

## 3000 SPECIAL EDUCATION POLICY

3000.1 All local education agencies (LEA) in the District of Columbia shall ensure, pursuant to the Individuals with Disabilities Education Act (IDEA), that all children with disabilities, ages three to twenty-two, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE) and that the rights of these children and their parents are protected.

SOURCE: Final Rulemaking published at 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## 3001 DEFINITIONS

3001.1 When used in this Chapter, the following terms and phrases shall have the meanings ascribed.

**Act** - the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 through 1419.

**Assessment** - the process of collecting data in accordance with § 3005 of this Chapter, to be used by the Individualized Education Program (IEP) team to determine a child's educational needs and eligibility for special education and related services.

**Assistive technology device** - any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

**Assistive technology service** - any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology service includes:

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, the child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability.

**At no cost** - the provision, without charge to the parent, of all:

- (a) Assessment procedures performed by the LEA and used to evaluate a child;
- (b) Specially designed instruction; and

- (c) Assistive technology devices and services required by the IEP.

"At no cost" does not include incidental fees that are typically charged to children without disabilities or to their parents as a part of the regular education program.

**Audiology** - services which include:

- (a) Identification of children with hearing loss;
- (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (c) Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
- (d) Creation and administration of programs for the prevention of hearing loss;
- (e) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (f) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

**Autism** - means a developmental disability which:

- (a) Does not include emotional disturbance as defined below;
- (b) Significantly affects verbal and nonverbal communication and social interaction;
- (c) Is often evident before three years old;
- (d) Adversely affects a child's educational performance; and
- (e) May be characterized by:
  - (1) Engagement in repetitive activities and stereotyped movements;
  - (2) Resistance to environmental change or change in daily routines; and
  - (3) Unusual responses to sensory experiences.

**Blindness** - See Visual Impairment

**Business day** - Monday through Friday except for Federal and District holidays.

**Charter School** - a publicly funded school in the District of Columbia, established in accordance with section 2214 of the D.C. School Reform Act of 1995 (Public Law 104-134) and §§ 31-2801 through 31-2829 of the D.C. Code, that is not a part of the D.C. public schools, unless the D.C. Board of Education has assumed responsibility for the charter school in question following a failure to renew, or revocation of, the school charter.

**Child** - an individual between the ages of three and twenty-two.

**Child with a disability** - a child who satisfies District registration and residency requirements and who has been evaluated in accordance with §§ 3005-3006 of this Chapter as having one of the following conditions and who, as a result of the impairment, needs special education and related services:

- (a) Autism;
- (b) Deaf-blindness;
- (c) Deafness;
- (d) Developmental Delay;
- (e) Emotional disturbance;
- (f) Hearing impairment;
- (g) Mental retardation;
- (h) Multiple disabilities;
- (i) Orthopedic impairment;
- (j) Visual impairment, including blindness;
- (k) Traumatic brain injury;
- (l) Other health impairment;
- (m) Learning disability; and
- (n) Speech or language impairment.

If it is determined, after an appropriate evaluation under the provisions of this Chapter, that a child has one of the disabilities identified in this section, but only needs a related service and not special education instruction, the child is not a child with a disability under this Chapter.

**Consent** - action in which a parent:

- (a) Has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
- (b) Understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and
- (c) Understands that the granting of consent is voluntary on the part of the parent and that it may be revoked at any time.

**Counseling services** - services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

**Day** - a calendar day unless otherwise indicated as a school day or a business day.

**DCPS** - the District of Columbia Public Schools.

**Deaf-blindness** - concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs solely as a child with deafness or a child with blindness.

**Deafness** - a hearing impairment which:

- (a) Is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification; and
- (b) Adversely affects the child's educational performance.

**Developmental Delay** - a condition in which a child, three through seven years of age:

- (a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas:
  - 1 Physical development;
  - 2 Language and communication development;
  - 3 Social or emotional development;
  - 4 Cognitive development; or
  - 5 Adaptive development; and
- (b) due to the delay(s) described above, requires special education and related services.

No child shall be classified as having “Developmental Delay” based solely on deficits in the area of social and/or emotional development.

"Developmental Delay" does not apply to children with the following disabilities:

- (a) autism;
- (b) traumatic brain injury;
- (c) mental retardation;
- (d) emotional disturbance;
- (e) other health impairment;
- (f) orthopedic impairment;
- (g) visual impairment, including blindness;
- (h) hearing impairment, including deafness; or
- (i) speech/language impairment.

