

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 14]

Special Education Services and Programs

The State Board of Education (Board) amends Chapter 14 (relating to special education services and programs) to read as set forth in Annex A. Notice of proposed rulemaking was published at 37 Pa.B. 2961 (June 30, 2007).

Statutory Authority

The Board acts under the authority of sections 1372 and 2603-B of the Public School Code of 1949 (code) (24 P. S. §§ 13-1372 and 26-2603-B).

Background

This final-form rulemaking establishes procedures for the identification of students who are disabled and in need of special education services and programs. This final-form 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). See 38 Pa.B. 3593 (June 28, 2008).

A committee of the Board (Chapter 14 Committee) held five regional public roundtable meetings during December 2006 and January 2007, where stakeholders were provided the opportunity to share their concerns about special education. The Chapter 14 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 those on the Board's stakeholder list, school district superintendents, intermediate unit executive directors, area vocational technical 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 web site, and Sunshine Act notices were posted at the meeting sites. State education groups alerted their members and others about the meetings through e-mail distribution lists, web sites and publications.

Throughout the process of drafting the proposed and final-form rulemaking, the Board prepared and posted updated drafts on the Board's web site. The Chapter 14 Committee met in public meetings on November 14, 2006, and during 2007 on January 17, March 21, May 16, June 28, September 19, November 1 and November 14. Drafts of both the proposed and final-form rulemaking were reviewed and discussed at the meetings. Members of the public were provided opportunities to provide comments at these meetings.

Notice of proposed rulemaking was published at 37 Pa.B. 2961. The Board received comments from 257 individuals and organizations during the 30-day public comment period. In addition, the Board received an additional 53 letters and e-mails after the 30-day public comment period.

The revisions to Chapter 14 are designed to align the chapter with the 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 statutes, court decisions and settlement agreements. The Federal regulations are available at www.idea.ed.gov/explore/home. The Board also addressed issues raised by stakeholders throughout its public outreach and review process.

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 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.

Summary of Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 37 Pa.B. 2961 and was available on the Department's web site at www.pde.state.pa.us. The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking. The Senate Education Committee held a hearing on September 18, 2007, and the House Education Committee held hearings on September 27, 2007, and October 31, 2007. The Board also discussed the proposed rulemaking with numerous individuals, education groups and individual members of the General Assembly.

The Board received written comments directly from 257 individuals and organizations during the 30-day public comment period. An additional 53 comments were received after the comment period. Rather than provide a lengthy listing of the organizations and comments and responses in the preamble, the Board prepared a separate document that outlines the comments and the Board's response. This document was sent to each commentator and is posted on the Board's web page on the Department web site.

A summary of substantive changes is provided as follows:

§ 14.102 (relating to purpose)

The reference to 34 CFR 300.160 (relating to participation in assessments) is added to the list of Federal regulations that are adopted by reference. The reference was left out of the proposed regulation through an oversight.

§ 14.103 (relating to terminology related to Federal regulations)

Several comments were received that suggested that 34 CFR 300.518 (relating to child's status during proceed-

ings) be adopted by reference. The United States Court of Appeals for the Third Circuit issued a ruling in *Pardini v. Allegheny Intermediate Unit*, 420 F.3rd 181 (3rd Cir. 2005), cert. denied, 547 U.S. 1050 (2006) which conflicts with the Federal regulation. The Commonwealth must adhere to the ruling of the Federal court that has jurisdiction over the Commonwealth and its political subdivisions.

§ 14.105 (relating to personnel)

Numerous comments were received regarding the proposed qualifications for educational paraprofessionals. In response, the Board has added a definition of instructional paraprofessional and personal care assistant. The qualifications for instructional paraprofessionals are revised to, beginning in July 2010, require they meet one of the following: 1) Associates Degree; or 2) completed 2 years of college; or 3) show evidence of mastery of concepts through a State or local assessment. The provision also adds a requirement that paraprofessionals and personal care assistants complete 20 hours of continuing professional education annually.

