

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 711]

Charter School and Cyber Charter School Services and Programs for Children with Disabilities

The Department of Education (Department) amends Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities) to read as set forth in Annex A.

Statutory Authority

The Department acts under the authority of sections 1732-A(c)(2) and 1749-A(b)(8) of the Charter School Law (24 P. S. 17-1732-A(c)(2) and 17-1749-A(b)(8)).

Background

This final-form rulemaking establishes procedures for the education of students with disabilities who attend public charter schools or cyber charter schools, and sets forth requirements and procedures for the delivery of services and programs for those students. This final-form rulemaking is promulgated to facilitate compliance with Federal statute, regulation and court decrees that apply to students with disabilities. The regulation adopts by reference the IDEA requirements, the Federal regulation adopted by reference may be found at www.idea.ed.gov/explore/home. Chapter 14 (relating to special education services and programs) which governs programs for students with disabilities who are served by school districts, does not apply to students with disabilities who attend charter schools and cyber charter schools. Instead, these schools must follow the regulation of the Department in Chapter 711, as required by sections 1732-A(b) and 1749-A(b)(8) of the Charter School Law. See 38 Pa.B. 3575 (June 28, 2008).

Summary of the Final-Form Rulemaking

The final-form rulemaking is designed to align the chapter with the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C.A. §§ 1400—1419), as amended December 3, 2004, related Federal regulation and applicable provisions of Pennsylvania statutes.

Section 711.1 (relating to definitions)

The final-form rulemaking revises the definitions of “charter school,” “cyber charter school” and “regional charter school” to rely on the definitions contained in statute. This change was made so that these definitions would be consistent and because the Department did not desire, nor did it see a need to expand upon or explain the definitions in the Charter School Law.

Section 711.2 (relating to purposes and intent)

The final-form rulemaking adds to this section that charter schools and cyber charter schools must provide students with disabilities access to the general curriculum and assessments described in Chapter 4 (relating to academic standards and assessment) and also that the Department supports the use of prereferral intervention strategies in cyber and charter schools. This was added to emphasize the importance of the participation of students with disabilities in the general curriculum. This language was also included in Chapter 14 concerning students with disabilities.

Section 711.5 (relating to personnel)

The final-form rulemaking adds this section which specifies qualifications necessary for paraprofessionals and educational interpreters who deliver part of the individualized education program to students with disabilities. These qualifications mirror those in Chapter 14. In considering comments received on these issues, the Department determined that the requirements that were applicable to these staff in school district programs were equally appropriate and necessary in charter schools and cyber charter schools.

Section 711.21 (relating to child find)

The final-form rulemaking adds requirements that written information regarding the child find procedures be included in the school handbook and web site. The Department determined that notice of the child find procedures should be more readily available to parents and the general public.

Sections 711.22 and 771.24 (relating to reevaluation; and evaluation)

The final-form rulemaking amends the reevaluation and evaluation time frames to 60-calendar days with the exception of days when school is on summer break. These requirements mirror those in Chapter 14 and it was felt that the time lines should be consistent in all public placements.

Section 711.44 (relating to ESY)

The Department amended the final-form rulemaking to mirror the Extended School Year (ESY) section in Chapter 14. See § 14.132 (relating to evaluation). This language adds to the regulation the guidance on ESY that has been given to other public schools by the Department for a number of years.

Section 711.45 (relating to positive behavior support)

Significant changes were made in response to the many comments received by parents, advocates and other interested parties. The amendment clearly distinguishes positive behavior support from the use of aversive techniques. The amendment stipulates that positive behavior support plans must be based on a functional behavioral analysis. The amendment clearly defines restraint and clearly prohibits the use of face-down prone restraints. The amendment requires that subsequent to a referral to law enforcement for a student with a disability who has a positive behavior support plan, functional behavior assessment must be conducted and positive behavior support plan updated. Upon reviewing each of these issues the Department determined that the changes were necessary to insure that appropriate behavior support was also made available in charter and cyber charter schools.

Section 711.61 (relating to suspension and expulsion)

Subsection (e) was added to provide that 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 and therefore a change in educational placement. This change, again, was made to mirror the comparable provision in Chapter 14 and was seen as a protection that should be afforded to students in charter and cyber charter schools.

