

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 14]

Special Education Services and Programs

The State Board of Education (Board) proposes to amend Chapter 14 (relating to special education services and programs) to read as set forth in Annex A. The Board is acting under the authority of sections 1372 and 2306-B of the Public School Code of 1949 (code) (24 P. S. §§ 13-1372 and 26-2603-B).

This proposed rulemaking establishes procedures for the identification of students who are disabled and in need of special education services and programs. This proposed rulemaking sets forth requirements and procedures for the delivery of those services and programs. As provided in the code, Chapter 14 does not apply to public charter schools or cyber charter schools. Instead these schools must follow the regulations of the Department of Education (Department) in Chapter 711 (relating to charter school services and programs for children with disabilities).

A committee of the Board (committee) held five regional public roundtable meetings during December 2006 and January 2007 and stakeholders were provided an opportunity to discuss the issues and share their concerns about special education. The committee then circulated draft regulations and conducted three regional public hearings to solicit public input on the draft regulations in March 2007. Notices of the meetings were distributed to individuals and organizations who asked to be included on the Board's stakeholder list. Notice was sent to superintendents, intermediate unit executive directors, area vocational school directors and others through the Department's PennLINK email system. Legal notices of the hearings were published in regional newspapers, public notice was posted on the Board website and Sunshine Act notices were posted at the meeting sites. A number of large Statewide education associations alerted their members and others about the meetings through e-mail distribution lists, websites and publications.

Throughout the process of drafting this proposed rulemaking, the Board prepared and posted updated drafts on the Board's website. The Chapter 14 committee met in public meetings on November 14, 2006, January 17, 2007, March 21, 2007, and May 16, 2007, when various versions of the proposed rulemaking were reviewed and discussed. Members of the public were provided opportunities to provide comments to the committee at these meetings. In addition to the comments provided at the roundtables, hearings and committee meetings, numerous individuals and organizations provided written comments to the Board by means of letters and e-mails. The Board heard from over 250 individuals and organizations throughout this process.

Purpose

The proposed amendments to Chapter 14 are designed to align the chapter with the Federal Individuals With Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1482), as amended December 3, 2004, related Federal regulations and applicable provisions of Pennsylvania

statute, court decisions and settlement agreements. The Federal regulations are available at <http://idea.ed.gov/explore/home>.

The Board determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is found in this proposal when: 1) Federal rules require greater detail for implementation; 2) court decisions or settlement agreements applicable to the Commonwealth require regulation; 3) State statute requires regulation; and 4) the current practice of special education in this Commonwealth requires regulation.

This proposed rulemaking will become part of the eligibility grant application to the United States Department of Education under IDEA ensuring the provision of a free, appropriate public education to students and children with disabilities. The Commonwealth must demonstrate a good faith effort to align its policies with IDEA and its implementing regulations to be eligible to receive Federal funds. Copies of the eligibility grant application will be made available to the public through the Department.

Requirements of the Proposed Rulemaking

The proposed rulemaking adopts terminology, establishes the purpose, specifies time lines for development and implementation of Individualized Education Program (IEP) plans, maintains requirements regarding extended school year services, requires behavior support in addition to the Federal requirements, establishes qualifications for instructional paraprofessional staff, sets qualifications for educational sign language interpreters and provides criteria for the facilities in which special education services and programs are to be delivered. Major elements of the proposed rulemaking include the following:

§ 14.101. Definitions.

This section defines the term "school entity" that is used throughout the chapter. In select locations, the regulation applies only to specific type of entities so they are identified when appropriate instead of using the blanket term "school entity." For the purpose of adding clarity, additional detail is added to the definition of "early intervention services." The term "instructional support team" is deleted as it is no longer used.

§ 14.102. Purposes.

Language is added to this section so that children with disabilities have access to the general curriculum and participate in State and local assessments. Children with disabilities are to be educated, to the extent appropriate, with students without disabilities and provided supplementary aids and services as indicated in their IEP. School entities are to provide a full continuum of placement options. Outdated references to Federal regulations are deleted and replaced with references to the current Federal regulations issued on August 14, 2006.

§ 14.103. Terminology related to Federal regulations.

Language is added to this section to indicate that intermediate units are considered the local education agency for purposes under Federal regulations regarding children with disabilities enrolled in private schools.

§ 14.104. Educational plans.

This section requires that each school district and intermediate unit special education plan describe early

intervention services, if offered, by the school district. This section also requires school districts to establish procedures for complying with the identification of children with specific learning disabilities, provides examples of the kinds of supplementary aids and services to be provided by the district, describes access to a full continuum of educational placements, requires policies and procedures designed to prevent over identification or disproportionate representation by race or ethnicity and establishes policies on behavior support services and parent counseling and training activities in accordance with Federal regulations. This section requires early intervention plans to be submitted every year instead of every 3 years as in the current regulation.

This section also prohibits making educational placement of a student with a disability because of a lack of resources, facilities, staff or simply administrative convenience. This section places into regulation the long-standing Federal reporting requirements that require states and school entities to maintain and report information concerning students with disabilities.

§ 14.105. Personnel.

This proposed section pertains to instructional paraprofessional staff working with students with disabilities to align their qualifications with those of paraprofessionals employed in schools that receive Federal Title I funds and those employed in prekindergarten programs. As directed in the act of July 11, 2006 (P. L. 1092, No. 114), the Board establishes qualifications for educational sign language interpreters. Professional caseload requirements are amended to reflect current practice in schools.

§ 14.106. Access to instructional materials.

As required by Federal regulations, the Board establishes standards for instructional materials in alternative formats by adopting the National Instructional Materials Accessibility Standard as defined in section 674 of IDEA (20 U.S.C.A. § 1474(e)(3)(B)).

§ 14.107. Complaint procedure.

This proposed section directs the Department to establish a complaint procedure consistent with Federal regulations and to disseminate notice of the procedure.

§ 14.108. Access to classrooms.

This proposed section states that a parent is to have reasonable access to the child's classroom within the parameters of local educational agency policy.

§ 14.121. Child find.

This section clarifies the types of awareness activities acceptable under the current provision. The regulation directs school districts to include information in its handbook and website. It also expands the annual notification requirement to include electronic media. Language is added, per Federal regulations, to require intermediate units to comply with the child find activities necessary for compliance for children with disabilities enrolled in private schools.

§ 14.122. Screening.

This section clarifies requirements for school districts to establish systems for the initial screening of students before making referrals students for special education evaluation.

§ 14.123. Evaluation.

This section provides that a parent who requests an evaluation of his child shall be given an evaluation request form within 5 days of the request. This section

also provides that a copy of the evaluation report shall be provided to the parent at least 10 school days prior to the meeting of the IEP team unless waived in writing by the parent.

§ 14.124. Reevaluation.

