Virgin Islands Department of Education
State Office of Special Education Rules

Virgin Islands Department of Education
State Office of Special Education
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Introduction

The Government of the U.S. Virgin Islands, through the Department of Education, State Office of Special Education (SOSE), adopts the Special Education Rules in compliance with the Individuals with Disabilities Education Act (IDEA), as amended. Compliance with the IDEA, the federal regulations implementing the IDEA, and the Special Education Rules is required for all public and private agencies providing publicly funded special education services and supports to eligible children with disabilities across the Territory of the U.S. Virgin Islands.

SOSE must ensure compliance with all special education laws and rules in order to receive federal funding. Each Local Education Agency (LEA) must develop procedures to ensure compliant practices on behalf of children with disabilities. Use these Special Education Rules to understand the requirements of IDEA and implement compliant practices and procedures in the school districts of the U.S. Virgin Islands.

SECTION 1. AUTHORITY AND PURPOSE

(a) **Authority.** The Virgin Islands Department of Education, State Office of Special Education (SOSE) shall amend and revise the rules and regulations for implementation of IDEA, federal regulations, and Territory laws as needed.

(1) Amendments to the Special Education Rules are authorized by the Virgin Islands Code, 17 V.I.C. § 292.

(2) Amendments to the Special Education Rules are recognized by the 2007 Nadine Jones Consent Decree, paragraph 20. Federal and/or U.S. Virgin Islands law, rule or regulation shall take precedent in the event of any inconsistent provision in the Consent Decree.

(b) **Purpose.** The purposes of the IDEA, federal regulations, and Special Education Rules are:

(1) To ensure all eligible children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(2) To ensure that the rights of children with disabilities and their parents are protected; and

(3) To assist LEAs in meeting the obligation to provide all eligible students with disabilities a free appropriate public education.

(c) **Interpretation.** U.S. Virgin Islands Territory enacted laws and rules must conform to the purpose and substance of the IDEA. As a recipient of federal funds, SOSE must ensure compliance with all requirements of the IDEA and federal regulations through adoption of rules, regulations, and/or policies. U.S. Virgin Islands Territory laws and rules may offer additional protections beyond those required by the IDEA as long as the Territory specific laws and rules do not conflict with the IDEA or federal regulations or diminish the rights of children with disabilities or their parent.

References: 34 C.F.R. §§ 300.1, 300.199; 17 V.I.C. §§ 285 through 287 and 292.

SECTION 2. SCOPE

(a) All provisions of the IDEA (20 U.S.C. § 1400 *et seq.)* and all federal regulations implementing the IDEA, including any subsequent amendments or revisions of law, regulations, and/or Territory rules, apply to each political subdivision or LEA in the U.S. Virgin Islands, regardless of whether the political subdivision or LEA receives any federal IDEA funds. The IDEA requires SOSE to ensure the requirements of the IDEA and the U.S. Virgin Islands are met in all education programs administered by the Territory, including any LEA or other entity providing services to children with disabilities.

(b) SOSE adopts all requirements in the IDEA and implementing federal regulations. The requirements of the IDEA are binding on each LEA or any entity that has direct or delegated authority to provide special education and related services to children with disabilities. U.S. Virgin Islands rules that offer additional protections to children with disabilities are not considered to be a conflict with the requirements of IDEA. In the event of any conflict or inconsistency that is not considered an additional protection, the federal regulations implementing the IDEA shall control.

(c) SOSE shall ensure that federal special education funds are appropriated to and spent by LEAs or public agencies in accordance with these rules, the IDEA, and federal regulations.

References: 34 C.F.R. §§ 300.200 through 300.230; 17 V.I.C. § 285.

SECTION 3. STATEMENT OF INTENT

(a) **Full educational opportunity.** All eligible children with disabilities ages 3 through 21 years residing in the Territory of the U.S. Virgin Islands, including children with disabilities who have been suspended or expelled from school, and who have not graduated from high school with a regular high school diploma are entitled to receive FAPE that includes special education, related services, and educational supports in conformity with an Individualized Education Program (IEP) developed using the procedures set forth in the IDEA, federal regulations, and Special Education Rules to meet a child's unique educational needs.

(b) **Least restrictive environment.** To the maximum extent appropriate, eligible children with disabilities shall be educated with nondisabled children in regular education settings using the same curriculum as their nondisabled peers.

References: 34 C.F.R. § 300.109; 17 V.I.C. § 283.

SECTION 4. GENERAL SUPERVISION

(a) Pursuant to its general supervisory authority and responsibility, SOSE shall—

(1) Ensure that the requirements of the IDEA and federal regulations are met; and

(2) Ensure that each LEA implements procedures that meet the standards of the U.S. Virgin Islands consistent with any laws and formally adopted Territorial policy or procedure, which shall be incorporated herein by reference and enforceable pursuant to these rules.

(b) The LEA must provide SOSE with information necessary to enable SOSE to carry out its general supervisory duties under the IDEA as required by 34 C.F.R. § 300.211.

References: 34 C.F.R. §§ 300.149, 300.211.

SECTION 5. DEFINITIONS

(a) ***Act*** means Part B of the Individuals with Disabilities Act (IDEA), as amended. The federal regulations at 34 C.F.R. Part 300 are enacted to ensure compliance with the IDEA.

