only. If a member of the team disagrees with the eligibility determination regarding SLD, then a separate statement must be submitted by the dissenting team member. If the LEA uses software with preprinted names, each team member will place initials or signature next to the preprinted name. 34 CFR §300.311(b)

**9. If a foster parent is considered a parent, may the foster parent provide consent for an evaluation or initial provision of service?**

State law does not prohibit a foster parent from being considered a “parent” under the IDEA, so unless a contractual obligation with a State or local entity prohibits it, a foster parent – who has been given legal authority to make educational decisions for the student – may act as a student’s parent under the IDEA. She or he would therefore have the authority to provide consent for an evaluation or for the initial provision of service. When more than one party is qualified to act as a parent under the IDEA, however,

the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not maintain legal authority to make educational decisions for the child. 34 CFR §300.30

**10. If a student is referred for a special education evaluation two years after the child was evaluated for special education services and found not to be a child with a disability or in need of special education, should the school entity use the *Prior Written Notice for Initial Evaluation and Request for Consent Form* or the *Prior Written Notice for Reevaluation and Request for Consent Form*?**

This would be an initial evaluation, therefore a *Prior Written Notice for Initial Evaluation and Request for Consent Form* must be used for informed parental written consent prior to the determination of eligibility and need for special education and related services.

**11. If a child with an IEP transfers from an out-of-state LEA, does the new LEA use the *Prior Written Notice for Initial Evaluation and Request for Consent Form* or the *Prior Written Notice for Reevaluation and Request for Consent Form* to initiate the evaluation process in Pennsylvania?**

The United States Department of Education, Office of Special Education Programs (OSEP), has determined that this would be an initial evaluation. The LEA should issue the *Prior Written Notice for Initial Evaluation and Request for Consent Form*.

**12. If the student is not a student with SLD, can the two pages of “Determination of SLD” be deleted from the *Evaluation Report* or *Reevaluation Report*?**

No. Each LEA may add information to the forms, but may not delete information or sections of the forms.

**13. Can a student have a secondary disability of SLD?**

Yes. The group of qualified professionals and parents determine whether the student with a disability has a secondary disability, including a specific learning disability. If the team determines the student is eligible under the SLD category, the SLD section of the *Evaluation Report* and *Reevaluation Report* must be completed and evaluation team members must sign the report and indicate agreement or disagreement with the findings.

**14. If the parent of a child who transfers from out of state refuses to provide consent for the initial evaluation, what options does the LEA have?**

The LEA may go to due process to override the parent’s refusal to consent to the initial evaluation. However, the LEA would not be in violation of FAPE if it decided to forgo an initial evaluation through due process. The LEA still has a child find responsibility and meets this responsibility by issuing the *Prior Written Notice for Initial Evaluation and Request for Consent* form. Since the purpose of the evaluation is to determine eligibility in Pennsylvania and the parent refuses consent, the LEA met its child find responsibility. Because the initial evaluation to determine eligibility in Pennsylvania cannot be conducted, the child is not considered eligible for special education programs and services. The LEA should provide support to the child through its general education system of supports.

**15. How often must an LEA of residence reevaluate a child with a disability who is unilaterally enrolled in a private school by his or her parents?**

The LEA must conduct a reevaluation of a child with a disability who is unilaterally enrolled in a private school by his or her parents in the same manner it conducts a reevaluation for a child with a disability enrolled in the LEA. At a minimum, however, the LEA must complete a reevaluation – or otherwise reach an agreement with the child’s parent that a reevaluation is unnecessary via a written parental *Agreement to Waive the Reevaluation* form – at least every three years. For children with an intellectual disability, a reevaluation must be completed every two years and no agreement to waive the reevaluation can be made.

**16. Can a parent ask for an independent educational evaluation (IEE) at any time or can the request only come after the district has had the opportunity to complete its own?**

The LEA must be permitted to complete its evaluation prior to the parent requesting an IEE at public expense (34 CFR §300.502). If the parent obtains an IEE at public expense or pays for the IEE, the LEA must consider the information contained in the evaluation.

**17. Can a parent name the individual to complete a district’s evaluation?**

The LEA determines the assessment procedures and those individuals who will complete the assessment procedures. The parent can request that certain individuals conduct the assessment procedures; however, the LEA is not required to grant the parent’s request.

**18. Does the LEA need to issue an *Invitation to Participate in the IEP Team Meeting or Other Meeting to review an Evaluation Report or Reevaluation Report*?**

LEAs often invite parents to review the results of an initial evaluation or reevaluation, and the Invitation form can be used for this purpose. Parents must receive the *Evaluation Report or Reevaluation Report* within 60 calendar days of parental consent. However, there is no requirement for a meeting to discuss the report.

**19. What date is considered to be the Date of Report on the *Evaluation Report*? Is it the date the evaluation is finished? Is it the date the eligibility determination is made?**

The Date of Report section of the *Evaluation Report* is the date the *Evaluation Report* is completed and the decision about eligibility is made. The report is developed by a group and, therefore, this is not an individual decision.

**20. Is the completed *Reevaluation Report* due three years from the date the *Evaluation Report* is finished (Date of Report)?**

The completed Reevaluation Report is due in two years from the Date of Report for students with intellectual disabilities and three years from the Date of Report for students with other disability categories.



**21. What factors should be considered prior to referral for evaluation regarding English Learners (ELs) with disabilities?**

Please refer to the guidance document located on the Pennsylvania Department of Education website at: [www.education.pa.gov](http://www.education.pa.gov) Go to Instruction, Special Education, Guidelines for English Learners with IEPs.

**22. When evaluating (or reevaluating) an English Learner with disabilities, should the ESL teacher be a member of the evaluation team? Should assessment data related to second language acquisition be part of the *Evaluation Report*?**

Yes. The ESL teacher should be a member of the evaluation (reevaluation) team for an English Learner. Please refer to the guidance document located on the Pennsylvania Department of Education website at: [www.education.pa.gov](http://www.education.pa.gov) Go to Instruction, Special Education, Guidelines for English Learners with IEPs.

## 6.2 Reevaluation

### 22 PA Code §14.124, 34 CFR §300.303

#### **1. Are there circumstances under which school entities may decide not to conduct an initial evaluation or a reevaluation?**

##### *Initial Evaluation*

Yes, LEAs need not conduct an initial evaluation of a child if his or her parent fails or refuses to produce the child for the evaluation or the child enrolls in a school or another public agency. If the LEA has a reasonable basis to believe that the child does not have a disability, then the LEA may refuse to conduct an initial evaluation, but it must issue a *Notice of Recommended Educational Placement/Prior Written Notice* (NOREP/PWN) stating the reasons for the refusal. 34 CFR §300.503

##### *Reevaluation*

LEAs need not conduct an initial evaluation of a child if his or her parent fails or refuses to produce the child for the evaluation or the child enrolls in a school or another public agency. If the LEA has a reasonable basis to believe that the child does not have a disability, then the LEA may refuse to conduct an initial evaluation, but it must issue a *Notice of Recommended Educational Placement/Prior Written Notice* (NOREP/PWN) stating the reasons for the refusal. 34 CFR §300.503

LEAs do not have to conduct a reevaluation if the parent agrees in writing, through the *Agreement to Waive Reevaluation*, that a reevaluation is not necessary. If the parent does not agree to waive the reevaluation, it must be completed. 34 CFR §300.303 (b)(2)

Students with intellectual disability must be reevaluated every two years. 22 Pa. Code 14 §14.124(c) 22 Pa. Code 711 §711.22(c)

#### **2. What is the definition of school term for the evaluation and a student aging out of special education?**

School term is determined by each individual LEA's calendar. For the purposes of the evaluation, the clock will begin to run on the first staff day and stop on the last staff day for each school term. If the student turns 21 on or after the first staff day, then the student with a disability is entitled to FAPE for the whole school term.

#### **3. Is the "review of data" part of the reevaluation process? Is the "review of data" required for the completion of the *Agreement to Waive the Reevaluation* form?**

The review of existing data is part of the reevaluation process and must occur prior to the anniversary date of the reevaluation. The existing evaluation data to be reviewed are listed in items 1 -7 in Section 1 of the *Reevaluation Report*.

There is no requirement for an IEP team to conduct the review of existing data if the school entity representative and parent have agreed to waive the reevaluation. 34 CFR §300.303 (b)(2)

**4. Is there a limit to the number of years that lapse between a reevaluation with a waiver? (e.g. If a parent waives the reevaluation, must the LEA conduct one after the 6 years are up? Or, can the parent waive again?)**

The parent and the LEA may agree to consecutive waivers. A reevaluation or waiver must occur every three years. 34 CFR §300.303 (b)(2)

The waiver process does not apply to students with an intellectual disability, who must be reevaluated every two years. 22 Pa. Code 14 §14.124(c) 22 Pa. Code 711 §711.22(c)

**5. Is the *Prior Written Notice for a Reevaluation and Request for Consent Form* issued if a reevaluation is conducted to exit a student from special education?**

It depends on whether the IEP team has determined that there is a need for additional data. A reevaluation is required when a change in eligibility is recommended by the IEP Team, including the parent, before determining that the child is no longer a child with a disability. 34 CFR §300.305 (e)(1)

**6. Describe the reevaluation process.**

As part of the reevaluation process, the IEP team and other qualified professionals, as appropriate, will review existing evaluation data, and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. If the IEP team and parents determine that additional data are necessary to complete the reevaluation, the *Prior Written Notice for a Reevaluation and Request for Consent Form* will be issued.

If the team determines that no additional data are necessary to complete the reevaluation, no *Prior Written Notice for a Reevaluation and Request for Consent Form* will be issued because consent is not required for the review of existing data. The *Reevaluation Report* generated from the review of existing data would indicate that the team determined no additional data were needed. The LEA also documents whether the child continues to be a child with a disability.

**7. If, upon reevaluating a child, the LEA wishes to conduct additional assessments that were never done before, may it proceed to evaluate without parent consent?**

The LEA must make reasonable efforts to obtain informed parental consent when requesting new and additional testing for a reevaluation. Reasonable efforts may include:

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

The LEA may proceed with additional assessments after reasonable efforts to obtain parental consent have been made and documented.

**8. If the LEA sends a *Prior Written Notice for Reevaluation and Request for Consent Form* to parents and they do not respond, is the LEA still required to complete the reevaluation within 60 calendar days and when does the timeline begin?**

The 60-calendar day timeline applies, and it would begin on the date the LEA concludes that it has completed its reasonable efforts to secure informed consent. LEAs must factor this scenario into its reevaluation process because the *Reevaluation Report* still must be completed within the two-year anniversary date for students with an intellectual disability or three-year anniversary date for all other disability categories. 34 CFR §300.300(c)(2)

**9. What happens if a reevaluation is due when the student is 12 years old? Does the team need to complete transition assessments for the reevaluation?**

Transition must be addressed by the time a student reaches his/her 14th birthday. Prior to the student reaching age 14, the IEP team is not required to address transition in the reevaluation process unless the IEP team determines it necessary and/or appropriate to do so.

**10. Should an IEP team meeting be convened within 30 calendar days upon completion of the evaluation or reevaluation?**

Yes, an IEP meeting must be convened within 30 calendar days upon completion of the evaluation or reevaluation. 34 CFR §300.323(c)(1)

**11. If the student is not a student with SLD, can the two pages of “Determination of SLD” be deleted from the *Evaluation Report* or *Reevaluation Report*?**

No. Each LEA may add information to the forms but may not delete information or sections of the forms.