This section provides clarification of the requirement that the reevaluation report be provided to parents within 60 school days from the date of action specified. This section also provides that a copy of the reevaluation report be provided to the parent at least 10 school days prior to the meeting of the IEP team unless waived by the parent in writing. This section also provides that a copy of the reevaluation report shall be provided to the parent at least 10 school days prior to the meeting of the IEP team unless waived in writing by the parent.

§ 14.125. Criteria for the determination of specific learning disabilities.

As required by IDEA, this section establishes criteria that school districts and intermediate units shall follow when establishing procedures for determining specific learning disabilities.

§ 14.131. IEP.

Requirements for IEPs in this section are amended to improve the focus and functionality of IEPs based on the category or categories of each child's disability and the types of supports and accommodations that will be provided. This section maintains transition planning at 14 years of age. This section grandfathered IEPs that exist at the time the final-form rulemaking becomes effective.

§ 14.132. ESY.

This proposed rulemaking adds requirements that students with severe disabilities be provided expeditious determinations of eligibility for extended school year services. The proposed rulemaking also requires that school entities consider eligibility for extended school year services for every student at the students' IEP meeting and that it be done so in a timely manner.

§ 14.133. Behavior support.

Language is added to this section to further encourage the use of positive behavior support strategies and to limit the use of restraints and bans the use of face down prone restraints unless determined necessary by a physician and documented in the student's current IEP. This section requires schools to maintain records on the use of restraints. This section also provides: a process to identify the need for the use of restraints to protect the student's safety or safety of others and that parental consent should be obtained; procedures for when there is an emergency use of restraints; and a meeting of the IEP team when restraints are used outside the parameters of the behavior management practices specified in the student's IEP. This section also requires that a review take place within 10 days whenever injuries requiring treatment by medical personnel occur resulting from self-injurious behavior or a nonaccidental act by another student.

§ 14.141. Terminology related to educational placement.

This section is proposed to be rescinded.

§ 14.142. Caseload for special education.

This section is proposed to be rescinded as the caseload requirements are included in proposed § 14.105 (relating to personnel).

§ 14.143. Disciplinary placements.

This proposed rulemaking updates the references to Federal regulations.

§ 14.145. Least restrictive environment requirements.

As required by IDEA, this proposed section provides State requirements for providing students services in the least restrictive environment.

§ 14.146. Age range restrictions.

This proposed section establishes age range restrictions which are designed to limit the placement of students with disabilities into classroom settings when there is a significant age difference with other students.

§ 14.153. Evaluation.

This proposed rulemaking updates references to Federal regulations and clarifies the 60-day time frame to provide the evaluation report is 60 calendar days from the date of parental consent.

§ 14.154. IEP.

This section clarifies that the 14-day implementation requirement is 14 calendar days and grandfathers IEPs developed prior to the effective date of the final-form rulemaking.

§ 14.155. Range of services.

This section clarifies that early intervention agencies or other licensed agencies may provide services under contract. This proposed rulemaking also restructures the regulation to improve clarity and focus regarding the services available and teacher caseloads.

§ 14.161. Prehearing conferences.

This section is proposed to be rescinded because it is no longer necessary as it is not required by IDEA.

§ 14.162. Impartial due process hearing and expedited due process hearing.

Proposed amendments to this section reflect changes in Federal requirements. This proposed rulemaking also adds requirements that due process hearings, appeal panel proceedings and hearing officers are to adhere to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). It also requires the Department to provide an annual report to the Board as to the activities of the due process hearings and appeal panel proceedings and to also report activities taken by the Department to strengthen the due process hearings and appeal panel proceedings.

§ 14.163. Resolution session.

This proposed section incorporates Federal requirements for resolution sessions for parents of children with disabilities and permits parent advocates to attend resolution sessions.

Affected Parties

Students who need or may need special education services and programs will be affected by this proposed rulemaking. This proposed rulemaking will also affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their children. The Department, school districts, intermediate units and area vocational technical schools will be affected through compliance with the regulations.

Cost and Paperwork Estimates

The proposed rulemaking will not result in significant added costs or savings to either the Department or school entities since it reflects existing Federal or State requirements, judicial rulings or settlement agreements.

The most significant potential cost factor is that of establishing minimum requirements on the qualifications of instructional paraprofessionals who provide support to a student with disabilities under the direction of a classroom teacher in § 14.105. Instructional paraprofessionals hired before July 1, 2008, shall demonstrate knowledge in and ability to assist in instruction in reading, writing and mathematics or readiness in these disciplines through a rigorous State or local academic assessment. Instructional paraprofessionals hired after July 1, 2008, need to meet the same requirement in addition to either having an associate's degree or higher or completed 2 years of postsecondary study.

Similar requirements have been in place under the Federal No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107—110, 115 Stat. 1425) for instructional paraprofessionals employed in schools receiving Title I funds and under Chapter 4 for paraprofessionals working in prekindergarten programs. Since the testing program already exists to address the NCLB requirements, costs associated with the testing program are limited to staff time and test administration. With respect to the requirement that newly hired paraprofessionals have 2 or more years of postsecondary education this requirement may require school entities to conduct increased recruitment efforts to meet this requirement. The Board believes the benefits of staff with greater levels of education far outweigh any potential minimal cost for school entities to conduct expanded outreach and recruitment of staff.

The proposed rulemaking requires that the Department report annually to the Board on the activities and results of due process hearings and appeal panel proceedings. Since the Department already collects this information, the cost of generating the annual report to the Board is minimal.

The proposed rulemaking adds a requirement that school entities maintain data on the use of restraints. This data will be reviewed as part of existing compliance reviews conducted by the Department. The cost to implement and administer this new requirement is minimal.

Requirements for the access to instructional materials as required by IDEA are added. The resource center is funded by the Federal government.

Under this proposed rulemaking, educational interpreters providing services to students who are deaf or hearing impaired employed by intermediate units and school districts need to meet the qualification of scoring a 3.5 or above on the Educational Interpreter Performance Assessment and participate in at least 20 hours of continuing professional education in interpreting or transliterating services each year to continue to provide education interpreting services to students. A number of intermediate units and the Pennsylvania Training and Technical Assistance network provide training at no or relatively small cost to educational interpreters to assist them in meeting these requirements.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 14 every 4 years in accordance with the Board's policy and

practice respecting all regulations promulgated by the Board. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 19, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, j buckheit@state.pa.us. Public comments must be received within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TTY (717) 783-8445.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-306. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

GENERAL PROVISIONS

§ 14.101. Definitions.

In addition to the definitions in §§ 14.102 and 14.103 (relating to purposes; and terminology related to Federal regulations), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Agency—[**An intermediate unit, school district**] **A school entity**, approved private school, State-operated program or facility or other public (excluding charter schools and cyber charter schools under Article XVII-A of The Public School Code of 1949 (24 P. S. §§ 17-1701-A—17-1751-A) or private organization providing educational services to children with disabilities or providing early intervention services.