Numerous comments were also received about the qualifications established for educational interpreters. The act of July 11, 2006 (P. L. 1092, No. 114) designated the Board with the responsibility to define qualifications for educational interpreters. The final-form rulemakings include a definition of educational interpreter; and they establish qualifications for educational interpreters to either provide evidence of a minimum score of 3.5 on the Educational Interpreter Assessment (EIPA), or be a qualified educational interpreter or qualified transliterator under the Sign Language Interpreter and Transliterator Registration Act (63 P. S. §§ 1725.1—1725.12). It should be noted that extensive professional development has been provided by the Department for the past several years to assist individuals serving as educational interpreters to improve their skills, and meet pending qualifications.

The Board, in consultation with the Department, will review the EIPA score requirement every 2 years. Educational interpreters shall also annually provide evidence of 20 hours of staff development related to interpreting.

The Board believes this standard provides a realistic balance to ensure that quality educational interpreter services are available to students across the Commonwealth who need them.

A considerable number of comments were made relating to the proposed caseload requirements. The final-form rulemakings include caseload language and a chart that closely follows § 14.142 (relating to terminology related to educational placement) caseload requirements in the current regulations, and continues to provide requirements as to the maximum number of students on a teacher's caseload. The term "caseload" continues to refer to the number of students whose Individualized Education Program (IEP) the teacher oversees. This is consistent with the manner in which the term caseload has been interpreted in the past.

The types of service (such as, learning support, autistic support, life skills support, and the like) remain the same. Changes include specific percentages (of time the student receives specialized instruction) to define itinerant and full time services. The terms "resource" and "part-time" are replaced with one term, "supplemental." This change was made because the language used for these terms in the current regulation is vague, subject to various interpretations and is tied to location of services provided to students.

The final-form language clarifies that special education services can be provided in a specialized setting (such as, special education classroom) and can also be provided within the regular education classroom and other settings, as appropriate as specified by the IEP.

§§ 14.123 and 14.124 (relating to evaluation; and reevaluation)

The regulations clarify that when a parent makes a verbal request for an evaluation or reevaluation of a child, the school shall provide the parent with a Permission to Evaluate/Reevaluate Form within 10-calendar days.

There were a considerable number of comments concerning the maximum number of days a school may take to complete the evaluation or reevaluation of a student based on a parent request. The Board reduced the current requirement of 60 school days to 60 calendar days, with the summer vacation period excluded. The Board believes this change is reasonable and appropriate given that the 60 school day requirement allows for up to one-third of the school year to elapse from the date the parent submits the Permission to Evaluate or Reevaluate Form. In addition, the 60-school day requirement is one of the longest permitted of the 50 states.

§ 14.133 (relating to positive behavior support)

A significant number of comments were received on this section. Many commentators expressed a preference for the draft language contained in the March 2007, draft regulations over that in the proposed regulations. In these final-form regulations, the Board inserted the word "positive" in the heading of the section to reflect the intent and focus of the new provisions. Eligible young children receiving services through early intervention services are now included in the protections provided in this section. The new provisions require that behavior support programs and plans be based on a functional assessment of behavior. Restraints are only to be considered as a measure of last resort, only after other less restrictive measures have been used. New provisions are added regarding positive behavior support plans. It adds a definition of restraints and provides that when restraints are used the school entity shall notify the parent and have the IEP team meet within 10-school days unless the parent waives the need for a meeting. The revised provision also establishes criteria as to when the use of restraints may be included in a student's or eligible young child's IEP. Finally, the revised language provides that subsequent to a referral to law enforcement for those who already have a positive behavior support plan that an updated functional behavior assessment be performed and the plan updated.

§ 14.155 (relating to range of services)

The caseload provision for early intervention services is to be based on the basis of the amount of time required to fulfill eligible young children's IEP. Class size may have up to six young children and up to a maximum of 11 if one additional teacher or paraprofessional is assigned to the classroom.