**12. What conditions warrant a reevaluation to be completed more frequently than every three years?**

An LEA must ensure that a reevaluation of a child with a disability is conducted if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, warrant a reevaluation.

**13. Does a change in eligibility require a reevaluation and that the NOREP/PWN be issued?**

Yes. A change in eligibility requires a *Reevaluation Report* and *NOREP/PWN* to be issued to the parent.

Exceptions to conducting the reevaluation include:

- the parent notifying the LEA in writing that he/she no longer wants the child to receive special education services (revocation),
- the student graduating with a regular diploma, or
- the student aging out of special education. In this case, the child is exited from special education without a reevaluation and a *NOREP/PWN* is issued.

**14. If the child's eligibility is not in question, but a parent requests a reevaluation to determine educational needs of the child, must the LEA conduct a reevaluation?**

The LEA must respond to the parent's request to conduct a reevaluation by conducting the reevaluation or declining to conduct the reevaluation. If the LEA declines to conduct the reevaluation, the LEA must issue a *NOREP/PWN* to the parent, as the LEA must provide notice to the parent if the LEA refuses to initiate or change the identification, evaluation or education placement of the child or the provision of FAPE to the child.

**15. How often must an LEA of residence reevaluate a child with a disability who is unilaterally enrolled in a private school by his or her parents?**

The LEA must conduct a reevaluation of a child with a disability who is unilaterally enrolled in a private school by his or her parents in the same manner it conducts a reevaluation for a child with a disability enrolled in the LEA. At a minimum, however, the LEA must complete a reevaluation – or otherwise reach an agreement with the child's parent that a reevaluation is unnecessary via a written parental *Agreement to Waive the Reevaluation* form – at least every three years. For children with an intellectual disability, a reevaluation must be completed every two years and no agreement to waive the reevaluation can be made.

**16. If a child with a disability in a private school enrolls in the LEA, must the LEA conduct a reevaluation?**

The requirement to conduct a reevaluation depends on whether a reevaluation was conducted within the required timelines during the child's placement in the private school. If the child transfers to the public school and the reevaluation was not completed within the timelines, the LEA must complete a reevaluation. Additionally, the LEA must complete a reevaluation if it determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parent or teacher requests a reevaluation. If the LEA declines to conduct a parentally requested reevaluation, the LEA must issue a *NOREP/PWN* to the parent, as the LEA must provide notice to the parents if the LEA refuses to initiate or change the identification, evaluation or education placement of the child or the provision of FAPE to the child.

**17. Should a reevaluation be conducted prior to implementing a change in amount of support on a child's IEP, such as changing from full time learning support to itinerant learning support?**

If it is determined that the educational or related service needs, including improved academic achievement and functional performance of the child warrant a reevaluation, the LEA must ensure that a reevaluation is conducted in accordance with 34 C.F.R. §§300.304-300.311. One of the purposes of the reevaluation is to determine the educational needs of the child, including whether any additions or modifications to the specially designed instruction and related services are needed to enable the child to meet his/her IEP goals and/or to participate in the general education curriculum. Because the *Evaluation Report* and *Reevaluation Report* outlines the unique needs of the child, the IEP team develops an IEP based on the needs described in the evaluation/reevaluation.

However, if the IEP team determines it has the information needed to decide on a change in the amount of support, the IEP team can make that decision through an IEP revision without a reevaluation. The revised information would be included in the next *Reevaluation Report*.

**18. Does the LEA need to issue an *Invitation to Participate in the IEP Team Meeting or Other Meeting to review an Evaluation Report or Reevaluation Report*?**

LEAs often invite parents to review the results of an initial evaluation or reevaluation, and the Invitation form can be used for this purpose. Parents must receive the *Evaluation Report or Reevaluation Report* within 60 calendar days of parental consent. However, there is no requirement for a meeting to discuss the report.

**19. How are data reviewed as part of the reevaluation process?**

The reevaluation process begins with a review of the child’s existing evaluation data by the IEP team and other qualified professionals, as appropriate. On the basis of that review, and input from the child’s parents, the team should identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. If the IEP team determines that additional data are necessary to complete the reevaluation, the *Prior Written Notice for Reevaluation and Request for Consent* form will be issued. If, however, the team determines that no additional data are necessary to complete the reevaluation, no *Prior Written Notice for Reevaluation and Request for Consent* form will be issued because consent is not required for the review of existing data. The *Reevaluation Report* generated from the review of existing data would indicate that the team conducting the reevaluation determined that no additional data were needed. The LEA would document whether the child continues to be a child with a disability.

The review of existing evaluation data that begins the reevaluation process can be carried out either through an IEP team meeting or by providing evaluation data to IEP team members to review on their own. If the LEA uses the meeting model, the LEA must issue an *Invitation to Participate in the IEP Team Meeting or Other Meeting* form and mark “Other.”

**20. Is the completed *Reevaluation Report* due three years from the date the *Evaluation Report* is finished (Date of Report)?**

The completed Reevaluation Report is due in two years from the Date of Report for students with intellectual disabilities and three years from the Date of Report for students with other disability categories.

**21. When evaluating (or reevaluating) a student who is an English Learner with disabilities, should the ESL teacher be a member of the evaluation team? Should assessment data related to second language acquisition be part of the *Evaluation Report*?**

Yes. The ESL teacher should be a member of the evaluation (reevaluation) team for an English Learner. Please refer to the guidance document located on the Pennsylvania Department of Education website at: [www.education.pa.gov](http://www.education.pa.gov) Go to Instruction, Special Education, Guidelines for English Learners with IEPs.

**22. Can a student have a secondary disability of SLD?**

Yes. The group of qualified professionals and parents determine whether the student with a disability has a secondary disability, including a specific learning disability. If the team determines the student is eligible under the Specific Learning Disability (SLD) category, the SLD section of the *Evaluation Report* and *Reevaluation Report* must be completed and evaluation team members must sign the report and indicate agreement or disagreement with the findings.

## 6.3 Revocation of Consent

### 34 CFR §300.300 (b)(4)

#### 1. What do the Federal Regulations require regarding revocation of consent?

34 CFR 300.9(c)(3) If the parents revoke consent in writing for their child's receipt of special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent...."34 CFR 300.300(b)(4) A parent may revoke consent in writing for his or her child's receipt of special education services after the parents' child was initially provided special education and related services ...."

#### 2. What procedures are required for the revocation of consent?

The following are required:

1. Parent must submit a signed, dated, written request revoking consent for special education programs and services.
2. The district must issue prior written notice (*NOREP/PWN*) within a reasonable period of time.
3. Reasonable notice is defined as ten calendar days.
4. The parents are informed that all special education programs and services will cease on the eleventh day from the receipt of the parents' revocation letter.

#### 3. May either parent revoke consent?

If both parents have legal custody to make educational decision, either parent may revoke consent. According to Letter to Cox, staff in the Office for Special Education Program (OSEP), United States Department of Education stated that one parent could submit a written revocation of consent to cease special education programs and services even though the other parent disagrees. Even though both parents may have educational rights, one parent can stop education programs and services and the local educational agency (LEA) must abide by that parent's wishes. The LEA would issue notice in accordance with 34 CFR 300.503 and cease providing special education programs and services. If subsequent to the revocation of consent by one parent, any request for an evaluation would be an initial evaluation. The LEA and the dissenting parent cannot use due process to stop the other parent's revocation of consent.

#### 4. May staff ask the parents why they are revoking consent?

Yes; however, the parents are not required to provide either an oral or written explanation before services are discontinued.

#### 5. What occurs when the parents revoke consent?

All special education programs and services cease. Also, the child will no longer be identified as a child with a disability under the implementing regulations, 34 CFR Part 300, of IDEA.



**6. May parents revoke consent to some services and not others?**

No. The revocation of consent requires the district to cease all special education and services. The parents cannot submit a revocation for some special education programs or services – this is all or nothing.

**7. If a student is 18 years of age, can he/she revoke consent?**

No. In Pennsylvania the age of majority is 21.

**8. If the student reaches the age of majority, may the student revoke consent for special education programs and services?**

Yes. If the rights transfer to the student at the age of majority, a student will be able to remove himself/herself from special education programs and services, as long as he/she does so in writing. The district must inform the parents of such a revocation of special education programs and services and provide notice as per 34 CFR 300.520(a)(1)(i)-“... The public agency must provide any notice required by this part to both the child and the parents....” This notice requirement is specified in 34 CFR 300.503(a) and (b).

**9. May a school district suggest or encourage parents to revoke consent?**

No. It is inappropriate for staff to suggest or encourage a parent to revoke consent. If staff believes that the child no longer requires special education programs and services, the staff should conduct a reevaluation to determine whether the child is still an eligible child.

**10. May a district use mediation or due process to override the parents’ revocation of consent?**

No. The regulations specifically state that districts may not use mediation or due process to override the parents’ revocation of consent.

**11. Is the district required to remove the paperwork regarding special education services that was completed prior to the revocation of consent?**

No. The revocation is not retroactive and does not erase what already occurred.

**12. After the revocation of consent goes into effect, what is the student’s status?**

The following considerations now apply:

- The student is considered a general education student and treated in the same manner as any other nondisabled child.
- The student’s individualized education program (IEP) is no longer in effect. The district is no longer required to conduct timely reevaluations or IEP team meetings.
- Child find applies to the student in the same manner as any other nondisabled student.

- Regular discipline rules apply. The district would not be considered to have knowledge that the child is a child with a disability who needs special education and services and not required to determine whether the conduct was a manifestation of the child's disability before implementing regular discipline.

**13. When the parent revokes consent, must the district conduct a reevaluation or convene an IEP team meeting?**

No. The district is not required to conduct a reevaluation or convene an IEP team meeting prior to issuing of the *NOREP/PWN* and discontinuing special education programs and services.

**14. Is the district liable for a denial of a free appropriate public education (FAPE) after the parents revoke consent?**

No. The regulations specifically state that a school district will not be considered in violation of the FAPE requirement for not providing special education and services.

**15. If consent is revoked, is the student eligible for Response to Intervention (RTI)?**

Yes. RTI is a general education initiative.

**16. What is the procedure if the parents change their minds and request special education programs and services?**

Since the child is no longer considered an eligible child, the district would:

1. Issue a *Prior Written Notice for Initial Evaluation and Request for consent*;
2. Complete the evaluation;
3. Determine whether the child meets eligibility criteria;
4. If no longer eligible, issue the *Evaluation Report* and *NOREP/PWN* and
5. If eligible, issue the *Evaluation Report*, issue an *Invitation to Participate in an IEP Team Meeting or Other Meeting*, develop an *IEP* and issue the *NOREP/PWN*.

**17. Once the parents revoke consent, must the teacher continue to provide IEP accommodations in general education?**

No. The teacher is not required to provide previously identified IEP accommodations in the general education environment.

**18. What if the parents, six days after submitting a letter for the revocation of consent, change their minds and submit a written request that the child remain in special education?**

The district would issue the *NOREP/PWN* to the parents that special education programs and services will continue.

**19. For accountability purposes on the State assessment, how is the student reported when the parents revoke consent for special education programs and services?**

If parents revoke consent after the school year begins, but before the administration of the State assessment required under the ESEA, the child is considered a general education student who has exited special education for accountability purposes. Section 200.20(f) of the Title 1 regulations allows States to include, for a period of up to two AYP determination cycles, the scores of students who were previously identified with a disability under the Act, but who no longer receive special education services, in the special education subgroup for purposes of calculating AYP (but not for reporting purposes). Therefore, the State may continue to include a child whose parents revoke consent for special education programs and services in the special education subgroup for the purposes of calculating AYP for two years following parental revocation of consent.