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

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

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

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

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

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

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

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

(d) ***Child(ren)*** as used in these Rules means an individual from the age of 3 years through 21 years.

(e) ***Child with a disability*** means—

(1) A child evaluated in accordance with 17 V.I.C. § 287 and 34 C.F.R. §§ 300.304 through 300.311 as having one of the disabilities defined below, and who, by reason thereof, needs special education and related services. The disability categories are defined as follows:

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

(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an *emotional disturbance,* as defined in paragraph (e)(1)(v) of this section.

(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this section are otherwise satisfied.

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

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

(iv) *Developmental delay* (DD) means a child with a disability for children aged three through seven—

(A) Who is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas—

- Physical development,
- Cognitive development,
- Social or emotional development, or
- Adaptive development; and

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

(C) Limitation. Prior to exceeding the age of seven years, the LEA shall either comprehensively evaluate the child to establish eligibility as a child with a disability in a different category or exit the child from special education.

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

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

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

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

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

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

(F) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

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

(vii) *Intellectual disability* (ID) means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

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

(ix) *Orthopedic impairment* (OI) means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by diseases such as poliomyelitis, bone tuberculosis, and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

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

(xi) *Specific learning disability* (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(xii) *Speech or language impairment* (SLI) means a communication disorder, such as stuttering, impaired articulation, language impairment,

or a voice impairment, that adversely affects a child's educational performance.

(xiii) *Traumatic brain injury* (TBI) means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The terms “traumatic brain injury” applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(xiv) *Visual impairment, including blindness* (VI) means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(2) If it is determined, through an appropriate evaluation under 34 C.F.R. §§ 300.304 through 300.311,

(i) That a child has one of the disabilities identified in paragraph (1) of this section but only needs a related service and not special education, the child is not a child with a disability under this chapter.

(ii) If, consistent with 34 C.F.R § 300.309(a)(2), the related service required by the child is considered special education rather than a related service under Territorial standards consistent with the definition of *special education* in paragraph (n) below, the child would be determined to be a child with a disability under paragraph (1) of this section.

(f) ***Consent*** means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

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

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

(i) *Revocation of consent.*

(A) If a parent revokes consent in writing for their child’s receipt of special education services, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(B) If the parent revokes consent in writing for their child's receipt of special education services, the LEA 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.

(C) The LEA must issue prior written notice before ceasing special education and related services pursuant to the parent's revocation.

(D) After revocation, any subsequent evaluation to determine eligibility and educational need shall be treated as an initial evaluation.

(g) ***Day*** means a calendar day unless otherwise indicated consistent with 34 C.F.R. § 300.11. *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes. The term *school day* has the same meaning for all children in school, including children with and without disabilities.

(h) ***Free appropriate public education (FAPE)*** means special education and related services designed to meet the unique educational needs of an eligible child that—

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

(2) Meet the standards of the U.S. Virgin Islands and meet the requirements of the federal regulations implementing the IDEA;

(3) Include an appropriate preschool, elementary school, or secondary school education in the U.S. Virgin Islands; and

(4) Are provided in conformity with and individualized education program (IEP) that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324.

(i) ***Least Restrictive Environment (LRE)*** means the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of 34 C.F.R. §§ 300.114 through 300.117, including—

(1) Determined at least annually;

(2) Based on the child's educational needs and the contents of the IEP; and

(3) Provided as close as possible to the child's home.

(j) ***Local education agency (LEA)*** means each LEA in the Territory of the U.S. Virgin Islands. Each school district is responsible for administrative control of public school programs within its boundaries.

(k) ***Parent*** means a biological or adoptive parent, a foster parent, unless otherwise prohibited by valid court order, a guardian generally authorized to act as the child's parent or otherwise authorized to make educational decisions for the child, an individual acting in the place of a biological or adoptive parent with whom the children resides, an individual who is legally responsible for the child's welfare, or a surrogate parent duly appointed under the regulations of the IDEA or Territory rules.

(1) The biological or adoptive parent, when attempting to act as the parent if more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(2) If any judicial decree or order identifies a specific person or persons to act as the parent of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the parent for the purpose of the IDEA and these rules.

(l) ***Prior written notice (PWN)*** means written notice that meets the requirements of 34 C.F.R. § 300.503 must be given to the parents of a child with a disability a reasonable time before the LEA—

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

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

(m) ***Related services*** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. Specific related services are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

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

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

(iv) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(v) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Behavioral services* means behavioral services provided by a Board Certified Behavioral Analyst, or other qualified personnel, with focus on daily habits, behaviors, and actions that can be negatively impacting a student in the educational environment. Behavioral services includes—

(i) Identification of children with maladaptive behaviors;

(ii) Determination of the range, nature, and degree of maladaptive behaviors;

(iii) Provision of habilitative activity such as behavioral support, behavior screening, and/or evaluation (Functional Behavior Analysis (FBA)) and/or Behavior Intervention Plans (BIP);

(iv) Creation and administration of programs to prevent, through early intervention, initial or further impairment; and

(v) Counseling and guidance of children, parents, and personnel regarding behavioral intervention.