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Early intervention agency—[**An intermediate unit, school district**] **A school entity** or licensed provider

which has entered into a mutually agreed upon written arrangement (**MAWA**) with the Department to provide early intervention services to eligible young children in accordance with the act.

Early intervention services—As defined in the act **are individualized services and supports provided to eligible young children in the least restrictive environment, including the child's home, in order to make measurable progress in preparation for school.**

Eligible young child—A child who is less than the age of beginners and at least 3 years of age and who meets the criteria in 34 CFR [**300.7**] **300.8** (relating to [**a**] child with a disability).

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[**IST—Instructional support team.**]

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Parent—The term as defined in 34 CFR [**300.20**] **300.30** (relating to parent) and also includes individuals appointed as foster parents under [**42 Pa.C.S. §§ 6301—6311 (relating to the Juvenile Act)**] **55 Pa. Code § 3700.4 (relating to definitions).**

School entity—**A local public education provider such as a school district, area vocational-technical school or intermediate unit but excluding charter and cyber charter schools under Article XVII-A of the Public School Code of 1949 (24 P. S. §§ 17-1701-A—17-1751-A).**

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Student with a disability—A child of school age who meets the criteria in 34 CFR [**300.7 (relating to a child with a disability)**] **300.8.**

§ 14.102. Purposes.

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—[**1419**] **1482**) and to ensure that:

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(ii) **Children with disabilities have access to the general curriculum, and participate in State and local assessments as established and described in Chapter 4 (relating to academic standards and assessment).**

(iii) **Children with disabilities are educated, to the maximum extent appropriate, with their nondisabled peers and are provided with supplementary aids and services.**

(iv) **School entities provide access to a full continuum of placement options as appropriate and necessary according to the child's IEP.**

(v) **The rights of children with disabilities and parents of these children are protected.**

(vi) **The use of early intervening services promotes students' success in a general education environment.**

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at [64 FR 12418—12469 (March 12, 1999)] 71 FR 46540—46845 (August 14, 2006). The following sections are incorporated by reference [.]:

(i) [34 CFR 300.4—300.6 (defining the terms “act”; “assistive technology device”; and “assistive technology service”).

(ii) 34 CFR 300.7(a) and (c) (defining the term “child with a disability”).

(iii) 34 CFR 300.8—300.24 (defining the terms “consent”; “day”; “business day”; “school day”; “educational service agency”; “equipment”; “evaluation”; “free appropriate public education”; “include”; “individualized education program”; “individualized education program team”; “individualized family service plan”; “local educational agency”; “native language”; “parent”; “personally identifiable”; “public agency”; “qualified personnel”; and “related services”).

(iv) 34 CFR 300.26 (defining the term “special education”).

(v) 34 CFR 300.28 and 300.29 (defining the terms “supplementary aids and services”; and “transition services”).

(vi) 34 CFR 300.121—300.125 (relating to free appropriate public education (FAPE); exception to FAPE for certain ages; full educational opportunity goal (FEOG); FEOG—timetable; and child find).

(vii) 34 CFR 300.138 and 300.139 (relating to participation in assessments; and reports relating to assessments).

(viii) 34 CFR 300.300 (relating to provision of FAPE).

(ix) 34 CFR 300.302—300.309 (relating to residential placement; proper functioning of hearing aids; full educational opportunity goal; program options; nonacademic services; physical education; assistive technology; and extended school year services).

(x) 34 CFR 300.311(b) and (c) (relating to FAPE requirements for students with disabilities in adult prisons).

(xi) 34 CFR 300.313 (relating to children experiencing developmental delays).

(xii) 34 CFR 300.320 and 300.321 (relating to initial evaluations; and reevaluations).

(xiii) 34 CFR 300.340 (relating to definitions related to IEPs).

(xiv) 34 CFR 300.342—300.346 (relating to when IEPs must be in effect; IEP meetings; IEP team; parent participation; and development, review and revision of IEP).

(xv) 34 CFR 300.347 (a), (b) and (d) (relating to content of IEP).

(xvi) 34 CFR 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEPs—accountability).

(xvii) 34 CFR 300.401 (regarding responsibility of state educational agency in connection with chil-

dren with disabilities in private schools placed or referred by public agencies).

(xviii) 34 CFR 300.403 (relating to placement of children by parents if FAPE is at issue).

(xix) 34 CFR 300.450—300.462 (relating to children with disabilities enrolled by their parents in private schools).

(xx) 34 CFR 300.500—300.515 (regarding certain due process procedures for parents and their children).

(xxi) 34 CFR 300.519—300.529 (relating to discipline procedures).

(xxii) 34 CFR 300.531—300.536 (regarding certain procedures for evaluation and determination of eligibility).

(xxiii) 34 CFR 300.540—300.543 (relating to additional procedures for evaluating children with specific learning disabilities).

(xxiv) 34 CFR 300.550—300.553 (relating to least restrictive environment (LRE) including general LRE requirements; continuum of alternative placements; placements; and nonacademic settings).

(xxv) 34 CFR 300.560—300.574(a) and (b) (providing for confidentiality of information).

(xxvi) 34 CFR 300.576 (relating to disciplinary information).]

34 CFR 300.4—300.6 (relating to act; assistive technology device; and assistive technology service).

(i) 34 CFR 300.8(a) and (c) (relating to child with a disability).

(ii) 34 CFR 300.9—300.15 (relating to consent; core academic subjects; day; business day; school day; educational service agency; elementary school; equipment; and evaluation).

(iii) 34 CFR 300.17—300.20 (relating to free appropriate public education; highly qualified special education teachers; homeless children; and include).

(iv) 34 CFR 300.22—300.24 (relating to individualized education program; individualized education program team; and individualized family service plan).

(v) 34 CFR 300.27—300.30 (relating to limited English proficient; local educational agency; native language; and parent).

(vi) 34 CFR 300.32—300.37 (relating to personally identifiable; public agency; related services; scientifically based research; secondary school; and services plan).

(vii) 34 CFR 300.39 (relating to special education).

(viii) 34 CFR 300.41—300.45 (relating to State educational agency; supplementary aids and services; transition services; universal design; and ward of the State).

(ix) 34 CFR 300.101 and 300.102 (relating to free appropriate public education (FAPE); and limitation—exception to FAPE for certain ages).

(xi) 34 CFR 300.104—300.108 (relating to residential placement; assistive technology; extended school year services; nonacademic services; and physical education).

(xii) 34 CFR 300.113 and 300.114(a)(2) (relating to routine checking of hearing aids and external components of surgically implanted medical devices; and LRE requirements).

(xiii) 34 CFR 300.115—300.117 (relating to continuum of alternative placements; placements; and nonacademic settings).

(xiv) 34 CFR 300.122 (relating to evaluation).

(xv) 34 CFR 300.130—300.144, regarding students enrolled by their parents in private schools.

(xvi) 34 CFR 300.148 (relating to placement of children by parents when FAPE is at issue).