**20. Is a student entitled to a Section 504/Chapter 15 service agreement when parents revoke consent?**

No. A student is not entitled to a Section 504/Chapter 15 service agreement for services, accommodations, or modifications if parents revoke consent for special education programs and services. Following the change in special education regulations granting parents the right to revoke consent, staff in the Office for Civil Rights (OCR), US Department of Education, would not respond to an inquiry regarding whether a Section 504/Chapter 15 service agreement must be provided when parents revoke consent for special education programs and services under the IDEA. There is, however, a 1996 OCR opinion in *Letter to McKethan*. OCR staff stated "... once a school district has found a student disabled within the meaning of the IDEA and has developed an IEP in accordance with the law's requirements, it is impermissible for the student's parent to refuse to accept IDEA services as specified therein and require the district to develop an IEP under Section 504...." Thus, a rejection of services under the IDEA would amount to a rejection of services offered under Section 504 and in these situations, the district complied with Section 504 when it complied with the IDEA requirements...." Teachers therefore are not required to implement those accommodations listed in the student's IEP.

Under Section 504, districts continue to have an affirmative duty to identify and locate every qualified disabled child residing in the SD who is:

- Not receiving public education,
- A homeless child,
- In a nonpublic school, or
- In a public school.

Based on this affirmative duty to identify and locate qualified children with disabilities, the school district/charter school may need, on a case-by-case basis, to consider eligibility under 504 for those students whose parents have revoked consent for special education services.

## **6.4 School Year/School Term**

**34 CFR §300.102, 24 P.S. §13-1301**

### **1. What is the definition of “school term” for the evaluation and a student aging out of special education?**

“School term” is determined by each individual LEA’s calendar. For the purposes of the evaluation, the clock will begin to run on the first staff day and stop on the last staff day for each school term. If the student turns 21 on or after the first staff day, then the student with a disability is entitled to FAPE for the whole school term.

## **7 Individualized Education Program**

### **7.1 Free Appropriate Public Education (FAPE)**

#### **34 CFR §300.17, 34 CFR §§300.101-300.113**

#### **1. What is the process for providing FAPE when a student transfers between public agencies within the same state?**

According to 34 CFR 300.323(e): If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either:

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

#### **2. What is the process for providing FAPE when a student transfers from another state?**

According to 34 CFR 300.323(f): If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--

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

## 7.2 Supplementary Aids and Services

### 34 CFR §300.42

**1. Section 14.131(a) includes requirements for students who receive autistic support services. Does this requirement include students in an autistic support placement and students identified under the autism spectrum disorder?**

If an IEP team determines that a student with autism requires autistic support, then yes, the services must address needs primarily in the areas of communication, social skills, or behaviors consistent with those of autism spectrum disorders. The IEP for these students must address needs as identified by the team, which may include, as appropriate, the verbal and nonverbal communication needs of the child; social interaction skills and proficiencies; the child's response to sensory experiences and changes in the environment, daily routine, and schedules; and, the need for positive behavior supports or behavioral interventions.

If an IEP team determines that a student with autism requires learning support, the services must address needs primarily in the areas of reading, writing, mathematics, or speaking or listening skills related to academic performance.

**2. Are special education personnel and supplementary aids and supports synonymous?**

No. Supplementary aids and services are defined as aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in the least restrictive environment. Special education personnel are staff members who provide special education supports and services.

**3. When answering the questions regarding supplementary aids and services at the end of the IEP, what is best practice? Should each individual question be answered or is it sufficient to include one statement addressing the questions as a group? When answering the questions regarding least restrictive environment, does each question have to be answered or may some be left blank?**

These questions must be reviewed and discussed (written responses are optional) by the IEP team as they begin to determine the student's educational placement. It is important to remember that the student's parents must be part of any team that makes decisions on the educational placement of their child. The purpose for reviewing and discussing these questions is to ensure that the IEP team has given adequate consideration to placement of this student in the general education classroom with supplementary aids and services, prior to considering removal from the general education classroom.

## 7.3 English Learners

### 34 CFR §300.27

#### **1. Should an English as a Second Language (ESL) teacher be a member of the IEP team for a student who is an English Learner?**

Yes. According to the Individualized Education Program (IEP) team requirements, “At least one member should be an individual who can interpret the instructional implications of evaluation results...”. Students who are English Learners receiving ESL instruction are administered the ACCESS for ELs language proficiency assessment annually. Data from that assessment can inform instruction, support the development of *IEP* goals, and inform the process of English Language acquisition as developmentally appropriate. ESL teacher input provides essential guidance to the IEP team related to the process of second language acquisition, parent communication, cultural responsiveness, and reduction of a language barrier. The ESL teacher knows the student’s strengths, needs, and learning style, as well as the interpretations of the assessment results and present levels of performance. In addition, the ESL teacher may fulfill the IEP team member requirement of having a person: (1) with knowledge about general education curriculum, ESL programs, and ESL instruction, (2) to interpret the instructional implications of evaluation results and (3) with knowledge or special expertise regarding the child.

#### **2. Should a student who is an English Learner with a disability receive both ESL instruction and special education services? Who makes the decision regarding the instructional plan?**

Please refer to the guidance document located on the Pennsylvania Department of Education website at: [www.education.pa.gov](http://www.education.pa.gov)

\*Go to Instruction, Special Education, Guidelines for English Learners with IEPs

#### **3. Who decides the need for and amount of ESL services student who is an English Learner with a disability receives?**

All students who are English Learners who are eligible for special education have the right to receive ESL instruction at their appropriate proficiency and developmental levels. The ACCESS for ELs is administered to students who are English Learners annually. Criteria from the assessment can be used to exit students from the ESL program. In terms of students with significant disabilities, the IEP team with the ESL teacher should make the decision whether the student is receiving a free appropriate public education (FAPE) in the ESL program.

## 7.4 Transition

### 34 CFR §300.43, 22 PA Code §14.131 (a)(5)

#### 1. Why must an LEA collect transition data?

The Bureau of Special Education (BSE) is assisting the Pennsylvania Department of Labor and Industry in meeting the data collection requirements of House Bill 400, now Act 26 of 2016, titled the “Work Experience for High School Students with Disabilities Act.”

#### 2. Why is secondary transition planning important?

Transition services are a coordinated set of activities for a child with a disability that are designed to be within a results-oriented process. They are 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, and community.

#### 3. When must the Individualized Education Program (IEP) team address secondary transition?

Transition planning is to begin no later than the first annual *IEP* to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually.

#### 4. How do we determine what a student needs for good transition programming?

Transition programming is based on age-appropriate assessments, which define and project the appropriate measurable postsecondary goals that address education and training, employment, and as needed, independent living.

#### 5. Is the transition section of the *IEP* written for just the IEP year or is it written to be inclusive of the current IEP year and all future IEP years?

The transition section of the *IEP*, like all other *IEP* sections, is written for one year. The transition section of the *IEP* must be updated annually; therefore, all activities and services indicated in the transition section should only cover the IEP year.

#### 6. When reviewing the LRE numbers with districts, is there also emphasis placed on community-based instruction that would enable the districts to meet the LRE requirements?

Curriculum-based instruction (CBI) or any instruction occurring outside the classroom in the school or community where interaction occurs with persons without disabilities, and includes nondisabled peers and community members, is counted as a general education classroom and is included in the calculation for LRE.



### **7. What are acceptable age-appropriate transition assessments?**

Age-appropriate transition assessments refer to any assessments that are conducted in order to determine a student's interests, preferences, aptitudes or abilities. Transition assessments are considered acceptable when they are individualized to meet the needs of the specific student.

### **8. What is a functional vocational assessment?**

The IEP team may need information about a student's aptitudes, interests, and skills in relation to employment. A functional vocational assessment is information gathered through situational assessments, preferably in the setting where the job is performed. It can include observations, surveys, interviews, and formal or informal measures. It focuses on practical skills needed for job and career success. Information can be collected about a student's personal/social interactions, ability to manage money, mobility, personal hygiene, ability to follow directions or ability to complete a task. The information that is collected can be used to refine the transition activities included in the *IEP*.

### **9. Is there a recommended set of transition assessments and/or a recommended number of transition assessments that should be completed?**

There is no set number of assessments that must be conducted. Overall, the number of transition assessments must be sufficient to establish post-secondary goals and paint a clear picture of the student's performance in relation to those goals. Although not required, many local education agencies do establish a suggested sequence of assessments that can then be customized to meet individual needs.

### **10. What happens if a reevaluation is due when the student is 12 years old? Does the team need to complete transition assessments for the reevaluation?**

Transition must be addressed by the time a student reaches his/her 14th birthday. Prior to the student reaching age 14, the IEP team is not required to address transition in the reevaluation process unless the IEP team determines it necessary and/or appropriate to do so.

**11. Will one assessment satisfy the annual assessment requirement or are numerous assessments needed to establish a baseline?** There is no set number of assessments that must be administered to establish baseline data, but there must be enough to establish baseline data related to post-secondary education/training, employment, and independent living.

### **12. Is it required that at least one of the assessments be standardized and formal?**

No, there is no requirement that at least one of the assessment be standardized and formal.

### **13. How do post-secondary goals and measurable annual goals differ?**

Post-secondary goals are based on age-appropriate transition assessment and describe the student's goals **after** they graduate from high school. There are three areas that post-secondary goals must address: post-secondary education/training, employment, and independent living.

By contrast, measurable annual goals are goals for school-age students. Measurable annual goals are statements of expected student achievement over one year. They address skill deficits, such as reading, math, organization, behavior, and communication skills.

### **14. There are three post-secondary goal areas: post-secondary education/training, employment and independent living. How many of these must be addressed for students in Pennsylvania?**

All three goal areas need to be addressed by the IEP team and summarized in the present educational levels secondary transition section of the *IEP*. Federal law requires that students have "appropriate, measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills" (§300.320[b][1]).

### **15. What happens if a post-secondary goal area is not needed for a particular student?**

If a post-secondary goal area is not needed, the reason it is not needed must be documented in the Present Levels of Academic Achievement and Functional Performance portion of a student's *IEP*. For example, if the IEP team has not selected a goal area of independent living for a particular student, the present levels should contain data to show that the student's current skills are age appropriate and that further preparation during high school is not needed. On the transition grid, the team would note that the IEP team had considered the goal area, and due to the student's current level of independence, as documented in the present levels of the *IEP*, has determined that a goal for this area is not needed at this time.

### **16. Should post-secondary goals be specific?**

Post-secondary goals should clearly indicate the student's intent for what he/she plans to do after high school, however, they should not state specific places of post-secondary training or employment.

### **17. How should an IEP team go about updating post-secondary goals and documenting the updated goals?**

Evidence of updating during an annual IEP meeting may include noting updated assessments in the present levels section of the *IEP*, revising the transition grid and/or updating post-secondary goals, based on new assessment data. If updating the *IEP* prior to the annual meeting, then the revision process should be followed.

### **18. Must all measurable annual goals be listed in the transition grid?**

No, there are no federal or state regulations that require measurable annual goals to be listed in the transition grid. However, best practice is that all measurable annual goals be directly related to the student's post-secondary goals. If the IEP team cannot find a direct correlation between a measurable

annual goal and a post-secondary goal, then the team may want to analyze the appropriateness of the measurable annual goal.