Section 711.62 (relating to procedural safeguards)

This section is amended in final-form rulemaking to mirror the procedural safeguards provision in Chapter 14.

This was done to provide the same single tier administrative appeal in the case of disputes between families and charter or cyber charter schools.

Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 37 Pa.B. 6405 (December 8, 2008). The proposed rulemaking was also available on the Department's web site and the Department held three public hearings regarding the proposed amendments in Pittsburgh, Harrisburg and King of Prussia. The Department accepted formal written comments during the 30-day public comment period that began upon publication of the proposed rulemaking.

The Department received comments from the Independent Regulatory Review Commission (IRRC), VALUE Coalition, the Pennsylvania Education Association, Pennsylvania RID, Vision for Equality, Inc. and the International Association of Nonviolent Crisis Intervention Certified Instructors. Several of the changes discussed previously were made as a result of the comments received. A detailed Comment and Response Document may be obtained by contacting Dr. Linda Rhen, Director of School Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 705-5014, TDD (717) 787-7367.

Affected Parties

The final-form rulemaking will affect students with disabilities and employees of charter schools and cyber charter schools in this Commonwealth.

Fiscal Impact and Paperwork Requirements

As the current two-tier system for due process hearings and appeals transitions to a single level system in the next year, charter schools and cyber charter schools will save approximately \$12,500, because the responsibility for a share of the cost of hearing officers, transcripts, travel and related administrative costs will shift from charter schools and cyber charter schools to the Department. With elimination of the appeals panels, the Department will save approximately \$5,000 annually in appeals panel costs related to charter schools and cyber charter schools. It is estimated that annual increased costs to the Department for implementation of the new single tier system, combined with the total costs of hearing officers, transcripts, travel and administrative costs will be approximately \$17,500.

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 charter schools and cyber charter schools 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 educa-

tion 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 July 1, 2008, following final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice regarding final-form rulemaking, the Department will review the effectiveness of this chapter 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 November 28, 2007, the Department submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the IRRC and to the Chairpersons of the House and Senate Committees (Committees) on Education. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees 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 Department 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. § 745a(j.2)), on June 18, 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 19, 2008, and approved the final-form rulemaking.

Contact Person

The official responsible for information on this final-form rulemaking is Dr. Linda Rhen, Director of School Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 705-5014, TDD (717) 787-7367.

Findings

The Department 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 Charter School Law.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 22 Pa. Code Chapter 711, are amended by amending §§ 711.1—711.9, 711.21, 711.22, 711.41—711.44, 711.61 and 711.62; and by adding §§ 711.10, 711.23—711.25, 711.45 and 711.46 to read as set forth in Annex A.

(b) The Secretary 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 Secretary of Education will 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.

GERALD L. ZAHORCHAK,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3564 (June 28, 2008).)

Fiscal Note: Fiscal Note 6-308 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

CHAPTER 711. CHARTER SCHOOL AND CYBER CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES

GENERAL PROVISIONS AND SUPERVISION

§ 711.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Charter School Law (24 P. S. §§ 17-1701-A—17-1723-A).

Charter school—An independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend. A charter school shall be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity.

Child with a disability—As defined in 34 CFR 300.8 (relating to child with a disability).

Cyber charter school—As defined in section 1703-A of the act (24 P. S. § 17-1703-A).

Department—The Department of Education of the Commonwealth.

ESY—Extended school year.

FAPE—Free appropriate public education.

IDEA—Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1419).

IEP—Individualized education program.

Regional charter school—As defined in section 1703-A of the act.

SEA—State education agency—The Department of Education of the Commonwealth.

School entity—A school district, intermediate unit, joint school or area vocational technical school.

Secretary—The Secretary of the Department.

Section 504—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).

§ 711.2. Purposes and intent.

(a) This chapter specifies how the Commonwealth, through the Department, will meet its obligation to ensure that charter schools and cyber charter schools comply with IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), and Section 504 and its implementing regulations in 34 CFR Part 104

(relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) This chapter does not prevent a charter school or cyber charter school and a school district from entering into agreements regarding the provision of services and programs to comply with this chapter, whether or not the agreements involve payment for the services and programs by the charter school or the cyber charter school.