(xvii) 34 CFR 300.172 (relating to access to instructional materials).

(xviii) 34 CFR 300.174 (relating to prohibition on mandatory medication).

(xix) 34 CFR 300.207 (relating to personnel development).

(xx) 34 CFR 300.210—300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children with disabilities).

(xxi) 34 CFR 300.224 (relating to requirements for establishing eligibility).

(xxii) 34 CFR 300.226 (relating to early intervening services).

(xxiii) 34 CFR 300.300 and 300.301 (relating to parental consent; and initial evaluations).

(xxiv) 34 CFR 300.302—300.307(a)(1) and (2) and (b) (relating to screening for instructional purposes is not evaluation; reevaluations; evaluation procedures; additional requirements for evaluations and reevaluations; determination of eligibility; and specific learning disabilities).

(xxv) 34 CFR 300.308—300.311 (relating to additional group members; determining the existence of a specific learning disability; observation; and specific documentation for the eligibility determination).

(xxvi) 34 CFR 300.320—300.325 (relating to definition of individualized education program; IEP Team; parent participation; when IEPs must be in effect; development, review, and revision of IEP; and private school placement by public agencies).

(xxvii) 34 CFR 300.327 and 300.328 (relating to educational placements; and alternative means of meeting participation).

(xxviii) 34 CFR 300.501—300.508 (relating to opportunity to examine records; parent participation in meetings; independent education evaluation; prior notice by the public agency; content of notice; procedural safeguards notice; electronic mail; mediation; filing a due process complaint; and due process complaint).

(xxix) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions,

appeal; partial review; timelines and convenience of hearings and reviews; and civil action).

(xxx) 34 CFR 300.518(a), (b) and (d) and 300.519 (relating to child's status during proceedings; and surrogate parents).

(xxxii) 34 CFR 300.530—300.537 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement and judicial authorities; change of placement because of disciplinary removals; and state enforcement mechanisms).

(xxxii) 34 CFR 300.610—300.625 (relating to confidentiality; definitions; notice to parents; access rights; record of access; records on more than one child; list of types and locations of information; fees; amendment of records at parent's request; opportunity for a hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children's rights).

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(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR [300.125(a)] 300. 111 (relating to child find).

§ 14.103. Terminology related to Federal regulations.

For purposes of interfacing with 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), the following term applies, unless the context clearly indicates otherwise:

Local educational agency—Where the Federal provision uses the term “local educational agency,” for purposes of this chapter, 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). **In the application of 34 CFR 300.130—300.144, regarding children with disabilities enrolled by their parents in private schools, intermediate units shall be considered to be the local education agency.**

§ 14.104. [Educational] Special education plans.

(a) Each school district shall develop **and implement** a special education plan aligned with the strategic plan of the school district under § 4.13 (relating to strategic plans). The special education plan shall be developed every 3 years consistent with the [3-year review cycle] phase of the strategic plan of the school district. The Secretary will prescribe the format, content and time for submission of the special education plan.

(b) Each school district's special education plan [shall] **must** specify the special education programs that operate in the district and those that are operated in the district by intermediate units, area vocational technical schools [and], other agencies **and describe**:

(1) **Early intervening services under 34 CFR 300.226 (relating to early intervening services) and this chapter, if the services are provided by the school district.**

(2) The school district procedures for complying with the State criteria for identifying children with specific learning disabilities.

(3) Examples of supplementary aids and services provided by the school district.

(4) Access to a full continuum of educational placements as required by the student's IEP.

(5) Policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children with disabilities, for those school districts identified with significant disproportionality in accordance with 34 CFR 300.646(a) (relating to disproportionality).

(6) School district procedures on behavior support services including a description of the training provided to staff in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention.

(7) Parent training activities provided by the school district.

(c) Each school district's special education plan [shall] must include procedures for the education of all students with [a disability] disabilities who are residents of the district including those receiving special education in approved private schools and students with [a disability] disabilities who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the Public School Code of 1949 (24 P. S. §§ 13-1305, 13-1306 and 13-1306.2).

(d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit, including equitable services provided consistent with 34 CFR 300.130—300.144 and subsection (b)(2)—(4), (6) and (7). The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.

(e) Each early intervention agency shall develop and submit to the Department an early intervention special education plan every [3 years] year.

(f) The Department will approve plans in accordance with the following criteria:

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(3) Placement of students with disabilities in settings other than regular education settings may not be based on lack of resources, facilities, staff or for administrative convenience.

(4) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

* * * * *

(i) Each school entity shall maintain information concerning students with disabilities, the services provided, performance and discipline data, as specified by the Secretary, and report information in a form and at times as required by the Secretary.

§ 14.105. Personnel.

(a) An instructional paraprofessional is a school employee who works under the direction of a cer-

tified staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children. Instructional paraprofessional personnel hired by a school entity on or after July 1, 2008, shall meet the qualifications outlined in paragraph (1) or (2) and paragraph (3) or (4). Instructional paraprofessionals who were hired in that role by a school entity before July 1, 2008, shall meet the qualifications outlined in paragraph (3) or (4) by July 1, 2010.

(1) Have completed at least 2 years of postsecondary study.

(2) Possess an associate degree or higher.

(3) Meet a rigorous standard of quality as demonstrated through a formal State or local academic assessment of knowledge in and ability to assist in instruction in reading, writing and mathematics.

(4) Meet a rigorous standard of quality as demonstrated through a formal State or local academic assessment of knowledge of, and the ability to assist in instruction, reading readiness, writing readiness and mathematics readiness, as appropriate.

(b) Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect on _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

(c) To serve as an educational interpreter, an individual shall meet the qualifications in paragraph (1) or (2) and paragraph (3):

(1) 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.

(2) Be a qualified educational interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act (63 P. S. §§ 1725.1—1725.12) and its implementing regulations.

(3) Provide evidence of a minimum of 20 hours of staff development activities relating to interpreting or transliterating services annually.

(d) The Board, in consultation with Department, will review the EIPA score requirement every 2 years.

(e) The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Case management—Development and management of an individual IEP, and if required in the IEP, monitoring and consultation with regular education or special education teachers, or both.

Replacement services—

(i) Direct services to an individual student with disabilities or small group of those students, that replace general education instruction within the regular education curriculum or replace the general curriculum with alternate curriculum.

(ii) The term includes teaching to the State-approved alternate standards.

(A) The following chart presents the maximum caseload allowed on a single teacher's roll for each school district:

| | |
|--|-------------|
| <i>Level I Services</i> | 50 students |
| Level I services may include one or any combination of the following services: Case Management; Supplemental Services; and Replacement Services up to 20% of the instructional day | |
| <i>Level II Services</i> | 25 students |
| Level II services must include Replacement Services 21% to 50% of the instructional day and may also include Case Management and Supplemental Services | |
| <i>Level III Services</i> | 15 students |
| Level III services must include Replacement Services 51% to 75% of the instructional day and may also include Case Management and Supplemental Services | |
| <i>Level IV Services</i> | 8 students |
| Level IV services must include Replacement Services more than 75% of the instructional day and may also include Case Management and Supplemental Services | |
| <i>Speech and Language Support</i> | 65 students |

(B) If a teacher provides more than one level of support to different students, the maximum number for the purpose of caseload will be prorated based upon the percentage of time providing that level of service and the maximum number of students allowed.