**19. Is it required that career education and work standards be included in the measurable annual goal statement?**

Neither federal nor state regulations require career education and work standards to be included in the measurable annual goal statement. If an IEP team determines it to be appropriate, the IEP team may include career education and work standards as part of the measurable annual goal.

**20. Who is involved in the transition planning process?**

Required members of the IEP team include the parent, the LEA, a general education teacher, a special education teacher and someone to interpret the results of the assessments. Transition planning should include those required members in addition to the student, personnel from outside agencies, career and technical education centers and other relevant community members.

**21. When should agencies be invited to an IEP meeting?**

For transition services that are likely to be provided or paid for by other agencies, representatives of the agency(ies) must be invited, with parental consent, to the IEP meeting. This process should begin when transition services are going to be discussed at the IEP meeting.

**22. How important is the participation of outside agencies in the secondary transition process?**

Collaboration with outside agencies is crucial. If a community agency is likely to be responsible for providing a program for transition services prior to and/or after graduation, the school must invite an agency representative to the IEP meeting.

**23. If an IEP team does not envision that an agency will provide or pay for services, must an agency still be invited in order to fulfill requirements of Indicator 13?**

An LEA's responsibility is to invite the agency(ies) to the IEP meeting, not to presume said agency's financial commitment or their need to attend. While an outside agency may not be providing/paying for services, this does not exempt the district from the requirement to provide the family with information about agencies that may benefit their child.

**24. May schools adapt the invitation to indicate that an agency is not being invited because the student is too young, or an agency is not likely to provide or pay for transition services?**

The IEP invitation is a standardized form and, as such, no items should be removed. However, additional items can be added.

**25. How can the IEP team document that parents refused to allow an agency to be invited to an IEP meeting?**

If it is clear that parents have been informed of, and understand, the role that agencies play, their refusal may be included in the present levels of the IEP. Other sources of documentation include the invitation, with parent notations or signatures, as well as permission forms in which the parent clearly refuses consent. Again, informed consent or refusal to consent is crucial.

**26. Must a separate IEP invitation be sent to the student and the parent?**

One invitation sent to parent and student is sufficient.

**27. What are courses of study and how should they be listed in the transition grid?**

Courses of study refer to the content areas in which the student receives instruction during the school day that will assist the student in reaching the postsecondary goals listed at the top of each table in the grid (e.g., English 11, Geometry, Co-Op placement, Home Economics I, Community Based Instruction, Apartment Program). General terms such as college prep, Career and Technical Education (CTE) program, functional skills, life skills, general, should not be used.

**28. Under the courses of study, does the IEP need to reflect the courses for the entire IEP year or just the current school year?**

Courses of study should reflect all of the courses expected to be completed over the duration of the IEP.

**29. What is meant by “services and activities” that lead to post-secondary goals?**

Services and Activities that lead to post-secondary goals are those specific actions that will be taken within the duration of the IEP. Examples for Education and Training might include developing self-advocacy skills, registering for the SAT, or attending a college fair. Examples for Employment might include in-school work experience, community service, or job shadowing. Examples for Independent Living might include participating in an apartment training program, using public transportation, managing a budget, planning menus and preparing meals, registering with Selective Service or to vote, or practicing pedestrian safety.

**30. Are there a minimum number of services or activities that must be listed in the transition grid?**

For each post-secondary goal area (post-secondary education/training, employment and independent living), there must be at least one service or activity that will support the student in achieving his/her goal.

**31. If the services and activities listed in the grid are not completed, is the LEA responsible?**

Services and activities listed in the transition grid are the responsibility of the LEA. If an agency or outside provider fails to provide or pay for services listed, the LEA must convene a meeting to address ways to complete the services listed.

**32. What experiences and activities outside the school building will prepare a student for participation in community life?**

Activities that help prepare students for life outside of school include, but are not limited to, government, social activities, recreation and leisure, routine appointments, shopping, banking and transportation. Some examples include:

- Securing a driver’s license
- Applying for a state identification card
- Visiting or joining a community recreation center or YMCA/YWCA
- Investigating opportunities for socialization (e.g., bowling, ice skating)
- Participating in community and civic organizations
- Learning the location of convenient and affordable places to shop for food and clothing
- Identifying transportation options within the community
- Registering to vote

The experiences and activities chosen should be aligned with the individual student’s needs.

**33. What activities and strategies will a student need to assist him/her in acquiring a desired job or career?**

Activities and strategies can focus on developing work-related behaviors, seeking employment, exploring careers, pursuing skills training, and taking apprenticeship training and finding actual employment. Students may need to focus on basic employee behaviors to succeed in the workplace, such as staying on task, responding appropriately to instructions, working with a team, working under pressure, and developing skills for self-advocacy. Workplace readiness skills may be gained through part-time (supported or nonsupported) employment, involvement in career and technical education programming (CTE), community service, apprenticeship programs, or involvement in the local office of vocational rehabilitation (OVR) and/or career link offices.

## 7.5 Career and Technical Education

### 1. What is the role of career and technical education (CTE) in transition?

Career and technical education programs can be part of the transition program to help prepare a student for work after high school. If a student with a disability is considering a career or technical education, or is currently enrolled in a CTE program, a representative from that program must be present at the IEP meeting.

### 2. Must the resident district and charter school invite the CTC (Career and Technology Center) representative to the individualized education program (IEP) team meeting?

Yes. According to 22 PA Code 339.21(5) and (6), "... With regard to the placement of students with IEPs or service agreements in vocational programming, faculty from the vocational programs in which students are recommended for placement will participate as members of the IEP or service agreement teams ... IEP and service agreement meetings, when scheduled by a LEA must give timely notice to the vocational and technical representative assigned and shall be attended by the vocational and technical representative ..."

### 3. Can the resident district, charter school and parent agree to excuse the CTC representative from the IEP team meeting or conduct an IEP team meeting without inviting the CTC representative?

No. 22 PA Code 339.21(5) and (6) require resident districts to invite the CTC representative to the IEP team meeting. According to 34 CFR 300.321(a)(2) through (5), the district staff at the IEP team meeting must include not less than one of the child's general education teacher, not less than one special education teacher of the child, a representative of the public agency, and an individual who can interpret the instructional implication of evaluation results. Although the parent and district can agree in writing to excuse those staff members specified in (a)(2) through (5), the CTC representative is not one of those individuals. Since there is no excusal provision in 22 PA Code 339.21, the parent and resident district cannot agree to excuse the CTC representative.

### 4. If the CTC representative is invited but does not attend, can the resident district continue with the IEP team meeting?

Yes, as long as the resident district provided "... timely notice ..." to the CTC representative assigned to attend the meeting.

### 5. Can the CTC representative override the decisions of the IEP team?

No. There is no provision in either 22 PA Code Chapters 14, 711 and 339 or 34 CFR Part 300 that gives the CTC representative the authority to override the decisions of the IEP team. The IEP team determines the programs and services based on the needs of the child. The IEP team, under the direction of the representative of the LEA and with input from all team members, including the CTC representative, develops the program and determines where the program is to be provided (i.e., placement).

**6. What is the role of the CTC representative at the IEP team meeting?**

The CTC representative is a member of the IEP team, which means the CTC representative can provide input and contribute to the discussion regarding programs and services to be provided to the student.

**7. Can the CTC contract with another agency or intermediate unit to serve in the role of the CTC representative as per 22 PA Code 339.21(6)?**

Yes, but the CTC representative must be knowledgeable about the CTC, its programs and services and how adaptations, modifications, and accommodations can be made with regard to the placement of students with IEPs or service agreements in the CTC.

**8. What happens if the CTC will not/cannot provide those services specified in the IEP? What is the LEA and charter school responsibility? What is the CTC's responsibility?**

Since the LEA, through the IEP team, placed the student in the CTC, the LEA is responsible to ensure that IEP programs and services are provided. If the CTC cannot provide IEP programs and services, CTC staff should contact the LEA. CTC staff cannot unilaterally determine that IEP programs and services are unreasonable and not provide them. The two entities must cooperate to ensure that the IEP is implemented. CTCs may not discriminate against students with disabilities.

**9. For program placement at the CTC, who determines whether the child is able to benefit from the program?**

The IEP team develops the program and then determines where the program is to be provided (placement). This decision is made by the IEP team and not individuals at the CTC. According to 22 PA Code 339.21 "... For a student with a disability, success shall be predicted by the student's IEP team on the basis of the student's ability to benefit from the program...." The CTC representative should express an opinion on this question, but the CTC cannot have policies/procedures that are contrary to the IEP team making the ultimate determination of "... ability to benefit... ". CTC instructional and administrative staff cannot override the decisions of the IEP team.

**10. Is the CTC considered an outside agency requiring parental consent for the CTC representative to attend the IEP team meeting?**

No. The LEA does not have to obtain parental consent in order to invite the CTC representative to the IEP team meeting. The provisions of 34 CFR 300.321(b)(3) do not apply.

## 7.6 Related Services

### 34 CFR §300.34

**1. If a student with a documented hearing loss is determined eligible for special education service as a student with a speech/language impairment, must a communication plan be developed as part of the IEP?**

If the IEP team has documented the student as Deaf or Hard of Hearing and checked “Deaf or Hard of Hearing” in the special consideration section of the IEP, then a communication plan must be developed to address the appropriate 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, assistive technology devices and services. In addition, a communication plan may be necessary to provide FAPE for an IDEA-eligible student with a hearing loss who has not been identified as Deaf or Hard of Hearing, if the hearing loss is preventing the student from making meaningful educational progress.

**2. If a student with an IEP receives counseling services, where does that need to be reflected in the IEP? If it is listed as a related service, does counseling also need to be included in the present level of performance and goals? Are there alternate areas to include it or is it always considered a related service?**

Counseling services for a student are typically listed as a related service. If the counseling need is part of the provision of a free appropriate public education, the information could be included in the present levels of academic achievement and functional performance. There is no requirement that measurable annual goals be developed for all related services. There may be circumstances where counseling services are listed as a modification/accommodation on the IEP.

**3. Can “training offered 1x a month to parents” be listed as a Related Service?**

Yes. Section 300.34(c)(8)(i-iii) lists parent counseling and training as a related service. A description of this training and who will schedule and offer it should be documented somewhere in the IEP.



## 7.7 Least Restrictive Environment

### 22 PA Code §14.145, 34 CFR §§300.114-120

#### 1. Is educational placement based on the amount of service or location of special education services?

Educational placement (Section VII of the IEP) is based on supplementary aids and services, type of support (amount and type), and location of program.

#### 2. Can a student who is in general education 100% of the time and receives paraprofessional support for the entire school day, still be considered 100% in the LRE?

Yes, LRE is the amount of time spent in the general education environment with nondisabled students. If the student is truly 100% in general education with nondisabled peers, then the student would be in the LRE 100% of the time.

#### 3. If a school district places students with disabilities into another district school because the neighborhood school is full, would the new school be considered the neighborhood school?

No, a student's neighborhood school is defined as the school the student would attend if he/she did not have an IEP.

#### 4. For life skills support programs, do regularly scheduled, community-based field-trips count in LRE calculations?

Yes, community-based instruction is included in the LRE calculation. Educational time spent in age-appropriate community-based settings that include individuals with and without disabilities, such as college campuses, vocational sites or field trips, be counted as time spent inside the general education classroom.