**District-** the District of Columbia.

**Emotional disturbance** - a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (a) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (b) An inability to build or maintain satisfactory interpersonal relationships with peers [\*1860] and teachers;
- (c) Inappropriate types of behavior or feelings under normal circumstances;
- (d) A general, pervasive mood of unhappiness or depression; or
- (e) A tendency to develop physical symptoms or fears associated with personal or school problems.

"Emotional disturbance" includes schizophrenia.

"Emotional disturbance" does not include a child who is socially maladjusted, unless it is determined that the child has an emotional disturbance.

**Evaluation** - includes:

- (a) Procedures used in accordance with 34 CFR § 300.500 (b) (2) to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- (b) The process of reviewing:
  - 1 Information from parents;
  - 2 Existing data; and
  - 3 Results of assessment procedures used to determine the child's present level of performance, educational needs and whether a child has a disability, and the nature and extent of the special education and related services that the child needs.
- (c) A review of all of the above at a meeting of the IEP team.

**Extended school year services** - special education and related services that:

- (a) Are provided to a child with a disability beyond the normal LEA school year, in accordance with the IEP, at no cost to the parents of the child; and
- (b) Meet the standards of the LEA.

**Free appropriate public education or FAPE** - special education and related services that:

- (a) Are provided, at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this Chapter;
- (c) Include preschool, elementary and secondary education; and
- (d) Are provided in conformity with an individualized education program that meets the requirements under §§ 3003, 3007-3010, and 3018 of this Chapter.

**General curriculum** - the curricular content adopted by the LEA for all children receiving a public education.

**Hearing impairment** - an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, but which is not included in the definition of deafness in this section.

**Impartial hearing officer** - an individual selected to conduct a due process hearing in accordance with *20 U.S.C. § 1415(f)* who:

- (a) Is not an employee of a public agency or the LEA that is involved in the education or care of the child; and
- (b) Does not have a personal or professional interest that would conflict with the individual's objectivity in the due process hearing.

**Include** - the items named are not all of the possible items that are covered, whether like or unlike the ones named.

**Independent educational evaluation (IEE)** - assessment procedures conducted by a qualified individual who is not an employee of the LEA.

**Individualized education program (IEP)** - a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with *20 U.S.C. § 1414*, and this Chapter.

**Individualized Family Service Plan (IFSP)** – a written plan for providing early intervention services to an eligible child and the child's family.

**IEP team** - a group of individuals, comprised of the persons listed in § 3003 of this Chapter, responsible for:

- (a) Identifying and evaluating children with disabilities in a meeting in accordance with *20 U.S.C. § 1414*, and §§ 3004 and 3005 of this Chapter;
- (b) Developing, reviewing, or revising an IEP for a child with a disability; and
- (c) Determining the placement of a child with a disability in the least restrictive environment (LRE) in accordance with *20 U.S.C. § 1414 (f)*, and § 3011 of this Chapter.

**Local Education Agency (LEA)** - Any public agency having administrative control and direction of a public elementary or secondary school in the District of Columbia. The term includes public charter schools; provided, however, that if a public charter school has ceded its responsibility for providing special education services pursuant to Section 3019 of this chapter to DCPS, then DCPS shall be considered the LEA for such public charter school for purposes of this chapter.

**Medical services** - services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

**Meeting** - a prearranged event when personnel of the LEA, a parent, and others who have knowledge or special expertise regarding the child, at the discretion of the LEA or the parent, come together at the same time and place, in person or telephonically, to discuss matters related to the identification, evaluation, educational placement, and the provision of FAPE for a child with a disability.

"Meeting" does not include:

- (a) Informal or unscheduled conversations with LEA personnel;
- (b) Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if these issues are not addressed on the child's IEP; or
- (c) Preparatory activities of LEA personnel necessary to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

**Mental retardation** - significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior, which is manifested during the developmental period and adversely affects a child's educational performance.

**Multiple disabilities** - concomitant impairments, such as mental retardation-blindness or mental retardation-orthopedic impairment, the combination of which causes such severe educational needs that the child cannot be accommodated in special education programs solely for one of the impairments. "Multiple disabilities" does not include children with deaf-blindness.

**Native language** -

- (a) The language or mode of communication normally used by the child, or the language or mode of communication normally used by the parent of the child;
- (b) In all direct contact with the child (including evaluation of the child), the language normally used by the child in the home or learning environment;
- (c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication which is normally used by the individual (e.g. Braille, sign language, or oral communication).