(c) Charter schools and cyber charter schools are exempt from Chapter 14 (relating to special education services and programs). See 24 P. S. § 17-1732-A.

(d) Children with disabilities shall 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).

(e) The Department supports the use of prereferral intervention strategies, in accordance with 34 CFR 300.226 (relating to early intervening services) and as outlined in § 711.23(c) (relating to screening) to promote students' success in the general education environment.

§ 711.3. Incorporation of Federal regulations.

(a) Charter schools and cyber charter schools assume the duty to ensure that a FAPE is available to a child with a disability in compliance with IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) and section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) The requirements of 34 CFR Part 300 as published at 64 FR 46450—46845 (August 14, 2006) are incorporated by reference, as follows:

(1) 34 CFR 300.4—300.8(a) and (c) (relating to act; assistive technology device; assistive technology service; charter school; and child with a disability).

(2) 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).

(3) 34 CFR 300.17—300.19 (relating to free appropriate public education; highly qualified special education teachers; and homeless children).

(4) 34 CFR 300.22 and 300.23 (relating to individualized education program; and individualized education program team).

(5) 34 CFR 300.27—300.30 (relating to limited English proficient; local educational agency; native language; and parent).

(6) 34 CFR 300.32—300.37 (relating to personally identifiable; public agency; related services; scientifically based research; and secondary school).

(7) 34 CFR 300.39 (relating to special education).

(8) 34 CFR 300.41—300.45 (relating to State educational agency; supplementary aids and services; transition services; universal design; and ward of the state).

(9) 34 CFR 300.101 and 34 CFR 300.102 (relating to free appropriate public education (FAPE); and limitation—exception to FAPE for certain ages).

(10) 34 CFR 300.104—300.108 (relating to residential placement; assistive technology; extended school year services; nonacademic services; and physical education).

(11) 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).

(12) 34 CFR 300.115—300.117 (relating to continuum of alternative placements; placements; and nonacademic settings).

(13) 34 CFR 300.122 (relating to evaluation).

(14) 34 CFR 300.148 (relating to placement of children by parents when FAPE is at issue).

(15) 34 CFR 300.160 (relating to participation in assessments).

(16) 34 CFR 300.172 (relating to access to instructional materials).

(17) 34 CFR 300.174 (relating to prohibition on mandatory medication).

(18) 34 CFR 300.207 (relating to personnel development).

(19) 34 CFR 300.210—300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children with disabilities).

(20) 34 CFR 300.226 (relating to early intervening services).

(21) 34 CFR 300.300 and 300.301 (relating to parental consent; and initial evaluations).

(22) 34 CFR 300.302—300.307(a)(1)(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).

(23) 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).

(24) 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).

(25) 34 CFR 300.327 and 300.328 (relating to educational placements; and alternative means of meeting participation).

(26) 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).

(27) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decision; appeal; partial review; timelines and convenience of hearings and reviews; and civil action).

(28) 34 CFR 300.518(a), (b) and (d) and 300.519 (relating to child's status during proceedings; and surrogate parents).

(29) 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).

(30) 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 request; opportunity for a hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children's rights).

(c) The requirements of 34 CFR Part 104 are incorporated by reference as follows:

(1) 104.3(f), (h)—(j), (k)(2) and (l) (relating to definitions).

(2) 104.4—104.8, regarding discrimination prohibited; assurances required; remedial action; designation of responsible employee; and notice.

(3) 104.10 (relating to effect of state or local law or other requirements and effect of employment opportunities).

(4) 104.11 and 104.12 (relating to discrimination prohibited; and reasonable accommodation).

(5) 104.21—104.37, regarding accessibility.

§ 711.4. Supervision.

(a) The Commonwealth, through the Department will provide general supervision of special education services and programs provided under this chapter to ensure that charter schools and cyber charter schools comply with § 711.3 (relating to incorporation of Federal regulations).

(b) The Department will supervise charter schools' and cyber charter schools' compliance with IDEA in accordance with the policies and procedures in the Department's IDEA grant application under 34 CFR 300.100 (relating to eligibility for assistance) and as approved by the United States Department of Education.

(c) Charter schools and cyber charter schools shall:

(1) Comply with the Department's compliance monitoring requirements.

(2) Provide the information requested by the Department.