#### 5. What is the proper way to calculate face time and place time?

The BSE assumes that face time refers to amount of special education services, and place time refers to the least restrictive environment location calculation. Face time is the calculation of the amount of time professional special education staff provide direct services to a student. Place time refers to the amount of time the student spends in the general education setting (the general education classroom with nondisabled peers or another location).

#### 6. What are the LRE requirements for Pennsylvania?

*According to 22 PA Code §14.145. Least restrictive environment requirements.*

Students with disabilities shall be educated in the least restrictive environment. Each school entity shall ensure that:

- To the maximum extent appropriate, and as provided in the IEP, the student with a disability is educated with nondisabled peers.

- Special classes, separate schooling or other removal of a student with a disability from the general education class occurs only when the nature or severity of the disability is such that education in the general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.
- A student may not be determined to require separate education because the child cannot achieve at the same level as classmates who do not have disabilities if the child can, with the full range of supplementary aids and services make meaningful progress in the goals included in the student's IEP.
- A student may not be removed from or determined to be ineligible for placement in a general education classroom solely because of the nature or severity of the student's disability, or solely because educating the student in the general education classroom would necessitate additional cost or for administrative convenience.
- School entities shall be required to provide access to a full continuum of placement options.

## 7.8 Extended School Year

### 22 PA Code §14.132

#### **1. Are there a minimum number of hours a district has to provide for extended school year (ESY)?**

No, the Individualized Education Program (IEP) team determines ESY services. The ESY section of the IEP must provide a description of services, time, frequency, and beginning and ending dates.

## 7.9 IEP Team Meeting

### 34 CFR §§300.320-328

#### **1. The LEA tape records all special education meetings. If the parent requests to have a stenographer at the special education meeting, should the LEA also have a stenographer?**

The regulations are silent on this matter. It is up to the LEA. There is no state regulation regarding the recording of special education meetings. The LEA should have a policy regarding the recording of special education meetings. If the LEA's policy prohibits the recording of meetings, the LEA should consider whether an exception may be warranted when an accommodation is needed for parent participation.

#### **2. Do we invite all general education teachers to the IEP team meeting and then excuse them?**

No. Each LEA must invite required IEP team members, including one general education teacher of the child if the child is, or may be, participating in the general education environment (34 CFR Sec. 300.321(a)(2)). The general education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one general education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child. An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher's area of the curriculum.

## 7.10 IEP Goals

### 1. Are Pennsylvania Academic Standards required to be noted on the IEP next to the goals?

No. The Pennsylvania Academic Standards are not required to be noted on the *IEP*; however, IDEA Part B regulations clarified that the general education curriculum means the same curriculum as all other students. An *IEP* must focus on ensuring that the student is involved in the general education curriculum that is aligned with the State's content standards. Information is available on the PaTTAN website regarding the alignment of *IEP* goals with academic standards, [www.pattan.net](http://www.pattan.net).

## **8 Local Education Agency**

### **8.1 Local Education Agency**

#### **22 PA Code §14.103**

##### **1. How is the term local educational agency defined in Pennsylvania?**

Where the Federal provision uses the term “local education agency,” the term means an intermediate unit, school district, State-operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services. Applicability of this term to public charter schools is found in Chapter 711 (relating to charter school services and programs for children with disabilities).

The Office for Dispute Resolution (ODR) *Pennsylvania Special Education Dispute Resolution Manual* defines the term “local educational agency” to mean a school district, charter school, cyber charter school, intermediate unit (in cases involving preschool students and students enrolled by their parents in private schools), an agency providing early intervention services under arrangement with the Pennsylvania Department of Education (referred to as the “MAWA”), or the Department of Corrections (in cases regarding students in state correctional facilities) providing educational services to children with disabilities or providing early intervention services.

## 9 Notice of Recommended Educational Placement/ Prior Written Notice

### 9.1 Notice

34 CFR § 300.300, 34 CFR § 300.503

#### 1. Does a change in eligibility require a reevaluation and that the NOREP/PWN be issued?

Yes. A change in eligibility requires a *Reevaluation Report* and *NOREP/PWN* to be issued to the parent.

Exceptions to conducting the reevaluation include:

- The parent notifying the LEA in writing that he/she no longer wants the child to receive special education services (revocation),
- The student graduating with a regular diploma, or
- The student aging out of special education.

In these cases, the child is exited from special education without a reevaluation and a *NOREP/PWN* is issued.

#### 2. If the child's eligibility is not in question, but a parent requests a reevaluation to determine educational needs of the child, must the LEA conduct a reevaluation?

The LEA must respond to the parent's request to conduct a reevaluation by conducting the reevaluation or declining to conduct the reevaluation. If the LEA declines to conduct the reevaluation, the LEA must issue a *NOREP/PWN* to the parent, as the LEA must provide notice to the parent if the LEA refuses to initiate or change the identification, evaluation, or education placement of the child or the provision of FAPE to the child.

#### 3. When the parent revokes consent, must the LEA conduct a reevaluation or convene an IEP team meeting?

No. The LEA is not required to conduct a reevaluation or convene an IEP team meeting prior to issuing of the *NOREP/PWN* and discontinuing special education programs and services.

#### 4. What if parents, six days after submitting a letter for the revocation of consent, change their minds and submit a written request that the child remain in special education?

The LEA would issue the *NOREP/PWN* to the parents that special education programs and services will continue.

## **10 Parentally Placed Private School Children With Disabilities**

### **10.1 Equitable Participation**

**34 CFR §§ 300.137-138**

#### **1. What are “equitable participation services?”**

Equitable participation services are provided to children with disabilities unilaterally enrolled by their parents in private schools. Eligible children enrolled in private schools by their parents have no individual IDEA entitlement to receive some or all of the special education related services they would receive if enrolled in the public schools. In Pennsylvania, the intermediate unit (IU) is the local educational agency (LEA) responsible for providing equitable participation services. Equitable participation services are determined after consultation between the representatives of the IUs and private schools within each region. Equitable participation services do not provide a free appropriate public education (FAPE).



## **11 Personnel**

### **11.1 Paraprofessionals**

#### **22 PA Code §14.105(a) and 22 PA Code §711.5(d)**

##### **1. What are the qualifications for instructional paraprofessionals in Pennsylvania?**

Special education paraprofessionals must meet Pennsylvania’s regulatory requirements contained in 22 Pa. Code §14.105 and 711.5(d) which include the following:

- Have completed at least two years of postsecondary study.
- Possess an associate degree or higher.
- Meet a rigorous standard of quality as demonstrated through a State or local assessment.

##### **2. When does the 20-hour staff development requirement begin?**

Instructional paraprofessionals, each school year, shall provide evidence of 20 hours of staff development activities related to their assignment. Personal care assistants shall provide evidence of 20 hours of staff development activities related to their assignment each year. The 20 hours of training may include training required by the school-based access program.

##### **3. Are LEAs expected to offer the 20 hours of staff development that is required for instructional paraprofessionals and personal care assistants?**

The intent is for the LEAs that employ the paraprofessionals to be responsible for providing the 20 hours of staff development on an annual basis; because the training must be “related to the assignment,” the employing agency is best suited to ensure the training will be relevant to the assignment.

##### **4. Must each LEA provide the training directly? Will PDE offer staff development through PaTTAN for paraprofessionals to meet the 20-hour requirement?**

The decision on who will provide the staff development to paraprofessionals is a matter of local discretion. There are several options an employer may utilize to provide this professional development, including arranging for intermediate units or other consortiums to provide the staff development or participation in appropriate PaTTAN staff development offerings. Additionally, PDE via PaTTAN, will continue to offer staff development for paraprofessionals. These programs have been, and will continue to be, developed to assist employers in providing high quality staff development to paraprofessionals.

##### **5. Will a statewide record-keeping system be organized for tracking the 20 hours of staff development, or will this be a local responsibility? Will paraprofessionals show documentation of 20 hours to the state or to the employer?**

There is no statewide tracking system of the 20-hour staff development requirement. The LEA that employs the paraprofessional must set up a system to track the hours during each school year thereafter. The paraprofessional will be required to show documentation of 20 hours to the employing LEA annually.

**6. Will meetings to coordinate ACCESS paperwork and learn the documentation process be considered appropriate professional development hours for personal care assistants for this 20-hour requirement?**

No, the time spent in training on paperwork and documentation does not fall within the intent of the requirement for 20 hours of staff development related to the assignment. However, time spent in training in CPR and First Aid, as required by the School-Based ACCESS Program, is appropriate for this requirement.

**7. Must the LEA receive state level approval of the staff development to be offered?**

No. However, the LEA is to include the activities to address the staff development requirement in its special education plan or Early Intervention Training Plan, or in the case of charter schools and cyber charter schools, the Annual Report.

**8. How will PDE address the issue of paraprofessionals who are instructional or personal care aides who stop working for reasons such as military service, maternity/child bearing or child rearing leave, disability, or long-term illness?**

The 20 hours must be met by individuals who are employed in the role of instructional paraprofessional, personal care assistant and educational interpreter for that year. If, for an entire school year, an individual is not employed/working in this role, for example, when the individual takes a one-year leave of absence for military service or child rearing leave, the individual would not be required to show evidence of meeting the 20-hour requirement for that school year. For paraprofessionals who may start working during the school year, the LEA has local discretion on how many hours of training that a paraprofessional will need to obtain in that school year.

**9. Does the 20-hour staff development requirement apply to substitute paraprofessionals?**

Whether the requirement for 20 hours of staff development applies to substitute paraprofessionals is a matter of local discretion. However, PDE encourages that consideration be given to the length of time that the person is substituting in making this determination.

**10. Does the 20-hour staff development requirement apply to instructional paraprofessionals and personal care assistants who:**

- Work in a special education classroom or Early Intervention program? – Yes
- Provide one-to-one or other specific assistance in accordance with an IEP (in a general education classroom or preschool, special education or Early Intervention classroom or community-based setting)? – Yes
- Work in a general education classroom or preschool with nondisabled students and students with disabilities? – No, unless specifically identified with a special education assignment

This requirement was not intended for, and does not apply to, individuals whose role is to serve in a general education classroom with nondisabled students and students with disabilities, and who do

not have any specific duties delineated in students' IEPs. If such individuals fall into the category of Title I paraprofessionals, the Title I requirements would apply.

**11. Will the state or local assessment requirement be more than a test? If so, give examples. Will the credential program offered by PDE via PaTTAN satisfy the requirements?**

The current Pennsylvania Special Education Paraeducator Credential of Competency will satisfy the requirement. It is based on ten performance-based standards identified by The Council for Exceptional Children (CEC) as necessary for a special education paraeducator to know or be able to do in order to work effectively with students in special education programs. PDE has endorsed the use of these ten CEC performance-based standards and their corresponding required knowledge and skills, as they define the basic content for the initial preparation and practice of special education paraeducators. Training covers a broad range of topics, such as the special education process, including assessment and progress monitoring, supporting the use of assistive technology in the classroom, effective behavior management, and supporting students in inclusive settings.

The performance-based standards include statements of the knowledge and skills needed by paraeducators to work successfully in educational environments. Any "rigorous standard of quality as demonstrated through a state or local assessment" should at a minimum address the 10 standards (below). If the employing entity uses a local assessment, it is to be based on the 10 standards and reflected in the entity's Special Education Plan or Early Intervention Training Plan. No specific approval from PDE is needed for the local assessment.