**Nonacademic and extracurricular activities and services** - activities and services that may include:

- (a) Meals, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA;
- (b) Referrals to agencies that provide assistance to individuals with disabilities; and
- (c) Employment of children, including employment by the LEA, and assistance in making outside employment available.

**Nonpublic school** - an educational program that is governed and operated by an individual or entity, not including the Federal government or any state, county, or municipal agency, or division thereof.

**Occupational therapy** - services performed by a qualified occupational therapist and include:

- (a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- (b) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
- (c) Preventing, through early intervention, initial or further impairment or loss of function.

**Orientation and mobility services** - services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community. "Orientation and mobility services" include:

- (a) Teaching children spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
- (b) Teaching children to use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
- (c) Teaching children to understand and use remaining vision and distance low vision aids; and
- (d) Other concepts, techniques, and tools.

**Orthopedic impairment** - a severe orthopedic impairment that adversely affects a child's educational performance. "Orthopedic impairment" includes impairments:

- (a) Caused by congenital anomaly (e.g., clubfoot or absence of some member, etc.);
- (b) Caused by disease (e.g., poliomyelitis or bone tuberculosis, etc.); and
- (c) From other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

**Other health impairment** - having limited strength, vitality, or alertness, including a heightened alertness to environment stimuli, resulting in limited alertness with respect to the educational environment, and adversely affecting a child's educational performance, due to chronic or acute health problems such as:

- (a) Asthma;
- (b) Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder;
- (c) Diabetes;
- (d) Epilepsy;
- (e) A heart condition;
- (f) Hemophilia;
- (g) Lead poisoning;
- (h) Leukemia;
- (i) Nephritis;
- (j) Rheumatic fever; and
- (k) Sickle cell anemia.

**Parent** - a natural or adoptive parent of a child, a guardian (but not the District if the child is a ward of the District), a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), or a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.515. A foster parent may act as a parent if:

- (a) The natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law; and
- (b) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under the Act, and has no interest that conflicts with the interests of the child.

**Parent counseling and training** includes:

- (a) Assisting parents in understanding the special needs of their child;
- (b) Providing parents with information about child development; and
- (c) Helping parents acquire the necessary skills that will enable them to support the implementation of their child's IEP.

**Personally identifiable information** - information that includes:

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier such as the child's Social Security number;
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**Physical education** - the development of the following services, specially designed if necessary:

- (a) Physical and motor fitness;
- (b) Fundamental motor skills and patterns; and
- (c) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

"Physical education" includes special physical education, adaptive physical education, movement education, and motor development.

**Physical therapy** - services provided by a qualified physical therapist.

**Psychological services** - services that include:

- (a) Administering psychological and educational tests, and other assessment procedures;
- (b) Interpreting assessment results;
- (c) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

- (d) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
- (e) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (f) Assisting in developing positive behavioral intervention strategies.

**Public expense** - the cost of services paid for or provided by a public agency at no cost to the parent.

**Qualified evaluator** - an evaluator who has met the SEA-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the evaluator's field in the location where the evaluator practices. For the administration of standardized tests, a person who is trained and knowledgeable and administers the test in accordance with the instructions provided by the producer of the test.

**Qualified personnel** - personnel who have met the SEA-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services set forth in Chapters 10 and 16.

**Recreation** - services that include assessment of leisure function, therapeutic recreation services, recreation programs in schools and other community agencies, and leisure education.

**Reevaluation** - means an evaluation conducted after the initial evaluation in accordance with § 3005 of this Chapter.

**Rehabilitation counseling services** - services provided:

- (a) By qualified personnel in individual or group sessions that focus specifically on:
  - (1) Career development;
  - (2) Employment preparation;
  - (3) Achieving independence, and
  - (4) Integration in the workplace and community of a child with a disability; and
- (b) To children with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

**Related services** - transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. "Related services" include:

- (a) Speech-language pathology;
- (b) Audiology services;
- (c) Psychological services;
- (d) Physical and occupational therapy;

- (e) Recreation, including therapeutic recreation;
- (f) Early identification and assessment of disabilities in children;
- (g) Counseling services, including rehabilitation counseling;
- (h) Orientation and mobility services;
- (i) Medical services for diagnostic or evaluation purposes;
- (j) School health services;
- (k) Social work services in schools;
- (l) Parent counseling and training; and
- (m) Transportation.