(3) Complete the corrective action required by the Department.

§ 711.5. Personnel.

(a) *Appropriate certification required.* Persons who provide special education or related services to children with disabilities in charter schools and cyber charter schools shall have appropriate certification, notwithstanding section 1724-A of the act (24 P. S. § 17-1724-A).

(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. To serve as an educational interpreter at a charter school or cyber charter school, consistent with the Sign Language Interpreter/Transliterator State Registration Act (63 P. S. §§ 1725.1—1725.12), 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 sign language interpreter or qualified transliterator under the Sign Language Interpreter or Transliterator State Registration Act and its implementing regulations.

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

(c) *Review of EIPA score.* The Department, in consultation with the State Board of Education will review the EIPA score requirement every 2 years.

(d) *Paraprofessionals.*

(1) An instructional paraprofessional is a charter school or cyber charter school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to students with disabilities. This 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. Special education 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) Each school year, instructional paraprofessionals 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.

§ 711.6. Annual report.

(a) The annual report required under section 1728-A(b) of the act (24 P. S. § 17-1728-A(b)) must include:

(1) The number of children with disabilities in special education.

(2) The services, programs and resources being implemented by the charter school or cyber charter school staff.

(3) The services and programs utilized by the charter school or the cyber charter school through contracting with another public agency, other organizations or individuals.

(4) The services and programs utilized by the charter school or the cyber charter school through the assistance of an intermediate unit as prescribed under sections 1725-A(a)(4) and 1744-A(3) of the act (24 P. S. §§ 17-1725-A(a)(4) and 1744-A(3)).

(5) Staff training in special education utilized by the charter school or the cyber charter school through the Department's training and technical assistance network and intermediate unit.

(b) The annual report must include an assurance that the charter school or the cyber charter school is in compliance with Federal laws and regulations governing children with disabilities and the requirements of this chapter.

(c) The annual report must include the age and type of exceptionality for each enrolled child with a disability; the level of intervention provided to each child with a disability; certification of staff providing services to each child with a disability; and programs and services available to children with a disability.

§ 711.7. Enrollment.

(a) A charter school or cyber charter school may not deny enrollment or otherwise discriminate in its admission policies or practices on the basis of a child's disability or the child's need for special education or supplementary aids or services.

(b) Subject to subsection (a), a charter school or cyber charter school may limit admission to a particular grade level or areas of concentration of the school such as mathematics, science or the arts. A charter school or cyber charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school charter.

(c) A charter school or cyber charter school may not discriminate in its admission policies or practices on the basis of intellectual ability. Admission criteria may not include measures of achievement or aptitude.

§ 711.8. Education records.

(a) When the educational records for a child with a disability are transferred from a public agency, private school, approved private school or private agency, to a charter school or cyber charter school, the public agency, private school, approved private school or private agency from which the child transferred shall forward all of the child's educational records, including the most recent IEP, within 10 days after the public agency, private school, approved private school or private agency is notified in writing that the child is enrolled in a charter school or cyber charter school.

(b) When the educational records for a child with a disability are transferred to a public agency, private school, approved private school or private agency from a charter school or cyber charter school, the charter school or cyber charter school shall forward the child's educational records, including the most recent IEP, within 10 school days after the charter school or cyber charter school is notified in writing that the child is enrolled at another public agency, private school, approved private school or private agency.

(c) Charter schools and cyber charter schools shall maintain educational records for children with disabilities consistent with the regulations for the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. §§ 1221 note and 1232g) in 34 CFR Part 99 (relating to family educational rights and privacy).

§ 711.9. Payments.

(a) The child's school district of residence shall provide the special education payments required by section 1725-A(a)(3) of the act (24 P. S. § 17-1725-A(a)(3)) to the charter school either when:

(1) A child with an IEP begins attending the charter school or cyber charter school.

(2) The charter school or cyber charter school has identified an enrolled child as a child with a disability under IDEA, has developed an IEP for the child and notifies the district of residence of the identification.

(b) When a child for whom a charter school or cyber charter school received the special education payment required under section 1725-A(a)(3) of the act enrolls in another public agency, private school or private agency, the charter school or cyber charter school shall immediately inform the child's school district of residence that its payment responsibilities under section 1725-A(a)(3) of the act have ceased.