Standard # 1: Foundations of Special Education

Standard # 2: Development and Characteristics of Learners

Standard # 3: Individual Learning Differences

Standard # 4: Instructional Strategies

Standard # 5: Learning Environments and Social Interactions

Standard # 6: Language

Standard # 7: Instructional Planning

Standard # 8: Assessment

Standard # 9: Professional and Ethical Practice

Standard # 10: Collaboration

These rigorous standards of quality, as demonstrated through a state or local assessment, are detailed in the materials and resources available on the PaTTAN website, and may be accessed at [www.pattan.net](http://www.pattan.net)

**12. How does PDE plan to address paraprofessionals moving in from out-of-state? What if an individual passed some sort of requirement in another state; will there be reciprocity?**

This is a matter of local discretion and will not be addressed by the Department. The local public entity has discretion to determine whether previous training counts toward the 20-hour staff development requirement, and whether previous credits or credentials meet the "rigorous standard."

**13. When a LEA uses different terminology and job titles than those described in the regulations, do the regulations apply to those different names and titles?**

LEAs should not rely on their own specific titles but compare what the individual does in the position to the definitions of instructional paraprofessional and personal care assistant, as outlined in Sections 14.105 and 711.5. Individuals whose job descriptions match those definitions must satisfy the requirements.

**14. Do approved private schools (APSs) have to maintain documentation regarding the rigorous standard of quality for paraprofessionals?**

No, APSs are not covered by this provision in Chapters 14 and 711.

**15. Must APSs adhere to the requirement for 20 hours of training annually?**

Yes, APSs must maintain documentation of 20 hours of staff development annually related to the assignment for each paraprofessional employed by the APS to assist and support students with disabilities or eligible young children.

**16. Are Career and Technology Centers (CTCs) responsible for documenting the 20 hours of training annually for paraprofessionals who work in their schools?**

The LEA employing the paraprofessionals is ultimately responsible for documenting appropriate training of paraprofessional staff. The sending LEA is responsible for the provision of FAPE for individual eligible students placed by the LEA in the CTC. Therefore, the CTCs and sending LEA should consult and maintain documentation of the provision of 20 hours of professional development for the paraprofessional requirements under Chapters 14 and 711.

**17. Regarding the 20 hours of professional development required of paraprofessionals annually, what if a person has to leave mid-year?**

Determining the requirement for 20 hours of staff development will be left to local discretion. A LEA may choose to pro-rate or require all 20 hours.

**18. What if a paraprofessional does not complete the 20 hours of annual training?**

If a paraprofessional does not meet the required 20 hours of training per year, he or she does not meet the minimum requirement to hold a paraprofessional position, and the LEA should follow relevant portions of the collective bargaining agreement and consult with its solicitor regarding the appropriate response to address staff who are not qualified to serve in the position that they currently hold.

**19. May an outside agency be used to provide paraprofessional training?**

Yes, an outside agency may be used to provide training, but it is at the discretion of the LEA whether training from outside providers will be recognized as meeting the regulatory requirement.

**20. Are paraprofessionals hired by an agency rather than a school district required to fulfill the requirements in Sections 14.105(a) and 711.5(d)?**

Yes, if they are working in the capacity of a special education paraprofessional as described in Section 14.105(a) and 711.

**21. Are the following examples (a. through e.) acceptable methods of training to meet the required 20 hours of professional development?**

- a. Diversity Awareness
- b. Universal Precautions
- c. First Aid
- d. CPR (Infant and Child)
- e. Effectively working and communicating with peers and colleagues?

It will be left to the discretion of the LEA if the listed examples of training will meet the requirements of Sections 14.105(a) and 711.5(d).

**22. If a paraprofessional has the Special Education Paraeducator Credential of Competency, does he/she still need to take the local assessment?**

No. The current Pennsylvania Special Education Paraeducator Credential of Competency will satisfy the rigorous standard of quality requirement. An LEA may, however, require additional training of its staff that exceeds the Credential of Competency.

**23. Will specific criteria be established for what constitutes appropriate study for an Associate's Degree?**

No, specific criteria for what constitutes appropriate study for an Associate's Degree will not be established. The criteria will be left to the discretion of the LEA.

**24. Can newly hired paraprofessionals be provided a grace period to obtain a qualified status?**

Whether or not a grace period to obtain qualified status will be provided is left to the discretion of the LEA.

**25. If a teacher assistant functions both as a paraprofessional and a personal care assistant, is CPR and first aid training required?**

No. Personal care assistants are required to provide evidence of 20 hours of staff development activities related to their assignment each school year. The 20 hours of training may include training required by the school-based access program, such as CPR and first aid training.

**26. If a district has a collective bargaining agreement that states paraprofessionals are to receive only six hours of training outside of the school day, can the district mandate the 20 hours?**

Yes. Paraprofessionals are still required to document the evidence of 20 hours of staff development activities related to their assignment annually effective July 1, 2008. (See 22 Pa. Code §14.105 and 711.5.) Unless the collective bargaining agreement specifically establishes a LEA's obligation to provide all twenty hours of training, it remains the obligation of the paraprofessionals to provide evidence of the required amount of staff development activities related to their assignments. If they fail to provide evidence of this training, they are no longer qualified for an instructional paraprofessional position. The six hours of training might, of course, be applied to this requirement, so long as the training is related to the paraprofessional's assignment. The paraprofessional would, however, still need to provide evidence of fourteen additional hours. The LEA may wish to review its options to provide training during the work day in order to assure that the paraprofessionals obtain staff development activities closely tailored to their assignment.

## 11.2 Educational Interpreters

### 22 A Code §14.105(b) and 22 PA Code §711.5(b)

#### 1. Does Chapter 14 and 711 allow the demotion of an educational interpreter who has not achieved a 3.5 score to an Instructional Assistant position?

The decision to demote a staff member is left to local discretion. It is the LEA's responsibility to comply with the requirements in Chapters 14 and 711, including the qualifications for an educational interpreter. To serve as an educational interpreter, the following qualifications must be met:

- Achieve and provide evidence of a score of 3.5 on the Educational Interpreter Performance Assessment (EIPA) for the appropriate grade level to which the person has been assigned; or
- Be a qualified sign language interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act (63 P.S. §§1725.1-1725.12) and its implementing regulations; and
- Provide evidence of a minimum of 20 hours of staff development activities relating to interpreting or transliterating services annually.

### 11.3 Caseload

#### 22 PA Code §14.105 (c)

**1. If the student receives Speech and Learning Support, which caseload will the student be assigned to?**

The student would be assigned to both the special education learning support teacher's caseload and the speech-language therapist's caseload.

**2. For children who receive only speech and language services, is the therapist the case manager?**

Chapter 14 does not define case manager, however; the speech and language therapist is the professional staff for whom the caseload requirements would apply for students whose primary disability is speech and language.

**3. Does caseload pertain to OT and PT?**

No, the Chapter 14 caseload requirements do not apply to OT (Occupational Therapy) or PT (Physical Therapy).

**4. If a student has a speech only IEP and the speech/language therapist manages that child's IEP, would the student be assigned to a special education teacher's caseload or to a speech/language therapist's caseload?**

The speech and language pathologist (SLP), as a special education professional is considered the student's special education teacher and the student described above would be assigned to the SLP caseload.

**5. Are Approved Private Schools responsible for maintaining compliance with caseload requirements in Chapter 14?**

No, APSs are not covered by caseload requirements in Chapter 14.

**6. Please clarify how the caseload requirement applies to special education teachers who have a combination of itinerant/supplemental services. How is the total number of students permitted on a teacher's caseload determined?**

The caseload is calculated using the Full Time Equivalency (FTE) of 1.0 = 1 special education professional. School entities are permitted to prorate the caseload chart. On the Program Profile as part of the Special Education Plan, one teacher may be reported as .75 (supplemental) and .25 (itinerant). The permitted number of students for this example is 14 supplemental students and 10 itinerant students.



**EXAMPLES of a Prorated Caseload Chart for the Special Education Plan**

Professional	Itinerant	Supplemental	Full Time	Full Time
Staff			(LS/ES/BVIS/PS/LSS) (K-6)	(AS, SL, LSS) (7-12)
1.0 FTE	50 Students	20 Students	12 Students	8 Students
.7 FTE	35 Students	14 Students	8 Students	5 Students
.5 FTE	25 Students	10 Students	6 Students	4 Students
.3 FTE	15 Students	6 Students	3 Students	2 Students

**7. If a student with disability is in a co-taught general education class all day, how do we calculate the amount of special education service?**

Co-teaching is a service delivery option that involves one general education and one special education professional, assigned to one classroom and one group of students. The amount and type of support is based on professional special education direct services to the student during the school day and documented on the IEP. This calculation is about direct “special education service” time (“place time”) with the special education professional and not the “place time.” Do not include paraprofessional support when calculating the amount of special education services that a student is receiving.

**8. Do Itinerant, Supplemental, and Full-Time definitions refer to the amount of time that the students are receiving special education services in a general education class?**

No, itinerant, supplemental, and full-time definitions refer to the percentage of time per school day the student receives support from professional special education personnel regardless of the location in general or special education class.

- Itinerant refers to special education supports and services provided by special education personnel for 20% or less of the school day.
- Supplemental refers to special education supports and services provided by special education personnel for more than 20% but less than 80% of the school day.
- Full time refers to special education supports and services provided by special education personnel for 80% or more of the school day.

## 12 Positive Behavior Support

### 12.1 Functional Behavioral Assessment

#### 1. Is consent required to do a Functional Behavioral Assessment (FBA) for a child?

Yes. An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is or continues to be a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a Positive Behavior Support Plan (PBSP). As with other individualized evaluation procedures, and consistent with 34 CFR § 300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation and when additional data is needed for a reevaluation.

#### 2. When are FBAs required to be completed and is there a state format?

Functional Behavioral Assessments (FBAs) must be conducted when:

- The Individualized Education Program (IEP) team (1) determines that a student's behavior is interfering with his/her learning or the learning of others, and (2) requires additional information to provide appropriate educational programming.
- A behavior violates a "code of student conduct" that results in a change of placement, (removal of more than 10 consecutive or more than 15 cumulative school days) and the behavior is determined by the IEP team to be a manifestation of the student's disability.
- The school refers the student to law enforcement.

Subsequent to a referral to law enforcement, for students with disabilities who have positive behavior support plans, an updated functional behavioral assessment and positive behavior support plan is required §14.133(h) and §711.46(h).

- When a student is removed from his/her current placement as a result of a weapon possession, and/or illegal drug possession/use, and/or serious bodily injury.

There is no state mandated format. However, the *FBA Process* publication outlines the regulatory requirements for conducting an FBA. For information on FBAs, go to [www.pattan.net](http://www.pattan.net)

#### 3. Must an FBA be done only by a certified behavior analyst or can a classroom special education teacher conduct the FBA?

The FBA does not need to be conducted by a certified behavior analyst. However, each LEA must have staff trained in conducting FBA. Best practice suggests that an FBA be conducted by a group, including individuals with training and experience in research-based behavior assessment and programming strategies, with knowledge about the student, and who interact with him or her on a regular basis in all environments in which he or she is under the authority of the LEA's discipline code.

**4. If a student is referred to law enforcement by a LEA on any occasion, are an updated FBA and positive behavior support plan (PBSP) required?**

Yes. Whenever a referral to law enforcement is made by a LEA for students with disabilities who have positive behavior support plans, an updated functional behavioral assessment and positive behavior support plan are required.

**5. Does an FBA replace the manifestation determination meeting?**

No. The FBA does not replace the requirement to conduct a manifestation determination review.