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

(4) *Early intervention* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related condition which results in the child's need for special education and related services.

(6) *Occupational therapy* includes—

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

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

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

(7) *Parent counseling and training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(8) *Physical therapy* means services provided by a qualified physical therapist.

(9) *Psychological services* include—

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

(ii) Interpreting assessment results;

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

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

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

(10) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

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

(iv) Leisure education.

(11) *School health services* means services provided by a qualified school nurse or other qualified person.

(12) *Social work services in schools* means—

(i) Preparing a social or developmental history on a disabled child;

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

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive his or her educational program.

(13) *Speech Pathology* includes—

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

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

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(14) *Transportation* includes—

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

(ii) Travel in and around school buildings; and

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

(15) *Vision services* means vision services provided by a Teacher of the Visually Impaired, or other qualified personnel, for persons identified with uncorrectable, reduced vision. Uncorrectable means total blindness or vision that is not further improved by glasses or contact lenses. It does not mean impaired vision when not wearing glasses with corrective lenses. Vision services includes—

(i) Identification of children with visual impairment;

(ii) Determination of the range, nature, and degree of visual impairment, including referral for medical or other professional attention for the habilitation of vision;

(iii) Provision of habilitative activity such as vision support or therapy, vision screening and/or evaluation;

(iv) Creation and administration of programs to support vision impairment; and

(v) Training and guidance of children, parents, and personnel regarding visual impairment.

(n) *Special education* means—

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability, in a continuum of placement options, including, without limitation: classroom instruction, itinerant instruction, resource

room, partial inclusion, full inclusion, separate class setting, separate school, home instruction, or instruction in a hospital or other institutional setting.

(i) *Specially designed instruction* means adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction for the following purposes:

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

(B) To ensure access of any child with a disability to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the LEA that apply to all children;

(2) Speech pathology services specially designed to meet the unique needs of the child; and

(3) Career and technical education specially designed to meet the unique needs of the child.

(o) *Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes or other education related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

References: 34 C.F.R. §§ 300.5, 300.6, 300.8, 300.17, 300.30, 300.34, 300.39; 17 V.I.C. § 282.

SECTION 6. CHILD FIND

(a) **Policies and procedures.** Each LEA shall adopt and implement policies and procedures to identify, locate, and evaluate all children age birth through 21 residing within its jurisdiction who are suspected of being a child with an IDEA disability and in need of special education, regardless of the severity of the disability, including—

(1) Children attending private and/or parochial schools within the LEA's boundaries, regardless of where the child resides;

(2) Children who are wards of the Territory of the U.S. Virgin Islands;

(3) Children who are highly mobile, including migrant and homeless children;

(4) Children who are suspected of having an IDEA disability and the need for special education, even though they are advancing from grade to grade;

(5) Children who are participating in Part C programs for infants and toddlers with disabilities under the IDEA. For these children, the LEA must—

(i) Facilitate a smooth and effective transition to preschool programs;

(ii) Participate in transition planning conference(s) arranged by the Part C provider; and

(iii) Determine eligibility and develop an IEP by the child's third birthday.

(6) Children who are parentally placed in private schools.

(b) **Public reporting.** Each LEA, at least annually, shall provide information to the public concerning the availability of special education services for children with disabilities, including child find activities conducted by the LEA.

(c) **Request for initial evaluation.**

(1) Any LEA may refer a child for a comprehensive evaluation if one of the following conditions is met:

(i) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child; or

(ii) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:

(A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.

(B) The child's educational achievement, including academic, behavioral, and functional skill achievement, was repeatedly assessed at reasonable intervals that accurately reflected assessment of the student's progress during instruction.

(C) The assessment results were provided to the child's parent.

(D) The assessment results indicate that an evaluation is appropriate.

(2) The parent of a child may request an evaluation. If the LEA agrees that an evaluation of the child is appropriate based on its suspicion that the child has an IDEA disability and the need for special education, a group of qualified professionals from the LEA, including the parent, must plan and propose a comprehensive evaluation without delay.

References: 34 C.F.R. §§ 300.111, 300.124, 300.131, 300.301; 17 V.I.C. §287.

SECTION 7. EVALUATION AND REEVALUATION

(a) **Initial evaluation.** Each LEA shall ensure that a comprehensive individual evaluation is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311 before the initial provision of special education and related services to a child with a disability.

(1) *Purpose.* Each evaluation shall include procedures consistent with paragraph (c) below to determine the following:

(i) Whether the child is a child with a disability;

(ii) The educational needs of the child; and

(iii) Contents of the child's IEP, if eligible.

(2) *Timeframe.* The LEA shall ensure that the comprehensive evaluation is conducted and completed within 45 days of receiving parental consent for the initial evaluation.

(3) *Exception.* The timeframe above does not apply to an LEA if—

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) The child enrolls in a school of another LEA after the evaluation timeframe has begun, but prior to a determination by the child's previous LEA as to whether the child is a child with a disability under IDEA.

(4) *Limitations.*

(i) The evaluation shall be completed before the initial provision of special education and related services to the child; and

(ii) The consent for evaluation shall not be considered as consent for the initial provision of special education and related services.