§ 711.10 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.

IDENTIFICATION AND EVALUATION

§ 711.21. Child find.

(a) To enable the Commonwealth to meet its obligations under 34 CFR 300.111 (relating to child find), each charter school and cyber charter school shall establish written policies and procedures to ensure that all children with disabilities who are enrolled in the charter school or cyber charter school, and who are in need of special education and related services, are identified, located and evaluated.

(b) Each charter school's or cyber charter school's written policy must include:

(1) Public awareness activities sufficient to inform parents of children applying to or enrolled in the charter school or cyber charter school of available special education services and programs and how to request those services and programs. Written information shall be published in the charter school or cyber charter school handbook and web site.

(2) Systematic screening activities that lead to the identification, location and evaluation of children with disabilities enrolled in the charter school or cyber charter school.

§ 711.22. Reevaluation.

(a) The parent or teacher of a child with a disability has the right under 34 CFR Part 300.303(b) (relating to reevaluations) to request a reevaluation annually. More frequent reevaluations may only occur if the parent and charter school or cyber charter school agree. In addition to the requirements incorporated by reference in 34 CFR 300.303 (relating to reevaluation), 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.

(b) Charter schools and cyber charter schools shall reevaluate students with disabilities at least once every 3 years.

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

§ 711.23. Screening

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

(1) Identification and provision of initial screening for students prior to referral for a special education evaluation, including those services outlined in subsection (c).

(2) Provision of peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Identification of 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 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 charter school and cyber charter school may develop a program of prereferral intervention services. In the case of charter schools and cyber charter schools meeting the criteria in 34 CFR 300.646(b)(2) (relating to disproportionality), as established by the Department, the services are required and 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 (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), or both.

(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 prereferral intervention activities may 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 or prereferral intervention activities.

§ 711.24. 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), must 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 of 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 charter school or cyber charter school 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 charter school or cyber charter school, 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.

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

Following are State-level criteria for determining the existence of a specific learning disability. Each charter school and cyber charter school 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's charter application and annual report. To determine that a child has a specific learning disability, the charter school or cyber charter school 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 any of the following:

- (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

§ 711.41. IEP.

(a) When a child with an IEP transfers to a charter school or cyber charter school, the charter school or cyber charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA.

(b) For students who are 14 years of age or older, the charter school or cyber charter school shall include a transition plan which includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.

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

§ 711.42. Transportation.

(a) School districts shall provide transportation to students with disabilities eligible under IDEA and to protected handicapped students under Section 504, to the charter school in which they are enrolled, if the charter school is located in their school district of residence, a regional charter school of which the school district is a part or a charter school located outside district boundaries at a distance not exceeding 10 miles by the nearest public highway. This includes transportation to an ESY program, if that program is held at the charter school.

(b) Students with disabilities and Section 504 students may require modifications or accommodations for transportation to the charter school. Provision of modifications or accommodations, including specialized equipment and

bus aides, in a student's IEP or Section 504 Service Agreement, are the obligation of the charter school.

(c) Cyber charter school students are not required to attend a specific facility to receive their educational services. The act does not require that a student's school district of residence provide transportation for cyber charter school students. If transportation is required as a related service in the IEP of the student with disabilities, who is enrolled in a cyber charter school, the cyber charter school shall provide the required transportation.

(d) This chapter does not prohibit a charter school or cyber charter school and a school district from entering into agreements regarding the provision of transportation as a related service or accommodation to children with disabilities eligible under IDEA, or students eligible under Section 504.

§ 711.43. Educational placement.

When the IEP team at a charter school or cyber charter school places a child in another public agency, private school or private agency, and the parents choose to keep their child enrolled in the charter school or cyber charter school, the charter school or cyber charter school is obligated to pay for that placement.

§ 711.44. ESY.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), charter schools and cyber charter schools 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 charter school or cyber charter school 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 FAPE.

(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 charter school or cyber charter school of the annual review meeting to ensure their participation.

(2) An 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 charter school or cyber charter school 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) Charter schools and cyber charter schools 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 charter

school's or cyber charter school's recommendation on ESY, the parents will be afforded an expedited due process hearing.

§ 711.45. Access to instructional materials.