**6. If a student brings drugs or weapons to school, must the LEA complete an FBA and PBSP prior to placement in an interim alternative educational placement?**

No. A LEA may unilaterally remove a student to an interim alternative educational placement for drugs, weapons, or serious bodily injury violations. The LEA must notify the parent of this decision.

**7. Is there a timeline for updating the FBA after a referral to law enforcement?**

No. However, the LEA should update the functional behavioral assessment and positive behavior support plan in a timely manner.

**8. What constitutes referral to law enforcement?**

Referral to law enforcement includes any time the school calls the police to report the activity of an eligible student. It is not necessary that the referral result in subsequent charges and/or arrest.

**9. If a student brings drugs or a weapon to school and is incarcerated or inflicts serious bodily injury, must an FBA and a positive behavior support plan be completed when the student returns, or while the student is incarcerated or in an interim alternative educational setting (IAES)?**

Chapters 14 and 711 regulations do not specify a timeline in this circumstance. However, it would seem reasonable and most helpful to complete the FBA before the student returns to school, which takes into consideration the student's functioning during the incarceration or placement in an IAES. A plan revision may be necessary when the student returns to the school setting, and if additional data is available supporting a modification.

**10. If a behavior intervention plan does not exist and the LEA refers a child to law enforcement, must the LEA complete a functional behavioral assessment (FBA)?**

If the behavior leading to the law enforcement referral is a manifestation of the child's disability and a behavior intervention plan does not exist, an FBA must be conducted, and the behavior intervention plan must be based on the FBA. (See 34 CFR §300.530(f)).

### **11. What if the parents refuse to provide consent for an FBA?**

If the FBA is part of an initial evaluation, consent is required. The LEA may, but is not required to, pursue consent through mediation and due process. If the FBA is part of a reevaluation and consent is not provided for an FBA, then the LEA may proceed with the FBA and reevaluate after reasonable attempts have been made to secure written consent. If the parent returns the *Prior Written Notice for Reevaluation and Request for Consent Form* and refuses to provide consent, the LEA may proceed with mediation or due process.

## 12.2 Restraints

### 22 PA Code §14.133 and 22 PA Code §711.46

#### **1. Do all school staff require training in positive behavior supports?**

No. An LEA's primary responsibility is to ensure that positive behavior support programs are in accordance with Chapters 14 and 711. This includes the training of personnel for the use of specific procedures and methods and techniques, having a written policy and procedures related to the use of positive behavior support techniques, and obtaining parental consent prior to the use of restraints or intrusive procedures. Staff should receive such training as is necessary to fulfill the LEA's responsibility to provide positive behavior support programs.

#### **2. What is the definition of a restraint?**

Chapters 14 and 711 define restraint as: the application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body. The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him; guiding a student or eligible young child to an appropriate activity; or holding a student's or eligible young child's hand to safely escort her from one area to another. Nor does the term include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the IEP. Additionally, devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints that are excluded from the definition of restraint. 22 Pa. Code §14.133(b) and 22 Pa. Code §711(b)

#### **3. Does the use of restraints to control episodic aggressive or self-injurious behavior trigger/necessitate notification of parent and a meeting of the IEP team?**

Yes. The use of restraints to control the aggressive behavior of an individual student or eligible young child shall cause the LEA to notify the parent of the use of restraint and a meeting of the IEP team within 10 school days of the aggressive behavior requiring the use of restraints, unless the parent, after written notice, agrees in writing to waive the meeting. Even when a restraint is appropriately included into a child's IEP, each use of restraint requires a meeting of the IEP team unless the parent, after receiving written notice, agrees in writing to waive the meeting.

#### **4. Does PDE recommend a model for restraint?**

No. The use of restraints should be extremely limited and will involve a highly individualized determination by the student's IEP team. Prone restraints are strictly prohibited under 22 Pa. Code §14.133(c)(3) and 22 Pa. Code §711.46(c)(3).

The Department of Education does not endorse any specific system or models of restraints. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a

measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with §14.133(c)(2). 22 Pa. Code §14.133(a) and 22 Pa. Code §711.46(a).

Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students, or to employees, and only when less restrictive measures and techniques have proven to be or are less effective. 22 Pa. Code §14.133 (c) and 22 Pa. Code §711.46(c).

The use of restraints to control the aggressive behavior of an individual student or eligible young child shall cause the school entity to notify the parent of the use of restraint and shall cause a meeting of the IEP team within 10 school days of the inappropriate behavior causing the use of restraints, unless the parent, after written notice, agrees in writing to waive the meeting. At this meeting, the IEP team shall consider whether the student or eligible young child needs a functional behavioral assessment, reevaluation, a new or revised positive behavior support plan, or a change of placement to address the inappropriate behavior. 22 Pa. Code §14.133 (c)(1) and 22 Pa. Code §711.46(c)(1).

The use of restraints may only be included in a student's or eligible young child's IEP when the following conditions apply:

- The restraint is utilized with specific component elements of positive behavior support.
- The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.
- Staff are authorized to use the procedure and have received the staff training required.
- There is a plan in place for eliminating the use of restraint through the application of positive behavior support. 22 Pa. Code §14.133(c) (2) and 22 Pa. Code §711.46(c)(2).

##### **5. "Excluded from the restraint definition are...techniques prescribed by a qualified medical professional." What is the definition of a "qualified medical professional?"**

While "qualified medical professional" is not defined in either Chapters 14 or 711 or IDEA 2004, at a minimum the definition includes a professional who is certified or licensed in the medical field.

The determination of mechanical restraints to control involuntary movement or lack of muscular control of students when due to organic causes and conditions is determined by a licensed physician, licensed optometrist, licensed podiatrist, licensed certified registered nurse practitioner, or licensed physician assistant. – Occupational Therapy Practice Act- Act of June 15, 1982, P.L. 502, No.140 Section 14(a).

Implementation of direct occupational therapy or physical therapy to an individual for a specific medical condition shall be based on a referral from one of these individuals.

##### **6. If a restraint is used and the IEP team must meet within 10 school days, what happens if the parent does not respond to the invitation?**

The team must meet within 10 school days whether or not the parent responds to the invitation or attends the meeting. The LEA needs to follow the same procedures as for all IEP team meetings. This includes keeping a record of attempts to arrange a mutually agreed on time and place for the meeting, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. If reasonable attempts to secure parent participation have been documented, the IEP team meeting should take place without the

parent in attendance and the parent should be informed of the IEP team's decision making and given an opportunity to provide input.

**7. Do requirements in Chapters 14 and 711 regarding the use of restraints apply to Licensed Private Academic Schools (LPAs) and Private Residential Rehabilitation Institutions (PRRIs)?**

Yes. Chapters 14 and 711 requirements apply if the student is placed in that facility by a public agency. If a parent has unilaterally placed a child in a LPAS or PRRI, Chapters 14 and 711 requirements do not apply.

**8. Is the LEA responsible for creating its own tracking system for use of restraints?**

Yes. 22 Pa. Code §14.133(c)(5) and 22 Pa. Code §711.46(c)(5) require that LEAs-maintain and report data on the use of restraints as prescribed by the Secretary. The report must be reviewed during cyclical compliance monitoring conducted by the Department.

**9. Does the IEP team have to reconvene after every restraint?**

Yes, if the "restraint" meets the definition in 22 Pa. Code §14.133(b) and 22 Pa. Code §711.46(b) and the parent does not waive the required IEP team meeting (22 Pa. Code §14.133(c)(1) and 22 Pa. Code §711.46(c)(1)), then an IEP team meeting must be held for each occurrence of a restraint.

**10. Does the parent need to be notified and must an IEP meeting be held if restraints are used in school buildings that are residential schools?**

Yes. All eligible students with IEPs who are placed by a LEA in a residential facility are protected by the requirements of Chapters 14 and 711 regarding restraints.

**11. Is suspension considered an aversive technique?**

Aversive techniques are defined as "deliberate activities designed to establish a negative association with a specific behavior." A pattern of suspensions that excludes a student from school for more than 15 cumulative days in a school year is considered an aversive technique. 22 Pa. Code §14.133(b) and 22 Pa. Code §711.46(b).

**12. Is there a minimum amount of time that a restraint is conducted that needs to be reported to the Pennsylvania Department of Education (PDE) and how do Local Education Agencies (LEAs) report an incident of restraint?**

Any time a restraint is used on a child eligible under the Individuals with Disabilities Education Act (IDEA), the incident must be reported to the Pennsylvania Department of Education (PDE).

22 Pa. Code § 14.133(b) and 22 Pa. Code §711.46(b) define restraint as: the application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body. Restraint does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate

activity, or holding a student's or eligible young child's hand to safely escort her from one area to another.

LEAs shall maintain and report data on the use of restraints regardless of the amount of time of the restraint, as prescribed by the Secretary of Education. The report shall be reviewed during cyclical compliance monitoring conducted by PDE.

The website for reporting use of restraints is the Restraint Information System of Collection (RISC) and can be found at: [https://apps.lead erservices.com/\\_risc/index.aspx](https://apps.lead erservices.com/_risc/index.aspx).

**13. If a student is determined eligible for gifted educational services under Chapter 16, do LEAs have to report the use of restraints for the gifted only student?**

No, the restraint reporting requirement applies to students with disabilities as defined in 22 Pa. Code Chapter 14 and children with disabilities as defined in 22 Pa. Code 711.

**14. If a student is attending an Approved Private School (APS), Intermediate Unit (IU) program, partial hospitalization program or residential treatment facility, which LEA (home or host district/charter school) reports the restraint?**

If the home district or charter school placed the student in a program or facility, then the home district or charter school is responsible for reporting the use of restraints. If an agency placed the student in a residential facility outside of the home district or charter school, then the district where the facility is located (the host district) has the responsibility to report the use of restraints. The host district must specify the placement setting where the restraint occurred.

**15. If a general education student or thought-to-be-eligible student is restrained, must the restraint be reported?**

No. The restraint reporting requirement contained in Chapters 14 and 711 applies to students with disabilities as defined in Chapter 14 and children with disabilities as defined in Chapter 711. While reporting requirements apply only to eligible children, LEAs should be aware that thought-to-be-eligible children are not without rights if an LEA has reason to believe that a child is an eligible child and the LEA uses restraints to physically control the child.

**16. Does the RISC system apply to 3-5-year-old programs?**

No. A different reporting system is used for this group of children and the Bureau of Early Intervention Services (BEIS) will notify school entities that provide services to eligible young children regarding the use of restraints and reporting requirements.

**17. Do IUs or APSs enter data into the RISC system or do IUs and APSs report the use of restraints to the appropriate LEA?**

IUs and APSs report the use of any restraints to the appropriate LEA, which must maintain and report data on the use of restraints.



**18. Are school staff members required to be trained annually in the use of physical restraints?**

LEAs have the primary responsibility for ensuring that positive behavior support programs are in accordance with Chapters 14 and 711, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy and procedures on the use of positive behavior support techniques and obtaining parental consent prior to the use of restraints or intrusive procedures. Training should be sufficient for the LEAs to meet this obligation, but there is no requirement that training take place annually.

**19. If a student is in an educational program operated by an agency and a restraint is used, is the use of the restraint reported to the LEA?**

Yes. The agency shall report to the appropriate LEA (the LEA on whose behalf the agency is providing the services), which shall maintain and report data on the use of restraints when a student is in the educational program side operated by an agency.

**20. Do LEAs report the total number of minutes of each restraint in the RISC system?**

Yes. The RISC system provides a system that reports the minutes and seconds of each restraint that is applied.