(C) A school district may request approval for a caseload chart which varies from that in clause (A) as part of its special education plan consistent with § 14.104 (relating to special education plans). The caseload and supporting documents submitted must:

(I) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(II) Apply to special education classes operated in the school district.

(III) Provide a justification for why the chart deviates from the caseload chart in clause (E).

(IV) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission. The district shall provide and include a copy of the notice to the public indicating the district intends to request a waiver of caseload regulations and a description of how parents, teachers and other interested parties were provided opportunities to give comment on the waiver request.

(D) Classes or programs with students from more than one district regardless of whether operated by a school district, intermediate unit or agency shall follow the caseload chart of the district where the class or program is located. Intermediate unit itinerant services provided to multiple districts must follow the caseload chart under subsection (e).

(E) Caseloads are not applicable to approved private schools or to chartered schools for the deaf and blind.

(F) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

(I) Graduation rates of students with a disability.

(II) Drop-out rates of students with a disability.

(III) Postsecondary transition of students with a disability.

(IV) Rate of grade level retentions.

(V) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).

Supplemental services—

(i) Direct services to an individual student with disabilities or small group of those students, that supplement the general education curriculum.

(ii) For example, the term includes co-teaching, preteaching, reteaching, modeling, guided practice, and the like.

§ 14.106. Access to instructional materials.

(a) The Board adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in section 674(e)(3)(B) of the Education of Individuals with Disabilities Education Act (20 U.S.C.A. § 1474(e)(3)(B)) and set forth in 71 FR 41084 (July 19, 2006) for the purpose of providing print instructional materials in alternate accessible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. To insure the timely provision of high quality, accessible instructional materials to children who are blind or other persons with print disabilities, agencies shall adopt the NIMAS. The NIMAS refers to a standard for source files of print instructional materials created by publishers that may be converted into accessible instructional materials.

(b) Agencies shall provide print instructional materials in specialized, accessible formats (that is, Braille, audio, digital, large-print, and the like) to children who are blind or other persons with print disabilities, as defined in the act to provide books for adult blind approved March 3, 1931 (see 2 U.S.C.A. § 135a (regarding books and sound-reproduction records for blind and other physically handicapped residents; annual appropriations; and purchases)), in a timely manner.

(c) Agencies act in a timely manner in providing instructional materials under subsection (a) if they take all reasonable steps to ensure that children who are blind or other persons with print disabilities have access to their accessible format instructional materials at the same time that students without disabilities have access to instructional materials. Agencies may not withhold instructional materials from other students until instructional materials in accessible formats are available.

(d) Receipt of a portion of the instructional materials in alternate accessible or specialized format

will be considered receipt in a timely manner if the material received covers the chapters that are currently being taught in the student's class.

(e) If a child who is blind or other person with a print disability enrolls in school after the start of the school year, an agency shall take all reasonable steps to ensure that the student has access to accessible format instructional materials within 10 school days from the time it is determined that the child requires printed instructional materials in an alternate accessible or specialized format.

(f) The Department or agencies may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production of and delivery of accessible materials to children who are blind or other persons with print disabilities. The NIMAC refers to the central repository, established under section 674(e) of the Education of Individuals with Disabilities Education Act, which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.

(g) Agencies coordinating with NIMAC shall require textbook publishers to deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency. Agencies that choose not to coordinate with NIMAC may require that publishers deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the agency.

§ 14.107. Complaint procedure.

The Department will establish a complaint procedure consistent with 34 CFR 300.151—300.153 (relating to adoption of State complaint procedures; minimum State complaint procedures; and filing a complaint) and disseminate notice of that procedure.

§ 14.108. Access to classrooms.

Parents shall have reasonable access to their child's classrooms, within the parameters of local educational agency policy.

CHILD FIND, SCREENING AND EVALUATION

§ 14.121. Child find.

(a) In addition to the requirements incorporated by reference in 34 CFR [300.125(a)(1)(i)] 300.111 (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs. **Written information shall be published in the school district handbook and school district website. The public awareness effort must include information regarding potential signs of developmental delays and other risk factors that could indicate disabilities.**

(c) Each school district shall provide annual public notification, published or announced in newspapers [or], **electronic media and other media**[, or both], with circulation adequate to notify parents throughout the

school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

(d) **Intermediate units are responsible for child find activities necessary to provide equitable services consistent with 34 CFR 300.130—300.144, regarding children with disabilities enrolled by their parents in private schools.**

§ 14.122. Screening.

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

(1) Identify and provide initial screening for students prior to referral for a special education evaluation.

(2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum. **To provide this support, school districts may implement instructional support teams according to Department guidelines or use an alternative process.**

(3) [**Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.**

(4) [**Identify students who may need special education services and programs.**

(b) [**Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections (a) and (c).**

(c) **The screening process shall include:**

(1) **For students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based or performance-based assessment.**

(2) **For students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.**

(3) **An intervention based on the results of the assessments under paragraph (1) or (2).**

(4) **An assessment of the student's response to the intervention.**

(5) **A determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.**

(6) **A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.**

(7) **Activities designed to gain the participation of parents.**

(d) **If screening activities have produced little or no improvement within 60 school days after initia-**

tion, the student shall be referred for evaluation under § 14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.]

The screening process must include:

(1) Hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.

(c) Each school district may develop a program of early intervening services. In the case of school districts meeting the criteria in 34 CFR 300.646(b)(2) (relating to disproportionality), as established by the Department, the early intervening services are required and must include:

(1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.

(2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

(3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.

(4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3).

(5) Repeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) Documentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.

(d) Screening or early intervening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of early intervening activities.

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child

is a child with a disability under 34 CFR [300.534(a)(1)] 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.531—300.535] 300.301 (relating to initial evaluations), the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent for evaluation.

(c) Parents may request an evaluation at any time and the request must be in writing. The school entity shall have readily available for that purpose, an evaluation request form. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the evaluation request form to the parents within 5 school days of the oral request.

(d) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team unless this requirement is waived by a parent in writing.

§ 14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR [300.536] 300.303 (relating to [reevaluation] reevaluations), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.536 (relating to reevaluation)] 300.303, a reevaluation report shall be provided to the parents within 60 school days from the date [that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.] on which the agency is able to document that it has made reasonable efforts to obtain parental consent in accordance with 34 CFR 300.300(c)(2) (relating to parental consent) and the parents have failed to respond.

* * * * *

(d) Copies of the reevaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team unless this requirement is waived by a parent in writing.