(a) The Department adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in section 674(e)(3)(B) of IDEA (20 U.S.C.A. § 1474(e)(3)(B)), and set forth at 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, charter schools and cyber charter schools 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) Charter schools and cyber charter schools 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) Charter schools and cyber charter schools 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. Charter schools and cyber charter schools 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 shall 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, a charter school or cyber charter school 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, charter schools or cyber charter schools 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 IDEA (20 U.S.C.A. § 1474(e)), which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.

(g) Charter schools and cyber charter schools 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 charter schools or cyber charter schools. Charter schools or cyber charter schools 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 charter schools or cyber charter schools.

§ 711.46. Positive behavior support.

(a) Positive rather than negative measures shall form the basis of positive behavior support programs to ensure that all students 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 opportunity for learning and self-fulfillment. Behavior support programs and plans shall 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 must 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 deescalation techniques in accordance with subsection (c)(2).

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.34, 300.324, 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.

Positive behavior support plan—A plan for students with disabilities 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 student's IEP. These plans include methods that 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) The application of physical force, with or without the use of a device, for the purpose of restraining the free movement of a student's body. The term does not include briefly holding, without force, a student to calm or comfort him, guiding a student to an appropriate activity, or holding a student's hand to safely escort him from one area to another.

(ii) Excluded from this definition are 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 parents and specified in the IEP. Devices used for physical or occupational therapy, seatbelts in wheel chairs 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 shall cause the charter school or cyber charter school 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 needs a functional behavioral assessment, re-evaluation, 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 IEP when:

(i) Utilized with specific component elements of positive behavior support.

(ii) 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 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) Charter schools and cyber charter schools shall maintain and report data on the use of restraints as prescribed by the Secretary. The report will 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 must 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 charter schools or cyber charter schools in educational programs:

(1) Corporal punishment.

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

(3) Locked rooms, locked boxes or other locked 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.

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) Charter schools and cyber charter schools have the primary responsibility for ensuring that 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 behavior support techniques and obtaining parental consent prior to the use of restrictive or intrusive procedures or restraints.

(g) Charter schools and cyber charter schools 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 a student with a disability who has a positive behavior support plan, an updated functional behavior assessment and positive behavior support plan shall be required.

PROCEDURAL SAFEGUARDS

§ 711.61. Suspension and expulsion.

(a) For purposes of this chapter, the terms "suspension" and "expulsion" have the meanings set forth in § 12.6 (relating to exclusions from school).

(b) Charter schools and cyber charter schools shall comply with Chapter 12 (relating to students) and 34 CFR 300.530—300.537, regarding discipline procedures.

(c) Any removal from the current educational placement is a change of placement for a student who is identified with mental retardation.

(d) When a child with a disability has been expelled from a charter school or cyber charter school, the charter school or cyber charter school shall provide the child with a disability with the education required under § 12.6(e) until the charter school or cyber charter school is notified in writing that the child is enrolled in another public agency, private school, approved private school or private agency.

(e) 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.

§ 711.62. Procedural safeguards.

(a) The charter school or cyber charter school shall ensure that procedures are established and implemented to allow parties to disputes regarding any matter described in 34 CFR 300.503(a)(1) (relating to prior notice by the public agency, content of notice), to resolve the dispute through a mediation process that, at a minimum, must be available whenever a hearing is requested under 34 CFR 300.507 (relating to filing a due process complaint) or 34 CFR 300.530—300.537, regarding discipline procedures.

(b) The following apply to coordination services for special education and Section 504 hearings and to hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local charter schools or cyber charter schools. The coordination services shall be provided on behalf of charter schools or cyber charter schools and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) A hearing officer may not be an employee or agent of a charter school or cyber charter school which is responsible for the education of the student, or of the school district in which the parents or student reside or of any other agency which is responsible for the education or care of the student. 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.

(c) A charter school or cyber charter school may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the charter school's or cyber charter school's evaluation or reevaluation. When a parent rejects the charter school's or cyber charter school's proposed identification of a child, proposed evaluation, proposed provision of a FAPE or proposed educational placement, other than the initial placement, the charter school or cyber charter school 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 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 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.

(e) Except as provided by 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 charter school or cyber charter school and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the child's then current education placement until the mediation process is concluded.

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

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