**21. If a restraint is required, LEAs may have two staff members on hand during the restraint (one conducting the restraint and one writing a real time narrative of the event). Do LEAs report “1” or “2” in the field for number of staff conducting the restraint?**

The LEA would report the staff member(s) who is/are physically conducting the restraint.

**22. Who should the LEA list as the “Contact Person” in the RISC system?**

The LEA can designate up to two “contact persons” within the RISC program. One contact person should be an individual that can answer any questions regarding the use of restraints, implementation of the IEP or positive behavior support plan. A second “contact person” may also be assigned to input the information of the restraint into the RISC Program.

**23. Do LEAs have to give a parent written notification when a restraint is used?**

Sections 14.133(c)(1) and Section 711.46(c)(1) require LEAs to notify the parent of the use of restraint and conduct a meeting of the IEP team within 10 school days of the inappropriate behavior causing the use of restraints, unless the parent, after written notice, agrees in writing to waive the meeting. Methods of communication such as telephone calls, voicemail or e-mail are acceptable means of providing the parent with notification related to the use of the restraint, but must be documented.

Notification of the IEP team meeting, however, must be written and the IEP team meeting must occur within 10 school days of the behavior causing the use of restraints.

**24. If the parent waives the IEP team meeting, must the IEP team meet to review the IEP and Positive Behavioral Support (PBS)?**

No. If the parent, after written notice, agrees in writing to waive the meeting, then an IEP team meeting is not required.

**25. If an IEP team meeting is scheduled and the parent does not attend, is this still considered an IEP team meeting?**

Yes. This would be considered an IEP team meeting as long as the parent was provided written notice of the IEP team meeting, but did not attend.

**26. Can an IEP team meeting be held for the use of multiple restraints in a short period of time?**

As long as the requirements of 22 Pa. Code §14.133(c)(1) and 22 Pa. Code §711.46(c)(1) are met relating to written notice, and as long as parents are given reasonable notice of the scope of the IEP team meeting, all incidents of restraint that occurred within a short period of time can be addressed at the same meeting.

**27. Is there a minimum or maximum number of waivers that can be signed before an IEP team meeting must be convened?**

No. If, after receiving written notice, the parent agrees in writing to waive each IEP team meeting, there is no maximum amount of times a parent can waive the IEP team meeting.

**28. Do Private Schools that provide contracted services on behalf of LEAs report directly into the RISC system, or do they report to the LEA?**

The private school should report to the appropriate LEA (home district or charter school or to the host district if the student is publicly placed in a residential facility outside the home district or charter school) and the LEA will enter the data into the RISC system.

**29. The RISC system addresses injuries “during the restraint.” If a staff injury occurred prior to the use of a restraint, does this injury get reported?**

No. The LEA should enter information related to an injury to staff suffered during the actual restraint.

**30. Do injuries resulting from restraints in APSs get reported to LEAs?**

Yes. Injury to students or staff is a required field in the RISC system; therefore, APSs should immediately report the use of any restraint and injury resulting from the restraint to the appropriate LEA, which must report the incident and injury in the RISC system.

**31. Is the RISC system applicable to Private Residential Rehabilitation Institutions (PRRIs), Residential Treatment Facilities (RTFs) or Partial Hospitalization Programs (PHPs)?**

Yes. Private Residential Rehabilitation Institutions (PRRIs), Residential Treatment Facilities (RTFs) or Partial Hospitalization Programs (PHPs) are to report the use of any restraints and injuries from a restraint that occurs to the appropriate LEA, which in turn must report the incident and injury into the RISC system.

**32. How serious must the student's injury be before LEAs are required to report the injury in the RISC system?**

All injuries – no matter how serious – must be reported in the RISC system. If any injury to a student has occurred, LEAs should choose the “Yes” option in response to the question “did an injury to student occur?” and should provide a brief description of the event and the injury. Additionally, if there is a serious injury (A serious medical injury is considered any injury that requires medical attention outside/beyond that which is available at the school where the incident occurred), email notifications are to be sent to kfocht@pa.gov with a carbon copy to amdeluca@pa.gov within **two school days** of the occurrence. This information will be communicated to the Director of the BSE who will notify Departmental Staff based on the severity of the injury. Because the purpose of the reporting requirement is to assist the Department in analyzing trends and/or issues related to the use of restraints, the description of the incident and injury should be detailed enough to be helpful to the Department’s analysis.

**33. Which LEA reports restraints for students who are in RTFs or an APS, the host district or the LEA of residence?**

For students who are placed by their home districts or charter school, the district of residence or charter school should report the restraint. For students that are publicly placed in an RTF, the host district of the facility should report the restraint and specify in the building attended section of the report that the restraint occurred in a placement setting.

**34. If a child is restrained, becomes calm and is restrained again, is this counted as one or two restraints?**

This is counted and reported as two separate restraints. Regardless of the amount of time that elapses between restraints, they are considered separate incidents of using a restraint.

**35. If a child is restrained by school security or school police, do these restraints have to be reported?**

Yes. If the school security or school police are employed by the local education agency or otherwise assigned to the school, whether they are paid directly from district funds or indirectly through a grant, the use of restraints by school police must be reported on RISC.

**36. If a behavior intervention plan does not exist and the LEA refers a child to law enforcement, must the LEA complete a functional behavioral assessment (FBA)?**

If the behavior leading to the law enforcement referral is a manifestation of the child's disability and a behavior intervention plan does not exist, an FBA must be conducted, and the behavior intervention plan must be based on the FBA. (See 34 CFR §300.530(f)).

**37. What if the parents refuse to provide consent for an FBA?**

If the FBA is part of an initial evaluation, consent is required. The LEA may, but is not required to, pursue consent through mediation and due process. If the FBA is part of a reevaluation and consent is not provided for an FBA, then the LEA may proceed with the FBA and reevaluate after reasonable attempts have been made to secure written consent. If the parent returns the *Prior Written Notice for Reevaluation and Request for Consent Form* and refuses to provide consent, the LEA may proceed with mediation or due process.

**38. If a child is in a residential treatment facility and the Department of Human Services (DHS) staff conducts the restraint in a school setting, who is responsible for reporting the restraint?**

The host district (LEA) reports the use of restraints during the educational program in the residential facility.

**39. If restraints occur in a licensed private academic school, who is responsible for reporting the restraint?**

It depends upon who placed the child in the licensed private academic school.

- If the district of residence placed the student in the licensed private academic school, the district of residence reports the restraint.
- If this is a 1306 placement, the host district, the district in which the facility is located, reports the restraint.
- If the student is unilaterally placed by the parent, the restraint is not reported. 22 Pa Code Chapter 14 Special Education regulations do not apply to licensed private academic schools when the placement is a unilateral parental placement.

**40. Who is responsible for reporting restraints that occur in the youth detention centers?**

The youth detention center reports use of restraints to the LEA in which the detention facility is located. The LEA in which the facility is located reports the restraint in RISC.

**41. Can a child who is placed in a partial hospitalization program be restrained?**

Yes. The partial hospitalization program is licensed through the DPW and DPW's law and/or policy regarding strategies and practices controls. On December 19, 2009, DPW issued a bulletin entitled "Strategies and Practices to eliminate the Use of Unnecessary Restraints", which is effective June 21, 2010. The bulletin states: "...Restraint should be utilized only as an emergency measure of last resort in

order to ensure the safety of all children and staff..." (Also, refer to Question 23 in the Questions and Answers on the Restraint Reporting Requirements and System dated June 2009.)

**42. If a student is restrained in the educational setting by a mental health employee, does the LEA have to report the restraint?**

Yes. The reporting of the restraint is not based on employment, but the setting in which it occurs.

## **13 Procedural Safeguards**

### **13.1 Resolution**

#### **22 PA Code §14.163**

**1. Is the term "Resolution Session" a step before an impartial due process hearing and expedited due process?**

Yes. The resolution session is a mandatory process that must occur within 15 calendar days of a LEA's receipt of parent's due process complaint and within seven calendar days of a LEA's receipt of a parent's expedited due process complaint notice. Only in prescribed circumstances can this meeting be waived by parents and LEAs. 34 CFR §300.510

## 14 Screening

### 22 PA Code §14.122 and 22 PA Code §711.23, 34 CFR §300.302

#### 1. Is screening permitted prior to conducting an initial evaluation?

Not only is screening permitted, prior to conducting an initial evaluation, Chapters 14 and 711 require each LEA to establish a system of screening to identify and provide initial screening for students prior to referral for a special education evaluation. A parent may elect to bypass the screening process and proceed directly to an initial evaluation. At that point, the LEA would agree to the initial evaluation and seek prior written parental consent, or deny the parent's request, issue a *Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)*, and provide reasons for the LEA's refusal to conduct an initial evaluation and continue the screening process.

#### 2. What constitutes a screening and when does it become an evaluation?

State and federal regulations address screening requirements:

14.122. Screening (a) Each school district shall establish a system of screening, which may include early intervening services, to accomplish the following:

- Identify and provide initial screening for students prior to referral for a special education evaluation.
- Identify students who may need special education services and programs.

711.23 Screening (a) Each charter school and cyber charter school shall establish a system of screening which may include prereferral intervention services to accomplish the following:

- Identification and provision of initial screening for students prior to referral for a special education evaluation.
- Provision of peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.
- Identification of students who may need special education services and programs.

In addition, IDEA at 34 CFR §300.302 Screening for instructional purposes is not evaluation states: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

## **15 Special Education Plans**

### **15.1 Special Education Plans**

#### **22 PA Code §14.104**

##### **1. Are revisions to the special education plans required?**

Yes, each school entity will be required to amend its special education plan using the Special Education Plan Revision Notice (SEPRN).

##### **2. If a district posts parent training activities that are provided by the intermediate unit on its website, does this satisfy the requirement or do districts need to provide their own training?**

The training session offered through the IU may meet part of the school entity's responsibility; however, it must also plan and offer training sessions for parents within the local school entity. The Bureau of Special Education recommends the school entity develop a process to include, but not be limited to, such procedures as seeking parent input to increase parent attendance at training sessions and providing an opportunity for parent and staff to receive training together.

##### **3. Is there a list of school districts that are approved to use the response to instruction and intervention process to qualify students for special education?**

To find a list of districts and schools within the districts that have received state approval to use response to intervention to identify specific learning disabilities, go to [www.pattan.net](http://www.pattan.net). Once on the website, click on "Educational Initiatives," then click on "Multi-Tiered Systems of Support (MTSS-RtI)" and then "Using RtI for SLD Determination." Within the text, click on the statement "a list of RtI/SLD approved schools."

##### **4. Can school districts report using RtI and the Discrepancy model when preparing their special education plan?**

IDEA 2006 and PA Chapter 14 regulations provide two options for the determination of a specific learning disability (SLD). Schools may use the ability-achievement discrepancy model and/or Response to Intervention (RtI). In order to use RtI for SLD determination, schools must seek approval through the Bureau of Special Education's established RtI/SLD Approval/Renewal Process. Schools that would like to use RtI methodology as part of comprehensive SLD eligibility determination must demonstrate that they have technically adequate models and/or implementation fidelity. The RtI/SLD approval/renewal process and application have recently been revised and can be accessed on the PaTTAN website for review. Upon approval, school districts would reflect the use of the model in their special education plan.

##### **5. Can a teacher be listed as LS and ES on the special education plan?**

Yes. School districts and intermediate units may prorate a professional special education staff on the special education plan. For example, a special education teacher may be 50% itinerant learning support and 50% supplemental emotional support.