§ 14.162 (relating to impartial due process hearing and expedited due process hearing)

Nearly every commentator addressed the issue of due process hearings and the appeal panels. There was near universal support for the elimination of the two-tier system. The Board determined it was in the best interest of all parties to eliminate the use of the appeal panels and to strengthen the first level hearings process. The

Board included provisions that require the Department to provide annual reports to the Board so it can monitor the effectiveness of the single tier system.

Fiscal Impact and Paperwork Requirements

As the current two-tier system for due process hearings and appeals transitions to a single level system over the next 2 years, schools will save approximately \$958,855 annually. The responsibility for the cost of hearing officers, transcripts, travel and related administrative costs will shift from local school entities to become that of the Department. With elimination of the appeals panels, the Department will save approximately \$251,000 annually in hearing officer, transcription services, travel and related costs.

With a reduction in the time frame for completion of evaluations and reevaluations from 60 school days to 60 calendar days, it is estimated that 10 to 20 additional school psychologists will be needed Statewide to complete the evaluations by the deadline in school entities with a high percentage of students with disabilities. With average salary/benefit costs of approximately \$75,000, the cost to school entities will total approximately \$1,125,000.

The Department will receive savings from the elimination of the appeals panel system. The Department will save approximately \$251,000 annually once all the appeals filed before July 1, 2008, are addressed by the panels. However, with the elimination of the appeals panels, the Department assumes responsibility for the costs associated with the first-level due process hearings which include the cost of hearing officers, court reporters, travel and related costs which were previously paid by local school entities. When the appeals panel system is eliminated, the single-level system will cost the Department approximately \$976,000 annually.

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

The final-form 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 final-form rulemaking, educational interpreters providing services to students who are deaf or hearing impaired employed by intermediate units and school districts will be required 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 final-form rulemaking will become effective on July 1, 2008.

Sunset Date

In accordance with its policy and practice regarding regulations, the Board will review the effectiveness of these regulations after 4 years. 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 the notice of proposed rulemaking, published at 37 Pa.B. 2961, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees (Committees) on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committee were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 4, 2008, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 5, 2008, and approved the final-form rulemaking.

Contact Person

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787, TDD (717) 787-7367.

Findings

The Board finds that:

- (1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Board, acting under authorizing statute, orders that:

- (a) The regulations of the Board, 22 Pa. Code Chapter 14, are amended by amending §§ 14.101—14.104, 14.121—14.124, 14.131—14.133, 14.143, 14.151, 14.153, 14.155 and 14.162; by deleting §§ 14.141, 14.142 and 14.161; and by adding §§ 14.105—14.108, 14.125, 14.145, 14.146 and 14.163 to read as set forth in Annex A.
- (b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (c) The Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order is effective July 1, 2008.

JIM BUCKHEIT,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 6-306 remains valid for the final adoption of the subject regulations.

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:

Act—The Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).

Agency—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 School Code (24 P. S. §§ 17-1701-A—17-1751-A)) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners—The minimum age established by the school district board of directors for admission to the district's first grade under § 11.15 (relating to admission of beginners).

Developmental areas—Cognitive, communicative, physical, social/emotional and self-help.

Developmental delay—A child who is less than the age of beginners and at least 3 years of age is considered to have a developmental delay when one of the following exists:

(i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.

(ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY—Extended school year.

Early intervention agency—A school entity or licensed provider that 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 section 103 of the act (11 P. S. § 875-103).

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 300.8 (relating to child with a disability).

IEP—Individualized education program.

IST—Instructional support team.

MDT—Multidisciplinary team.

Mutually agreed-upon written arrangement—As defined in section 103 of the act.

Parent—The term as defined in 34 CFR 300.30 (relating to parent) and also includes individuals appointed as foster parents under 55 Pa. Code § 3700.4 (relating to definitions).

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

School entity—A local public education provider such as a school district, area vocational-technical school or intermediate unit but excluding charter schools and cyber charter schools under Article XVII-A of the School Code.

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

§ 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—1482) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.

(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.

(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 71 FR 46540—46845 (August 14, 2006). The following sections are incorporated by reference:

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

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

(iii) 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).