(5) *Screening.* 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.

(b) **Reevaluation.** Each LEA shall ensure that a comprehensive reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311.

(1) *Purpose.* The LEA shall ensure that a comprehensive reevaluation is conducted if—

(i) The LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) If the child's parent or teacher requests a reevaluation.

(2) *Limitation.* A reevaluation conducted under paragraph (b) above—

(i) May occur not more than once a year, unless the parent and the LEA agree otherwise; and

(ii) Must occur at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary.

(c) **Evaluation team procedures.** The LEA shall ensure that all evaluations are conducted in accordance with the following procedures, including—

(1) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each LEA shall ensure that a group of qualified professionals, including the parent, or members of an IEP team for the child, as appropriate, (hereinafter "evaluation team") comply with the following requirements:

(i) The evaluation team shall review existing evaluation data on the child, if part of the child's educational record, including the following information:

(A) Evaluations and information provided by the parent of the child;

(B) Current classroom-based, local, and state assessments and classroom-based observations; and

(C) Observations by teachers and related services providers.

(ii) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following:

(A) Whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8; and

(B) The educational needs of the child; or

(C) In the case of a reevaluation, whether the child continues to have such a disability; and

(D) The educational needs of the child.

(E) The present levels of academic achievement, educational needs, and related developmental needs of the child;

(F) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(G) Whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(2) The evaluation team described in this section may conduct its review without a meeting.

(3) Additional data needed. If the evaluation team determines that additional data and/or assessments are necessary in order to make the determinations required in this section, the LEA must provide notice to the parent in accordance with 34 C.F.R. § 300.503, that describes any evaluation procedures the LEA

proposes to conduct and seek the parent's informed consent consistent with 34 C.F.R. § 300.9.

(4) No additional data needed. If the evaluation team determines that no additional data and/or assessments are necessary to make the determinations required by this section, the LEA must notify the child's parent of—

(i) That determination and the reasons for the decision; and

(ii) The right of the parent to request an assessment to determine whether the child continues to be a child with a disability, and to determine the educational needs of the child.

(d) **Conduct of evaluation.** In conducting the evaluation, the LEA must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under 34 C.F.R. § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(4) Ensure assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(5) Ensure assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(6) Ensure assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(7) Ensure 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.

(8) Ensure assessments of a child who transfers from one LEA to another LEA in the same school year are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 C.F.R. § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(9) In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(10) Ensure assessment tools and strategies that provide relevant information that directly assist in determining the educational needs of the child are provided.

(e) **Determination of eligibility.** Upon completion of the administration of assessments and other evaluation measures—

(1) *Team decision.* The evaluation team, including the parent, shall determine whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8 and the educational needs of the child; and

(2) *Evaluation report.* The LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(3) *Limitation.* A child must not be determined to be a child with a disability under this part—

(i) If the determinant factor for that determination is—

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction;

(B) Lack of appropriate instruction in math; or

(C) Limited English proficiency; and

(ii) If the child does not otherwise meet the eligibility criteria under 34 C.F.R. § 300.8.

(4) *Procedures.* In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 C.F.R. § 300.8, and the educational needs of the child, each LEA must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all sources is documented and carefully considered.

(5) *Eligibility.* If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within 15 days in accordance with 34 C.F.R. §§ 300.320 through 300.324.

(f) **Additional requirements for specific learning disability (SLD).** If the evaluation team is determining a child's eligibility in the category of SLD, the LEA must meet additional requirements as follows:

(1) *Additional evaluation team members.* The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 C.F.R. § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(i) The child's regular teacher; or

(ii) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(iii) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(iv) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(2) *Determination of SLD.* The evaluation team may determine that a child has a specific learning disability, as defined in 34 C.F.R. § 300.8(c)(10), if—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(A) Oral expression.

(B) Listening comprehension.

(C) Written expression.

(D) Basic reading skill.

(E) Reading fluency skills.

(F) Reading comprehension.

(G) Mathematics calculation.

(H) Mathematics problem solving.

(ii) The child does not make sufficient progress to meet age or Territory approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based intervention; or

(iii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, U.S. Virgin Islands approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific

learning disability, using appropriate assessments, consistent with 34 C.F.R. §§ 300.304 and 300.305; and

(iv) The evaluation team determines that its findings are not primarily the result of—

(A) A visual, hearing, or motor disability;

(B) An intellectual disability;

(C) Emotional disturbance;

(D) Cultural factors;

(E) Environmental or economic disadvantage; or

(F) Limited English proficiency.

(v) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the evaluation team must consider, as part of the evaluation described in 34 C.F.R. §§ 300.304 through 300.306—

(A) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(3) *Specific documentation for SLD.* For a child suspected of having a SLD, the documentation must contain all required elements consistent with 34 C.F.R. § 300.311.

(g) **Evaluations before a change in eligibility.** The LEA must evaluate a child with a disability in accordance with 34 C.F.R. §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability and discharging that child from special education.

(1) The evaluation described in this section is not required before the termination of a child's eligibility under this part due to—

(i) Graduation from secondary school with a regular diploma; or

(ii) Exceeding the age eligibility for FAPE under U.S. Virgin Islands law.