§ 14.125. Criteria for the determination of specific learning disabilities.

(a) This section contains the State-level criteria for determining the existence of a specific learning disability. Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with § 14.104(b) (relating to special education plans). To

determine that a child has a specific learning disability, the school district or intermediate unit shall:

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

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2) Use one of the following procedures:

(i) A process based on the child's response to scientific, research-based intervention, which includes documentation that:

(A) The student received high quality instruction in the general education setting.

(B) Research-based interventions were provided to the student.

(C) Student progress was regularly monitored.

(ii) A process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.

(3) Have determined that its findings under this section are not primarily the result of:

- (i) A visual, hearing or orthopedic disability.
- (ii) Mental retardation.
- (iii) Emotional disturbance.
- (iv) Cultural factors.
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

(4) Ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:

(i) Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction.

(ii) Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

IEP

§ 14.131. IEP.

(a) In addition to the requirements incorporated by reference (see 34 CFR 300.320—300.324), the [follow-

ing provisions apply to IEPs] IEP of each student with a disability must include:

(1) [Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team. A parent may waive this provision.] A description of the type or types of support as defined in this paragraph that the student will receive, the determination of which may not be based on the categories of the child's disability alone. Students may receive more than one type of support as appropriate and as outlined in the IEP and in accordance with this chapter.

(i) *Autistic support.* Services for students with the disability of autism who require services to 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 behavioral interventions or supports.

(ii) *Blind-visually impaired support.* Services for students with the disability of visual impairment including blindness, who require services to address needs primarily in the areas of accessing print and other visually-presented materials, orientation and mobility, accessing public and private accommodations, or use of assistive technologies designed for individuals with visual impairments or blindness. For students who are blind or visually impaired, the IEP must include a description of the instruction in Braille and the use of Braille unless the IEP team determines, after the evaluation of the child's reading and writing needs, and appropriate reading and writing media, the extent to which Braille will be taught and used for the student's learning materials.

(iii) *Deaf and hard of hearing support.* Services for students with the disability of deafness or hearing impairment, who require services to address needs primarily in the area of reading, communication accessing public and private accommodations or use of assistive technologies designed for individuals with deafness or hearing impairment. For these students, the IEP must include a communication plan to address the 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.

(iv) *Emotional support.* Services for students with a disability who require services primarily in the areas of social or emotional skills development or functional behavior.

(v) *Learning support.* Services for students with a disability who require services primarily in the areas of reading, writing, mathematics, or speaking or listening skills related to academic performance.

(vi) *Life skills support.* Services for students with a disability who require services primarily in the

areas of academic, functional or vocational skills necessary for independent living.

(vii) *Multiple disabilities support.* Services for students with more than one disability the result of which is severe impairment requiring services primarily in the areas of academic, functional or vocational skills necessary for independent living.

(viii) *Physical support.* Services for students with a physical disability who require services primarily in the areas of functional motor skill development including adaptive physical education or use of assistive technologies designed to provide or facilitate the development of functional motor capacity or skills.

(ix) *Speech and language support.* Services for students for students with speech and language impairments who require services primarily in the areas of communication or use of assistive technologies designed to provide or facilitate the development of communication capacity or skills.

(2) [The IEP of each student shall be implemented as soon as possible but no later than 10 school days after its completion.] Supplementary aids and services in accordance with 34 CFR 300.42 (relating to supplementary aids and services).

(3) [If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents. The interim IEP shall be implemented until a new IEP is developed and implemented or until the completion of due process proceedings under this chapter.] A description of the level or levels of support as defined in § 14.105(e) (relating to personnel).

(4) [If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.] The location where the student attends school and whether this is the school the student would attend if the student did not have an IEP.

(5) [Every student receiving special education and related services provided for in an IEP developed prior June 9, 2001, shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.] For students who are 14 years of age or older, a transition plan which includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.

(6) The IEP of each student shall be implemented as soon as possible but no later than 10 school days after its completion.

(7) Every student receiving special education and related services provided for in an IEP developed prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), shall continue to receive the special

education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference in 34 CFR [300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of IEP)] 300.324 (relating to development, review, and revision of IEP), each school [district] entity shall designate persons responsible to coordinate transition activities.

(c) The member of the IEP team from the school entity, as identified in 34 CFR 300.321(a)(4) (relating to IEP Team), may not be excused from attendance from an IEP team meeting.

§ 14.132. ESY.

[This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.]

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:

(1) At each IEP meeting for a student with disabilities, the school [districts] entity shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.

* * * * *

[(3)] (b) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

[(i)] (1) Progress on goals in consecutive IEPs.

[(ii)] (2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

[(iii)] (3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

[(iv)] (4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

[(v)] (5) Observations and opinions by educators, parents and others.

[(vi)] (6) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

[(4)] (c) The need for ESY services will not be based on any of the following:

[(i)] (1) The desire or need for day care or respite care services.

[(ii)] (2) The desire or need for a summer recreation program.

[(iii)] (3) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe mental retardation; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for extended school year services to be provided as follows:

(1) Parents of students with severe disabilities shall be notified by the school entity of the annual review meeting to ensure their participation.

(2) The IEP review meeting must occur no later than February 28 of each school year for students with severe disabilities.

(3) The Notice of Recommended Educational Placement (NOREP) shall be issued to the parent no later than March 31 of the school year for students with severe disabilities.

(4) If a student with a severe disability transfers into a school entity after the dates in paragraphs (2) and (3), and the ESY eligibility decision has not been made, the eligibility and program content must be determined at the IEP meeting.

(e) School entities shall consider the eligibility for ESY services of all students with disabilities at the IEP meeting. ESY determinations for students other than those described in subsection (d) are not subject to the time lines in subsection (d). However, these determinations shall still be made in a timely manner. If the parents disagree with the school entity's recommendation on ESY, the parents will be afforded an expedited due process hearing.

§ 14.133. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior support programs to ensure that all students shall be free from demeaning treatment and aversive techniques or the inappropriate use of restraints. Behavior support programs include a variety of techniques to develop and maintain skills that will enhance an individual student's or young child's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student or young child shall be the least intrusive necessary.

(b) Notwithstanding the requirements incorporated by reference in 34 CFR [300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel)] 300.34, 300.324 and 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Positive techniques—Methods which utilize positive reinforcement and other positive techniques to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—

(i) Devices and techniques, that last longer than 30 consecutive seconds, designed and used to control acute [or], episodic [aggressive] behaviors [or to control involuntary movements or lack of muscular

control due to organic causes or conditions. The term includes physical and mechanical restraints.], including aggressive or self injurious behaviors. Redirection or physical prompting as a teaching technique when a student does not exhibit active resistance is not considered a restraint. Devices, objects or techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatments are excluded from this definition.

(ii) Examples excluded from this definition include devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets for balance and safety, safety harnesses in buses, functional positioning devices or hand over hand assistance with feeding or task completion.