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

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

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

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

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

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

(x) 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 300.160 (relating to participation in assessments).

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

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

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

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

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

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

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

(xxv) 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).

(xxvi) 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).

(xxvii) 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).

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

(xxix) 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).

(xxx) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal; impartial review; timelines and convenience of hearings and reviews; and civil action).

(xxxi) 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).

(xxxiii) 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).

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(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 300.111 (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, the intermediate unit shall be considered to be the local education agency.

§ 14.104. 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 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 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 it must describe the following:

(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.

(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 must include procedures for the education of all students with disabilities who are residents of the district, including those receiving special education in approved private schools and students with disabilities who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the School Code (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 year.

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

(1) Services and programs are designed to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.

(2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.

(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.

(g) Portions of the plans that do not meet the criteria for approval will be disapproved. Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30 days after the receipt of the request. The Department will render a decision within 30 days following the hearing.

(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) *Paraprofessionals.*

(1) An instructional paraprofessional is a school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children. The support and assistance includes one-on-one or group review of material taught by certificated staff, classroom management and implementation of positive behavior support plans. Services may be provided in a special education class, regular education class or other instructional setting as provided in the student's IEP. Instructional paraprofessionals shall meet one of the following qualifications effective July 1, 2010:

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

(ii) Possess an associate degree or higher.

(iii) Meet a rigorous standard of quality as demonstrated through a State or local assessment.

(2) Nothing in subsection (a) should be construed to supersede the terms of a collective bargaining agreement in effect on July 1, 2008.

(3) Instructional paraprofessionals, each school year, shall provide evidence of 20 hours of staff development activities related to their assignment.

(4) A personal care assistant provides one-to-one support and assistance to a student, including support and assistance in the use of medical equipment (for example, augmentative communication devices; activities of daily living; and monitoring health and behavior). A personal care assistant may provide support to more than one student, but not at the same time. Personal care assistants shall provide evidence of 20 hours of staff development activities related to their assignment each school

year. The 20 hours of training may include training required by the school-based access program.

(b) *Educational interpreters.* An educational interpreter is an individual who provides students who are deaf or hard of hearing with interpreting or transliterating services in an educational setting.

(1) To serve as an educational interpreter, an individual shall meet the qualifications in subparagraph (i) or (ii) and subparagraph (iii):

(i) 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.

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

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

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

(c) *Caseload.*

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

(i) *Full-time.* Special education supports and services provided by special education personnel for 80% or more of the school day.

(ii) *Itinerant.* Special education supports and services provided by special education personnel for 20% or less of the school day.

(iii) *Supplemental.* Special education supports and services provided by special education personnel for more than 20% but less than 80% of the school day.

(2) The following chart represents the maximum number of students allowed on a teacher's caseload:

	<i>Itinerant (20% or Less)</i>	<i>Supplemental (Less Than 80% but More Than 20%)</i>	<i>Full-Time (80% or More)</i>
Learning Support	50	20	12
Life Skills Support	20	20	12 (Grades K-6) 15 (Grades 7-12)
Emotional Support	50	20	12
Deaf And Hearing Impaired Support	50	15	8
Blind And Visually Impaired Support	50	15	12
Speech And Language Support	65		8

	<i>Itinerant (20% or Less)</i>	<i>Supplemental (Less Than 80% but More Than 20%)</i>	<i>Full-Time (80% or More)</i>
Physical Support	50	15	12
Autistic Support	12	8	8
Multiple Disabilities Support	12	8	8

(3) Each student with a disability shall be assigned to a special education teacher's caseload.

(4) A school district may request approval for a caseload chart that varies from that in paragraph (2) 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 paragraph (2).

(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.

(5) 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 services provided to multiple districts must follow the caseload chart under paragraph (2).

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

(7) 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).

§ 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 acces-

sible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. To ensure 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, in a timely manner, 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 2 U.S.C.A. § 135a (regarding books and sound-reproduction records for blind and other physically handicapped residents; annual appropriations; and purchases).