(2) For a child whose eligibility terminates due to graduation with a regular diploma or exceeding the age of 21, the LEA must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

References: 34 C.F.R. §§ 300.301 through 300.311.

SECTION 8. IEP TEAMS

(a) **Participants.** The LEA must ensure that the IEP team for each child with a disability includes—

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the LEA who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the LEA.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above in this section;

(6) At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) **Parent participation.** Each LEA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(c) **Meeting notice.** The notice required above must—

(1) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(2) Inform the parents of the provisions in 34 C.F.R. § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and 34 C.F.R. § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act).

(3) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must—

(i) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 34 C.F.R. § 300.320(b); and

(ii) Indicate that the LEA will invite the student; and identify any other agency that will be invited to send a representative.

(d) **Other methods to ensure parent participation.** If neither parent can attend an IEP team meeting, the LEA must use other methods to ensure parent participation, including individual conference, video meetings, or telephone conference calls, consistent with 34 C.F.R. § 300.328 (related to alternative means of meeting participation).

(e) **Conducting an IEP team meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the LEA is unable to convince the parents that they should attend. In this case, the LEA must keep a record of its attempts to arrange a mutually agreed on time and place.

(f) **Transition services participants**. The LEA must—

(1) Invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).

(2) If the child does not attend the IEP team meeting, take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(g) **Use of interpreters.** The LEA must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(h) **Excusal of a mandatory IEP team member.** This paragraph applies to mandatory team members, including the general education teacher, special education teacher, LRE representative, and the individual who can interpret the instructional implications of assessment results.

(1) These mandatory team members are not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting; or

(2) These mandatory team members may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—(i) The parent, in writing, and the LEA consent to the excusal; and(ii) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

References: 34 C.F.R. §§ 300.321, 300.327.

SECTION 9. ANNUAL IEP REQUIREMENTS

(a) **Required contents.** IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 through 300.324, and that must include—

(1) Consideration of—

(i) The strengths of the child;

(ii) The concerns of the parents;

(iii) The results of the initial or most recent evaluation of the child;

(iv) The academic, developmental, and functional needs of the child;

(v) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;

(vi) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(vii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(viii) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(ix) Consider whether the child needs assistive technology devices and services.

(2) A statement of the child's present levels of academic achievement and functional performance, including—

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(3) A statement of measurable annual goals, including academic and functional goals designed to—

(i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(ii) Meet each of the child's other educational needs that result from the child's disability;

(4) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

(5) A description of—

(i) How the child's progress toward meeting the annual goals will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(6) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(7) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class, general curriculum, and extracurricular activities;

(8) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments.

(i) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(9) The projected date for the beginning of the services and supports in the IEP, and the anticipated frequency, location, and duration of those services and supports.

(b) **Extended School Year (ESY).** Consistent with 34 C.F.R. §300.106, each LEA must ensure that ESY services are available as necessary to provide FAPE and specified in the IEP.

(1) ESY service means special education and related services that—

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

(ii) Beyond the normal school year of the LEA;

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

(iv) At no cost to the parents of the child.

(2) ESY services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, the LEA may not:

(i) Limit ESY services to particular categories of disability; or

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

(c) **Transition services**. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals, including—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

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

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

(d) **Transfer of rights at age of majority**. Beginning not later than one year before the child reaches the age of 18, the IEP must include a statement that the child has been informed of the child's rights under the IDEA, if any, that will transfer to the child on reaching the age of majority under 34 C.F.R. § 300.520.

(e) **When IEPs must be in effect.** At the beginning of each school year, each LEA must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320 as follows:

(1) *Initial IEPs; provision of services*. Each LEA must ensure that—

(i) A meeting to develop an IEP for a child is conducted within 15 days of a determination that the child needs special education and related services; and

(ii) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(2) *Accessibility of child's IEP.* Each LEA must ensure that—

(i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(ii) Each teacher and provider is informed of—

(A) His or her specific responsibilities related to implementing the child's IEP; and

(B) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(3) *IEPs for children who transfer LEAs within the U.S. Virgin Islands.* If a child with a disability (who had an IEP that was in effect in a previous LEA in the U.S. Virgin Islands) transfers to a new LEA in the U.S. Virgin Islands and enrolls in a new school within the same school year, the new LEA (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 LEA), until the new LEA either—

(i) Adopts the child's IEP from the previous LEA; or

(ii) Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 C.F.R. §§ 300.320 through 300.324.

(4) IEPs for children who transfer from another State or Territory. If a child with a disability (who had an IEP that was in effect in a previous LEA in another State or Territory) transfers to a new LEA in the U.S. Virgin Islands and enrolls in a new school within the same school year, the new LEA (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 LEA), until the new LEA—

(i) Conducts an evaluation pursuant to 34 C.F.R. §§ 300.304 through 300.306 (if determined to be necessary by the new LEA); and

(ii) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 C.F.R. §§ 300.320 through 300.324.

References: 34 C.F.R. §§ 300.43, 300.320 through 300.324.