(c) 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. [The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.]

(1) When there is evidence to suggest that the emergency use of restrictive procedures, such as restraints may be necessary to ensure a student's safety or the safety of others, parental consent should be obtained. If a restrictive procedure is needed on an emergency basis, parents should be informed and consent for future uses be obtained within 10 school days following the need for the use of a restrictive procedure. The need for restrictive procedures for safety should be noted in the student's IEP.

(2) The use of restraints to control the aggressive and self injurious behavior on the part of an individual student shall cause a meeting of the IEP team within 10 school days of the behavior causing the use of restraints unless the use of restraint was consistent with the explicit provisions of the existing IEP and that IEP remains current and appropriate for the student. At this meeting, the team shall consider whether the student needs a behavioral assessment, reevaluation, a new or revised behavior plan, or a change of placement to address the inappropriate behavior.

(3) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(4) School entities shall maintain and report data on the use of restraints as prescribed by the Secretary.

* * * * *

(e) The use of face down prone restraints is prohibited in educational programs, unless determined necessary by a physician and documented in the student's current IEP.

(f) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

* * * * *

[(f) Agencies] (g) School entities have the primary responsibility for ensuring that behavior [management] support programs are in accordance with this chapter, 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 behavior [management] support techniques and obtaining parental consent prior to the use of highly restraining or intrusive procedures.

(h) Injuries requiring treatment by medical personnel that occur as the result of self injurious behavior or a nonaccidental act by another student shall receive prompt review within 10 school days. The review must include consideration as to whether the student causing the injury needs a behavioral assessment, reevaluation, a new or revised behavior plan or other change in program or placement. Recommended changes or determinations should be communicated to the parent and other IEP team members who may request that an IEP meeting be held.

[(g)] (i) In accordance with their plans, agencies may convene a review, including the use of human rights committees, to oversee the use of [restraining] restrictive or intrusive procedures [and] or restraints.

EDUCATIONAL PLACEMENT

§ 14.141. [Terminology related to educational placement] (Reserved).

[Notwithstanding the requirements incorporated by reference with regard to educational placements, the following words and terms, when used in § 14.142 (relating to caseload for special education), have the following meanings:

Autistic support—Services for students with the disability of autism.

Blind and visually impaired support—Services for students with the disability of visual impairment, including blindness.

Deaf and hard of hearing impaired support—Services for students with the disabilities of deafness or hearing impairment.

Emotional support—Services for students with a disability whose primary identified need is emotional support.

Full-time—Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Itinerant—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

Learning support—Services for students with a disability whose primary identified need is academic learning.

Life skills support—Services for students with a disability focused primarily on the needs of students for independent living.

Multiple disabilities support—Services for students with multiple disabilities.

Part-time—Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

Physical support—Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

Resource—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

Speech and language support—Services for students with the disability of speech and language impairment.]

§ 14.142. [Caseload for special education] (Reserved).

[(a) This chart presents the maximum caseload allowed on a single teacher's roll for each school district.

| <i>Type of Service</i> | <i>Itinerant</i> | <i>Resource</i> | <i>Part-time</i> | <i>Full-time:</i> |
|------------------------------------|------------------|-----------------|------------------|-------------------------------|
| Learning Support | 50 | 20 | 15 | 12 |
| Life Skills Support | 20 | 20 | 15 | 12 Elementary 15 Secondary |
| Emotional Support | 50 | 20 | 15 | 12 |
| Deaf and Hearing Impaired Support | 50 | 15 | 10 | 8 |
| Blind or Visually Impaired Support | 50 | 15 | 15 | 12 |
| Speech and Language Support | 65 | | | 8 |
| Physical Support | 50 | 15 | 12 | 12 |
| Autistic Support | 12 | 8 | 8 | 8 |
| Multiple Disabilities Support | 12 | 8 | 8 | 8 |

(b) A school district may request approval for a caseload chart which varies from that in subsection (a) as part of its special education plan consistent

with § 14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

(1) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(2) Apply to special education classes operated in the school district.

(3) Provide a justification for why the chart deviates from the caseload chart in subsection (a).

(4) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission.

(c) Classes or programs with students from more than one district regardless of whether operated by a school district, intermediate unit, or agency shall follow the caseload chart of the district where the class or program is located. Intermediate unit itinerant services provided to multiple districts shall follow the caseload chart under subsection (a).

(d) Caseloads are not applicable to approved private schools.

(e) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

- (1) Graduation rates of students with a disability.
- (2) Drop-out rates of students with a disability.
- (3) Postsecondary transition of students with a disability.
- (4) Rate of grade level retentions.
- (5) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).

(f) The maximum age range shall be 3 years in elementary school (grades K-6) and 4 years in secondary school (grades 7-12). A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team and is justified in the IEP.]

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR [300.519(b) (relating to change of placement for disciplinary removals)] 300.530(b) and 300.536 (relating to authority of school personnel; and change of placement because of disciplinary removals), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR [300.520 (a)(2)(i) and (ii) (relating to authority of school personnel)] 300.530—300.535 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement; and judicial authorities). [For this purpose, the definitions in 34 CFR 300.520(d) apply.]

§ 14.145. Least restrictive environment requirements.

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

(1) To the maximum extent and as provided in the IEP, the student with a disability is educated with students who are not disabled.

(2) Special classes, separate schooling or other removal of a student with a disability from the regular education class when the nature of severity of the disability is such that education in the regular education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.

(3) 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 supplementary aids and services, make progress in the goals included in the student's IEP.

(4) A student may not be removed from or determined to be ineligible for placement in a regular education classroom solely because of the nature or severity of the student's disability, or solely because educating the student in the regular education classroom would necessitate additional cost or administrative convenience.

(5) School entities shall be required to provide a full continuum of placement options.

§ 14.146. Age range restrictions.

(a) The maximum age range in specialized settings shall be 3 years in elementary school (grades K-6) and 4 years in secondary school (grades 7-12).

(b) A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team of that student and is justified in the IEP.

EARLY INTERVENTION

§ 14.151. Purpose.

* * * * *

(b) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

* * * * *

(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by [an intermediate unit, school district] a school entity or other agencies.

§ 14.153. Evaluation.

Notwithstanding the requirements [adopted by reference] in 34 CFR 300.122 (relating to evaluation):

* * * * *

(3) The assessment [shall] must include information to assist the MDT to determine whether the child has a disability and needs special education and related ser-

vices [and to determine the extent to which the child can be involved in appropriate preschool activities].

(4) The following [timeline] time line applies to the completion of evaluations and reevaluations under this section:

(i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the early intervention agency receives written parental consent.

* * * * *

(ii) Notwithstanding the requirements incorporated by reference in 34 CFR [300.536] 300.303 (relating to [reevaluation] reevaluations), a reevaluation report shall be provided within 60 calendar days from the date that the [request] parental consent for reevaluation was received [from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation].

* * * * *

§ 14.154. IEP.