(c) Agencies act in a timely manner in providing instructional materials under subsection (a) if they take 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 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 300.111 (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 web site. 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, electronic media and other media, 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) Identify students who may need special education services and programs.

(b) The screening process must include:

(1) Hearing and vision screening in accordance with section 1402 of the School Code (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 300.306 (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 300.301 (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-calendar days after the agency receives written parental consent for evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.

(c) Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10-calendar 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 300.303 (relating to reevaluations), shall include a certified school psychologist when evaluating a child for autism, emo-

tional 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 300.303, the reevaluation time line will be 60-calendar days, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.

(c) Students with disabilities who are identified as mentally retarded shall be reevaluated at least once every 2 years.

(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.

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 IEP of each student with a disability must include:

(1) 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. Special education supports and services may be delivered in the regular classroom setting and other settings as determined by the IEP team. In determining the educational placement, the IEP team must first consider the regular classroom with the provision of supplementary aids and services before considering the provision of services in other settings.

(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 positive behavior supports or behavioral interventions.

(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 technolo-

gies 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 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) Supplementary aids and services in accordance with 34 CFR 300.42 (relating to supplementary aids and services).

(3) A description of the type or types of support as defined in § 14.105 (relating to personnel).

(4) 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) For students who are 14 years of age or older, a transition plan that 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 July 1, 2008, 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 300.324 (relating to development, review, and revision of IEP), each school entity shall designate persons responsible to coordinate transition activities.

§ 14.132. ESY.

(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 entity shall determine whether the student is eligible for ESY services and, if so, make subsequent determinations about the services to be provided.

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors; however, no single factor will be considered determinative:

(i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).

(ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(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:

- (1) Progress on goals in consecutive IEPs.
- (2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
- (3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
- (4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- (5) Observations and opinions by educators, parents and others.
- (6) Results of tests, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

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

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

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

(3) The desire or need for other programs or services that, 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 ESY 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 encourage 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 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. Positive behavior support.

(a) Positive, rather than negative, measures must form the basis of behavior support programs to ensure that all students and eligible young children shall be free from demeaning treatment, the use of aversive techniques and the unreasonable use of restraints. Behavior support programs must include research based practices and techniques to develop and maintain skills that will enhance an individual student's or eligible young child's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with subsection (c)(2).

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 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:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive behavior support plans—A plan for students with disabilities and eligible young children who require specific intervention to address behavior that interferes with learning. A positive behavior support plan shall be developed by the IEP team, be based on a functional behavior assessment, and become part of the individual eligible young child's or student's IEP. These plans must include methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—

(i) The application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body.

(ii) The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate activity, or holding a student's or eligible young child's hand to safely escort her from one area to another.

(iii) The term does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the IEP. Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition, and governed by subsection (d).

(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.

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

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

(i) The restraint is utilized with specific component elements of positive behavior support.

(ii) The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.

(iii) Staff are authorized to use the procedure and have received the staff training required.

(iv) There is a plan in place for eliminating the use of restraint through the application of positive behavior support.

(3) The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor.

(4) 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.

(5) School entities shall maintain and report data on the use of restraints as prescribed by the Secretary. The report shall be reviewed during cyclical compliance monitoring conducted by the Department.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

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

(1) Corporal punishment.

(2) Punishment for a manifestation of a student's disability.

(3) Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placement).

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) School entities have the primary responsibility for ensuring that positive behavior 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 positive behavior support techniques and obtaining parental consent prior to the use of restraints or intrusive procedures as provided in subsection (c).

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

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

EDUCATIONAL PLACEMENT

§ 14.141. (Reserved).

§ 14.142. (Reserved).

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR 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 300.530—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).

§ 14.145. Least restrictive environment requirements.

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

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

(2) Special classes, separate schooling or other removal of a student with a disability from the regular education class occurs only when the nature or 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 the full range of supplementary aids and services, make meaningful 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 for administrative convenience.

(5) School entities shall be required to provide access to 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.

(a) This section and §§ 14.152—14.158 (relating to early intervention) apply to services and programs for eligible young children.