SECTION 10. IEP REVIEW AND REVISION

(a) **Review and revision.** Each LEA must ensure that the IEP team—

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address—

(i) Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;

(ii) The results of any reevaluation conducted;

(iii) Information about the child provided to, or by, the parents;

(iv) The child's anticipated needs; or

(v) Other matters.

(b) **Agreement.** In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the LEA may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(c) **Amendments.** Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by agreeing to amend part of IEP rather than redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(d) **Prior Written Notice (PWN).** Prior to implementing IEP amendments, the LEA must issue a PWN to the parent a reasonable amount of time before the amendments are to be effective. PWN shall meet all content requirements consistent with 34 C.F.R. § 300.503.

References: 34 C.F.R. § 300.324.

SECTION 11. PRIVATE SCHOOL PLACEMENTS

(a) **LEA responsibility.** If an LEA places a child with a disability in a private school or facility as a means of providing FAPE to the child, the LEA shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by IDEA.

(b) **Developing IEPs.** Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA must initiate and conduct a meeting to develop an IEP for the child in accordance with 34 C.F.R. §§ 300.320 and 300.324(2). The LEA must ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(c) **Reviewing and revising IEPs.** After a child with a disability is placed in a private school or facility by the LEA, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(1) If the private school or facility initiates and conducts these meetings, the LEA must ensure that the parents and an LEA representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(2) Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.

(d) **Parentally placed private school students.** To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including parochial, schools located within the boundaries served by the LEA, provision is made for the participation of those children in the program assisted or carried out under the IDEA by providing them with special education and related services, including direct services determined in accordance with 34 C.F.R. § 300.137.

(1) *Services plan for parentally-placed private school children with disabilities.* In accordance with this section and 34 C.F.R. §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(2) *Record keeping.* Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under 34 C.F.R. §§ 300.130 through 300.144:

(i) The number of children evaluated;

(ii) The number of children determined to be children with disabilities; and

(iii) The number of children served.

(3) *No individual right.* No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

References: 34 C.F.R. §§ 300.132, 300.325.

SECTION 12. DISCIPLINE

(a) **Authority of LEA personnel.** Discipline of children with disabilities is regulated by the IDEA and federal regulations. The LEA's authority to make decisions regarding discipline of special education students must be consistent with 34 C.F.R. §§ 300.530 and 300.536 and the provisions in this section.

(b) **Case by case determination.** The LEA may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(c) **Services.** After a child with a disability has been removed from his or her current placement for 10 school days (consecutive or cumulative) in the same school year, during any subsequent days of removal the LEA must—

(1) Provide special education services to enable the child to continue to participate in the general education curriculum, although in the disciplinary setting or interim alternative educational setting, and to progress toward meeting goals in the child's IEP; and

(2) Provide, as appropriate, a functional behavioral assessment and behavior intervention plan that are designed to address the behavioral violation so that it does not recur.

(d) **Removals for more than 10 consecutive days.** If a child is removed from his or her current placement for more than ten (10) consecutive days in a school year, that removal constitutes a change in educational placement.

(e) **Removals for more than 10 cumulative days.** The LEA may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 C.F.R. § 300.536).

(f) **Change of placement.** For purposes of removals of a child with a disability from the child's current educational placement under 34 C.F.R. § §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(3) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(g) **Notice of change of placement.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 C.F.R. § 300.504.

(h) **Determination of setting.** The LEA shall utilize the following steps to determine the interim alternative educational setting:

(1) *No change of placement.* The LEA shall determine the educational services and supports if no change of placement occurred as a result of the disciplinary removal pursuant to paragraph (f) above. The LEA shall determine the location of the interim alternative educational setting for the delivery of special education services; or

(2) *Change in placement.* The LEA shall convene the child's IEP team to determine educational services and supports when the disciplinary removal constitutes a change in placement pursuant to paragraph (f) above. The IEP team shall determine the interim alternative educational setting for the delivery of special education services.

(i) **Manifestation determination.** Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must—

(1) Review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP team determine that a condition in either paragraph (i) or (ii) above was met.

(3) If the LEA, the parent, and relevant members of the child's IEP team determine the condition described in paragraph (ii) above was met, the LEA must take immediate steps to remedy those deficiencies.

(4) If the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must—

(i) Either—

(A) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(B) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(ii) Except as provided in paragraph (j) of this section regarding special circumstances, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(j) **Special circumstances.** The LEA may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child engages in any of the following conduct—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of SOSE or the LEA.

(i) *Weapon* is defined as a dangerous weapon, meaning a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches in length consistent with 18 U.S.C. §930(g)(2).

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of SOSE or the LEA.

(i) *Illegal drug* means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used pursuant to any other authority under IDEA or under any other provision of federal law.

(ii) *Controlled substance* means a drug or other substance identified under drug schedules I, II, III, IV, or V. *21 U.S.C. §812(c).*

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of SOSE or the LEA.

(i) *Serious bodily injury* is defined as bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. *18 U.S.C. §1365(h)(3).* The LEA may not modify this definition.

(k) **Appeal.** The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or if the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing.

(1) *Expedited due process hearing.* Whenever a hearing is requested under the paragraph above, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing on an expedited basis.

(2) *Procedures.* SOSE is responsible for arranging the expedited due process hearing, which must occur utilizing the following expedited timeframes—

(i) The expedited due process hearing must be held within 20 school days of the date the complaint requesting the hearing is filed.