**School day** - a day, including a partial day, when the LEA is open and students are required to be in attendance for instructional purposes.

**School health services** - services provided by a qualified school nurse or other qualified individual.

**Severe discrepancy** - A difference of at least two years below a child's chronological age and/or at least two standard deviations below the child's cognitive ability as measured by appropriate standardized diagnostic instruments and procedures.

**Social work services in school** - include:

- (a) Preparing a social or developmental history of a child with a disability;
- (b) Group and individual counseling with the child and family;
- (c) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (d) Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
- (e) Assisting in the development of positive behavioral intervention strategies.

**Special education** - specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including the instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. "Special education," if it meets this definition, includes:

- (a) Speech-language pathology services;
- (b) Vocational education;
- (c) Travel training; and
- (d) Instruction in physical education if the service consists of specially designed instruction.

**Specially designed instruction** - the adaptation of content, methodology, or delivery of instruction, as appropriate to meet the unique needs of a child with a disability in order to ensure access to the general curriculum, so that the child can meet the educational standards that apply to each child within the jurisdiction of the District.

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

**Speech or language impairment** - a communication disorder such as stuttering, impaired articulation, voice impairment, or language impairment that adversely affects a child's educational performance.

**Speech-language pathology services** - services that include:

- (a) Identification of children with speech or language impairments;
- (c) Diagnosis and appraisal of specific speech or language impairments;
- (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (e) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

**State Education Agency (SEA)**--The Board of Education of the District of Columbia.

**Supplementary aids and services** - aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with a disability to be educated with non-disabled children to the maximum extent appropriate in accordance with § 3012 of this Chapter.

**Surrogate Parent** - an individual who is appointed by the LEA to advocate for the child with a disability, or a child suspected of having a disability, during evaluation through possible placement, when no parent can be identified or the whereabouts of parents cannot be determined or if the child is a ward of the District, as needed.

**Transition Services**--include:

- (a) A coordinated set of activities for a child with a disability, designed within an outcome-oriented process, that promote movement from school to post-school activities including:
  - (1) Post-secondary education;
  - (2) Vocational training;

- (3) Integrated employment, including supported employment;
  - (4) Continuing and adult education;
  - (5) Adult services;
  - (6) Independent living; or
  - (7) Community participation.
- (b) Activities based on the individual child's needs, taking into account the child's preferences and interests including:
- (1) Instruction, related services, community experiences, development of employment and other post-school adult living objectives;
  - (2) Acquisition of daily living skills, if appropriate; and
  - (3) Functional vocational evaluation, if appropriate.

Transition services for children with a disability may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.

**Transportation** - services that include:

- (a) Travel to and from school and between schools;
- (b) Travel in and around school buildings; and
- (c) Specialized equipment (such as special or adapted buses, lifts, and ramps) if required to provide special transportation for a child with a disability.

**Traumatic brain injury** - an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. "Traumatic brain injury" includes open or closed head injuries resulting in impairments in one or more areas such as:

- (a) Cognition;
- (b) Language;
- (c) Memory;
- (d) Attention;
- (e) Reasoning;
- (f) Abstract thinking;
- (g) Judgment;
- (h) Problem solving;
- (i) Sensory, perceptual, motor abilities;

- (j) Psychosocial behavior;
- (k) Physical functions;
- (l) Information processing; and
- (m) Speech.

"Traumatic brain injury" does not include brain injuries that are:

- (a) Congenital or degenerative; or
- (b) Brain injuries induced by birth trauma.

**Travel Training** - providing instruction, as appropriate, to children with significant cognitive disabilities and other children with disabilities who require such instruction, to enable them to:

- (a) Develop an awareness of the environment in which they live; and
- (b) Learn the skills necessary to move effectively and safely from place to place within that environment (in school, in the home, at work, and in the community).

**Visual impairment, including blindness** - impairment in vision that, even with correction, adversely affects a child's educational performance. "Visual Impairment" includes partial sight and blindness.

**Vocational education** - organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

SOURCE: Final Rulemaking published at 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 38 DCR 4095a (July 5, 1991); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003); as amended by Final Rulemaking published at 52 DCR 10559 (December 2, 2005).

## **3002 LEA RESPONSIBILITY**

### 3002.1 Provision of FAPE

- (a) The LEA shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the District.
- (b) A child with a disability found by the LEA to be eligible for special education and related services shall remain eligible through the end of the semester he or she turns twenty-two.
- (c) If a child with a disability turns twenty-two during the summer, he or she shall be ineligible for further special education and related services under this Chapter.
- (d) The LEA shall ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of

special education and related services, including children with disabilities attending private schools, regardless of the nature or severity of their disabilities.