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

(1) The Department will provide for the delivery of 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 a school entity or other agencies.

§ 14.153. Evaluation.

Notwithstanding the requirements in 34 CFR 300.122 (relating to evaluation):

(1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.

(2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including physical development, cognitive and sensory development, learning problems, learning strengths and educational need, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.

(3) The assessment must include information to assist the group of qualified professionals and parents to determine whether the child has a disability and needs special education and related services.

(4) The following 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 300.303 (relating to reevaluations), a reevaluation report shall be provided within 60 calendar days from the date that the parental consent for reevaluation was received.

(iii) Reevaluations shall occur at least every 2 years.

(5) Each eligible young child shall be evaluated by an MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under § 14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under § 14.123(a).

§ 14.154. IEP.

(a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.

(b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:

(1) At least one special education teacher or special education provider.

(2) An agency representative familiar with appropriate activities for preschool children and knowledgeable about the availability of the resources of the early intervention agency. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative shall be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

(c) With parental consent, the IEP must include a section on family services, which provides for appropriate services to assist the family in supporting the eligible young child's development.

(d) Notwithstanding the requirements incorporated by reference, the following 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.

(2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.

(e) For children who are within 1 year of transition to a program for school age students, the IEP must contain goals and objectives which address the transition process.

(f) Progress indicators include, but are not limited to, IEP annotation, dated progress and documented parental feedback.

(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 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 July 1, 2008, 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 with other agencies in the community, including preschools, provided that the other agencies are subject to the supervision or licensure of the Department of Public Welfare or licensed by the State Board of Private Academic Schools.

(b) The IEP team shall recommend early intervention services 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 noneligible 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.* Services provided 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 duration of early intervention services, in terms of program days and years, must 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 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.

(d) The caseloads of professional personnel shall be determined on the basis of the amount of time required to fulfill eligible young children's IEPs. The following caseload requirements shall be used for preschool early intervention programs:

(1) *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) *Early intervention classroom teachers.* Early intervention classroom teachers, who provide specialized instruction in an early intervention classroom, may have up to 6 young children in their classroom and may have additional children up to a maximum of 11, provided that one additional teacher or paraprofessional is assigned to the classroom.

(3) *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.

PROCEDURAL SAFEGUARDS

§ 14.161. (Reserved).

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

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, a notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) If parents disagree with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation, or placement of, or the provision of a free appropriate public education to the student or young child, the parent may request an impartial 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 a parent fails to respond to the district or early intervention agency's proposed evaluation or reevaluation. When a parent rejects the 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 school aged child with a disability or thought to be a child with a disability shall be 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 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.

(e) The hearing shall be an oral, personal hearing and shall be closed to the public unless the parents request an open hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) A written or at the option of the parents, electronic verbatim record of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) A party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers:

(1) The Secretary may contract for coordination services for hearings related to a child with a disability or thought to be a child with a disability. The coordination services may include arrangements for stenographic services, arrangements for hearing officer services (including the compensation of hearing officers), scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings. The

compensation of hearing officers does not cause them to become employees of the Department.

(2) A hearing officer may not be an employee or agent of the school entity in which the parents or the child with a disability or thought to be a child with a disability resides, or of an agency that is responsible for the education or care of the child with a disability or thought to be a child with a disability or by a person having a personal or professional interest that would conflict with the person's objectivity in the hearing. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

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

(1) A hearing shall be held 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 resolution or mediation session ends without resolution or agreement date.

(3) A hearing officer may grant specific extensions of time beyond the periods in paragraphs (1) and (2) at the request of either party.

(4) If an expedited hearing is conducted under 34 CFR 300.532 (relating to appeals), the hearing officer decision shall be mailed within 30 school days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list must include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

(s) Except as provided in 34 CFR 300.533 (relating to mediation 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.

(t) The Department will report to the Board by September 1 each year on the number of impartial due process hearings held during the previous school year. The report will also provide a Statewide summary of the results of the hearings 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 hearing 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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