(ii) The hearing officer must make a determination within 10 school days after the hearing.

(iii) Unless the parents and LEA agree in writing to waive the resolution meeting described or agree to use the mediation process—

(A) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(B) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(3) The decision of the hearing officer in an expedited due process hearing is appealable consistent with 34 C.F.R. § 300.514.

(l) **Placement during appeal.** When an appeal is taken pursuant to paragraph (k) above by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for the removal, whichever occurs first, unless ordered by the hearing officer or the parent and the LEA agree otherwise.

(m) **Protections for children not yet eligible for special education.** A child who has not yet been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (1) below) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(1) *Basis of knowledge.* The LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(i) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) The parent of the child requested an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311; or

(iii) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

(2) *Exception.* A public agency would not be deemed to have knowledge under paragraph (1) of this section if—

(i) The parent of the child—

(A) Has not allowed an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311; or

(B) Has refused services under this part; or

(C) The child has been evaluated in accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

(ii) *Conditions that apply if no basis of knowledge exists.* If a LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

(A) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530, the evaluation must be conducted in an expedited manner.

(B) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(n) **Referral to law enforcement.** Nothing in this part prohibits the LEA from reporting a crime committed by a child with a disability to appropriate authorities or prevents Territorial law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and Territorial law to crimes committed by a child with a disability.

(1) *Transmittal of records.* The LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the LEA reports the crime.

(2) *Confidentiality.* The LEA reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

References: 34 C.F.R. §§ 300.530 through 300.536.

SECTION 13. PROCEDURAL SAFEGUARDS

(a) **Contents.** Each LEA shall implement procedural safeguards consistent with the requirements of 34 C.F.R §§ 300.500 through 300.536, including dissemination of a procedural safeguards notice that meets the requirements of 34 C.F.R. § 300.504 and is consistent with the model notice adopted by SOSE, addressing—

(1) *Parent participation and involvement.* The parent of a child with a disability must be afforded an opportunity to participate in the special education process.

(2) *Parental consent.* The LEA shall implement parental consent and the revocation of parental consent procedures consistent with 34 C.F.R. §§300.9 and 300.300.

(3) *Independent educational evaluation (IEE).* Consistent with 34 C.F.R. § 300.502, the parent of a child with a disability shall have the right to obtain an IEE of the child at public expense if the parent disagrees with an evaluation conducted or obtained by the LEA. If a parent requests an IEE, the LEA must, without unnecessary delay, either—

(i) File a due process hearing request to prove that its evaluation of the child was appropriate; or

(ii) Ensure that an IEE is provided at public expense.

(4) *Prior written notice (PWN).* PWN shall be given to the parent of a child with a disability a reasonable time before the LEA proposes to, or refuses to, initiate or change the identification, evaluation, educational placement of the child, or the provision of FAPE to the child in conformity with the requirements of 34 C.F.R. § 300.503.

(5) *Discipline procedures.* Discipline of a child with a disability, including placement in an interim alternative educational setting, shall be implemented consistent with the requirements of 34 C.F.R. §§ 300.530 through 300.536. Challenges to LEA decisions regarding the removal of a child with a disability from his or her current educational placement are subject to the expedited due process hearing procedures in 34 C.F.R. § 300.532(c).

(6) *Surrogate parents.* The procedures for appointment of a surrogate parent shall comply with 34 C.F.R. §§ 300.30 and 300.519.

(7) *Transfer of parental rights at age of majority.* When a student reaches the age of 18, parental rights under the IDEA shall transfer to the student in accordance with 34 C.F.R. §§ 300.320(c) and 300.520.

(8) *Unilateral private placements.* Requirements for unilateral placement by parents of children with disabilities in private schools shall be consistent with 34 C.F.R. §§ 300.129 through 300.144 and 300.148.

(9) *Access to education records.* The LEA must protect the confidentiality of education records consistent with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 C.F.R. §99, and in conformity with 34 C.F.R. §§ 300.610 through 300.627. The LEA must permit the parent to inspect and review any education records relating to the parent's child(ren) that

are collected, maintained, or used by the LEA for the purpose of meeting the requirements of IDEA. The right to inspect and review includes—

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

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

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

(10) *Complaints.* The parent has the right to resolve complaints through the due process hearing system or the SOSE complaint system, including relevant time periods and the difference between the dispute resolution options in conformity with 34 C.F.R. §§ 300.507 through 300.518.

(11) *Appeals.* Any party aggrieved by the findings and decision of a due process hearing officer has the right to bring a civil action appealing the decision within 90 days from the date of the hearing officer issues a decision as specified in 34 C.F.R. § 300.516.

(12) *Attorneys' fees.* The prevailing part in a due process hearing may file an action for attorneys' fees consistent with 34 C.F.R. § 300.517.

(13) *Mediation.* The parent shall have the right to voluntarily participate in mediation at the expense of SOSE consistent with 34 C.F.R. § 300.506.