* * * * *

(d) Notwithstanding the requirements incorporated by reference, the following [timelines] time lines govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 calendar days after the completion of the IEP.

* * * * *

(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented [and] or until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to [June 9, 2001] _____(Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

§ 14.155. Range of services.

(a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools [provided these other agencies are licensed, when appropriate, by the Department or the Department of Public Welfare]. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs with other agencies in the community, including preschools, provided that the other agencies are subject to the supervision or licensure of the Depart-

ment of Public Welfare or licensed by the State Board of Private Academic Schools.

(b) The IEP team shall [review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child] recommend services and programs to be provided in the least restrictive environment with appropriate and necessary supplementary aids and services. The placement options may include one or more of the following:

(1) Early childhood environment. Services provided in a typical preschool program with non-eligible young children.

(2) Early childhood special education environment. Services provided in a special education preschool program funded by the early intervention agency.

(3) Home environment. Services provided in the home.

(4) Services outside of the home environment.

(5) Specialized environment. Services provided in a specialized setting including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting.

(iii) An approved out-of-State program.

(c) [The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

(1) Regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.

(2) Regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.

(3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with non-eligible young children.

(4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.

(5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.

(6) Early intervention services provided in a specialized early intervention program.

(7) Early intervention services and programs provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.]

The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children.

(1) The duration of early intervention services shall be developed by each early intervention agency in accordance with the Mutually Agreed upon Written Arrangement (MAWA) and shall be included in [its plans] the MAWA's plan under § 14.104 (relating to educational plans).

(2) Some eligible young children may lose skills over breaks and have difficulty in regaining these skills as evidenced through child performance data. In those cases, the IEP team shall consider whether services should be provided during the break period to maintain skills.

[(e)] (d) The caseloads of professional personnel shall be determined on the basis of maximums allowed and the amount of time required to fulfill eligible young children's IEPs. The following caseloads shall be used in early intervention programs:

(1) [*Supportive intervention.* In a regular preschool program in which supportive intervention is the primary method of service, the caseload range shall be 10-40 children with no more than six eligible young children serviced in the same session. Supportive intervention includes consultation, integrated therapies and other instructional strategies.] *Early intervention itinerant teachers.* Teachers who provide services in a typical preschool, community program or the child's home, shall have a caseload range of 20-40 children, based on the duration and frequency of service as indicated on each IEP.

(2) [*Specialized setting.* In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:

(i) *0-18 months*—One staff member for every three eligible young children, with a maximum class size of nine.

(ii) *18-36 months*—One staff member for every four eligible young children, with a maximum class size of 12.

(iii) *36 months and up*—One staff member for every six eligible young children, with a maximum class size of 18 children.]

Early intervention classroom teachers. Teachers who provide specialized instruction in a special education classroom, shall have a caseload range of three to six eligible young children based on developmental levels with a maximum of 35 children. For each additional child up to six children enrolled in the classroom, one additional adult shall be provided.

(3) [*Home based program.* In early intervention programs in which the home based program is provided to eligible young children as the only

program, the ratio is 10 to 20 eligible young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.] *Speech therapists.* Speech therapists who provide services in classrooms, typical preschools, community programs, or the child's home shall have 25-50 children based on the duration and frequency of service as indicated on each IEP.

[(4) *Early intervention program—speech and language.* In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.

(5) *Early intervention program—physical and occupational therapies.* In early intervention programs where physical therapy or occupational therapy, or both, is specified on the IEP, individual caseloads are determined with consideration to the type of services delivered and the time required for those services.]

PROCEDURAL SAFEGUARDS

§ 14.161. [Prehearing conferences] (Reserved).

[The purpose of the prehearing conference is to reach an amicable agreement in the best interest of the student or young child.

(1) In addition to the requirements incorporated by reference in 34 CFR 300.503-300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district or early intervention agency in the case of a young child to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.

(2) When a parent requests and the school district or early intervention agency in the case of a young child agrees to participate in a prehearing conference, the conference shall be convened within 10 days of receipt of the parent notice and shall be chaired by the superintendent, the early intervention agency representative or their designees.

(3) A parent or the school district or early intervention agency in the case of a young child may waive the right to a prehearing conference and immediately request an impartial due process hearing under § 14.162 (relating to impartial due process hearing and expedited due process hearing).

(4) If the prehearing conference results in agreement, the provisions under § 14.131 (relating to IEP) shall be applied.

(5) Within 5 days of the agreement, a parent may notify the school district or early intervention agency in the case of a young child, in writing, of a decision not to approve the identification, evaluation, recommended assignment or the provision of a free appropriate public education. When a parent gives notice not to approve the identification, evaluation, recommended assignment, or the provision of a free appropriate public education, or if the prehearing conference does not result in an agreement, the provisions under § 14.162 shall be applied.]

§ 14.162. Impartial due process hearing and expedited due process hearing.

* * * * *

(c) A school district or early intervention agency may request a hearing to proceed with an initial evaluation or a reevaluation when [the district has not obtained parental consent as required by 34 CFR 300.505(c) (relating to parental consent)] a parent fails to respond to the district or early intervention agency's proposed evaluation or reevaluation. When a parent rejects the [district's] district or early intervention agency's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, other than the initial placement, the school district or early intervention agency may request an impartial due process hearing. **If the parent fails to respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.**

(d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted [by] on behalf of and held in the school district at a place and time reasonably convenient to the parents and child involved. A hearing for an eligible young child or thought to be an eligible young child shall be conducted [by] on behalf of the early intervention agency at a place and time reasonably convenient to the parents and child involved. These options shall be set forth in the notice provided for requesting a hearing.

* * * * *

(q) The following [timeline] time line applies to due process hearings:

(1) A hearing shall be held [within 30 days after a parent's or school district's initial request for a hearing. If the school district uses the coordination services under subsection (p), the parent's request must be forwarded by the school district within 5 days of the receipt of the request to the service agency supported by the Secretary] after the conclusion of the resolution session under 34 CFR

300.510 (relating to resolution process) or after one of the parties withdraws from mediation or the parties agree to waive or agree to end the resolution session.

(2) The hearing officer's decision shall be issued within 45 days after the [parent's or school district's request for a hearing] the resolution or mediation session ends without resolution or agreement date.

* * * * *

(t) Except as provided in 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the school entity and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the current education placement until the mediation process is concluded.

(u) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(v) The Department will report to the Board by September 1 each year on the number of impartial due process hearings and appeal panel proceedings held during the previous school year. The report will also provide a Statewide summary of the results of the proceedings in a manner that will not violate the confidentiality of children and families. The report will also address actions taken during the previous school year and future plans to strengthen the activities of due process hearings and appeal panel proceedings.

§ 14.163. Resolution session.

The resolution session required under 34 CFR 300.510 (relating to resolution process) will be available to parents of both school age and eligible young children with disabilities. Parent advocates may attend the sessions.

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