(14) *Stay-put.* Generally, during the pendency of a due process hearing the child must remain in the current educational placement identified in the most recently implemented IEP consistent with 34 C.F.R. § 300.518. A due process hearing request challenging matters involving the disciplinary removal of a child with a disability is an exception to the general stay-put placement. In conformity with 34 C.F.R. § 300.533, the child must remain in the disciplinary setting or interim alternative educational setting pending the decision of the hearing officer, expiration of the time period of the removal, or if the parent and LEA otherwise agree.

(b) **Duty to provide.** A copy of the procedural safeguards available to the parent of a child with a disability must be given to the parent only one time a school year, except that a copy also must be given to the parent—

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

(2) Upon receipt of the first complaint under § 300.151 and upon receipt of the first due process hearing request under 34 C.F.R. § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

References: 34 C.F.R. § 300.504.

SECTION 14. DISPUTE RESOLUTION

(a) **Dispute resolution options.** SOSE shall make available the following special education dispute resolution options:

(1) *Mediation.* In accordance with the procedures specified in 34 C.F.R. §300.506, the parent and the LEA may voluntarily participate in mediation involving any matter arising under Part B of the IDEA, including disputes arising prior to a due process hearing request or a state complaint filed with SOSE.

(2) *State complaint procedures.* SOSE shall resolve any complaint, including a complaint filed by an organization or individual from another state, that alleges a violation of IDEA, the federal regulations, or U.S. Virgin Islands law or rule that meets the requirements of signed, written complaint in conformity with 34 C.F.R. §§ 300.151 through 300.153.

(i) In resolving a complaint in which a failure to provide appropriate services has been found, SOSE, pursuant to its general supervisory authority under the IDEA, shall address:

(A) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and

(B) The appropriate future provision of services for all children with disabilities.

(3) *Due process hearing procedures.* A parent or LEA may file a due process complaint on any of the matters relating to the identification, evaluation, educational placement, or provision of FAPE to the child consistent with procedures outlined in 34 C.F.R. §§ 300.507 through 300.518 and 300.532. If a parent files a due process hearing request, the LEA must convene a resolution session as required by 34 C.F.R. § 300.510.

(4) *Expedited due process hearing procedures.* The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing. Whenever a due process hearing is requested pursuant to this paragraph, the hearing shall be conducted on an expedited basis according to the procedures specified in 34 C.F.R. § 300.532(c).

(b) **Child's status during due process proceedings.** Except as provided in 34 C.F.R. §300.533 (regarding disciplinary removals), during the pendency of any administrative or judicial proceeding regarding a due process hearing, unless the LEA and the parent of the child agree otherwise, the child must remain in his or her current educational placement consistent with 34 C.F.R. §300.518.

References: 34 C.F.R. §§ 300.151 through 300.153, 300.506 through 300.518, 300.532.

SECTION 15. SOSE SUPERVISION OF AN LEA

(a) **Monitoring focus.** SOSE shall enforce the requirements of the IDEA and monitor the implementation of these rules by the LEA in accordance with 34 C.F.R. §§ 300.600 through 300.608. The primary focus of the monitoring activities shall be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that the LEA meets the program requirements under the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(b) **Priority areas.** Consistent with 34 C.F.R. § 300.600(d), SOSE shall monitor LEAs and public agencies using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure the performance in those areas—

(1) Provision of FAPE in the LRE;

(2) Components of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services; and

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation involves inappropriate identification, pursuant to data collected in accordance with 34 C.F.R. § 300.646.

(c) **Determinations.** Based on the information provided by the LEA, information obtained through monitoring visits, and dispute resolution activities, SOSE shall make determinations annually about the performance of each LEA using the categories in 34 C.F.R. § 300.603(b)(1).

(d) **Enforcement.** SOSE shall enforce compliance with IDEA and U.S. Virgin Islands Territorial laws and rules using appropriate enforcement mechanisms, which must include, if applicable—

(1) Technical assistance;

(2) Placing conditions on funding;

(3) Corrective action plan or improvement plan; or

(4) Withholding funds.

(e) **Special Education Funding.** LEA funding shall be implemented in accordance with 34 C.F.R. §§ 300.200 through 300.230 and any other applicable U.S. Virgin Islands Territorial provisions.

(f) **Condition of assistance.** The LEA is eligible for federal funding under the IDEA for a fiscal year if the LEA submits a plan that provides assurances to SOSE that the LEA meets each of the conditions set forth in the IDEA and these rules.

References: 34 C.F.R. §§ 300.600 through 300.605.

SECTION 16. APPENDIX – ACRONYM GLOSSARY

AUT	Autism
BIP	Behavior Intervention Plan
DB	Deaf Blind
DD	Developmental Delay
ED	Emotional Disability
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
HI	Hearing Impairment
ID	Intellectual Disability
IDEA	Individuals with Disabilities Education Act
IEE	Independent Education Evaluation
IEP	Individualized Education Program
LEA	Local Education Agency (School District)
LRE	Least Restrictive Environment
MD	Multiple Disabilities
OI	Orthopedic Impairment
OHI	Other Health Impairment
PWN	Prior Written Notice
SLD	Specific Learning Disability
SLI	Speech or Language Impairment
SOSE	State Office of Special Education
TBI	Traumatic Brain Injury
VIDE	Virgin Islands Department of Education