- (e) The LEA shall ensure that, beginning at age three, FAPE is available to any child with a disability who needs special education and related services, including children who are suspended or expelled, and highly mobile children, such as migrant or homeless children, even if they are advancing from grade to grade.
- (f) The services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability.
- (g) When a child with a disability can receive FAPE in his or her local school without transportation, the LEA is not required to provide transportation to an alternative placement unilaterally selected by the child, parent or guardian.
- (h) Section 2510--(Proposed Discipline of a Student with Disability) Title V provides for discipline of students including students with disabilities.

#### 3002.2 Provision of FAPE Not Required

- (a) The LEA shall not be obligated to provide FAPE to a child with a disability aged eighteen to twenty-two who, in the last educational placement prior to incarceration in an adult correctional facility:
  - (1) Was not actually identified as being a child with a disability under § 3004 of this Chapter; and
  - (2) Did not have an IEP under § 3007 of this Chapter.
- (b) The exception in subsection (a) above does not apply to a child with disability, aged eighteen to twenty-two, who:
  - (1) Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to his or her incarceration; or
  - (2) Did not have an IEP in his or her last educational setting, but who had actually been identified as a "child with a disability" under section 3001 of this Chapter.
- (c) The LEA shall not be obligated to provide FAPE to children with disabilities who have graduated from high school with a regular high school diploma. This provision does not apply to children with disabilities who have graduated, but who have not been awarded a regular high school diploma.

#### 3002.3 Individualized Education Programs

- (a) The LEA shall ensure that procedures are in place to identify, locate and evaluate children with disabilities residing in the District or children who are wards of the District.
- (b) The LEA shall ensure that an IEP team is available to fulfill IEP team responsibilities as required by this Chapter.

- (c) The LEA shall ensure that an IEP is developed and implemented for each eligible child with a disability served by the LEA.
- (d) The LEA shall ensure that special education and related services are provided to an eligible child with a disability in accordance with the child's IEP.
- (e) The LEA shall ensure that the IEP team reviews and revises, as appropriate, but no less than annually, the IEP of each child with a disability.
- (f) The LEA shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

3002.4 Procedural Safeguards

- (a) The LEA shall maintain and implement procedural safeguards as required by this Chapter.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2973 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003); as amended by Final Rulemaking published at 52 DCR 10559 (December 2, 2005).

### **3003 INDIVIDUALIZED EDUCATION PROGRAM (IEP) TEAM**

3003.1 The IEP team for each child with a disability shall include:

- (a) The parents of the child;
- (b) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, or if the child is being evaluated for SLD;
- (c) At least one special education teacher, or, if appropriate, at least one special education provider of the child;
- (d) A representative of the LEA who is:
  - (1) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, and
  - (2) Knowledgeable about the general curriculum and about the availability of resources of the LEA;
- (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in §§ (a) through (d) of this section, or for a child being evaluated for SLD, a person qualified to conduct individual diagnostic evaluations;
- (f) Other individuals, at the discretion of the parent or the LEA, who have knowledge or special expertise regarding the child, including related services personnel, if appropriate; and
- (g) The child, if appropriate.

Nothing in this section shall preclude the LEA from designating an advocate to assist the parent as a member of the team, with the consent of the parent.

- 3003.2 If a child does not have a regular teacher, the regular educator described in § 3003.1(b) shall be an individual qualified to teach a child of the child's age.
- 3003.3 When the purpose of the IEP meeting is to evaluate a child and/or determine his or her eligibility for special education services, the IEP team shall include qualified individual(s) with appropriate credentials and expertise to conduct evaluations in the area(s) of the child's suspected disability.
- 3003.4 When a purpose of the IEP meeting is to consider transition services:
- (a) The IEP team shall invite:
    - (1) The child; and
    - (2) A representative of any other agency that is likely to be responsible for providing or paying for transition services.
  - (b) If the child does not attend the meeting, the LEA shall take other steps to ensure that the child's preferences and interests are considered.
  - (c) If an invited representative of a participating agency does not attend the meeting, the LEA shall take other steps to obtain the involvement of the agency in the planning of transition services.
- 3003.5 As a member of the IEP team, a regular education teacher of the child shall, to the extent appropriate, participate in the development of the child's IEP. Participation includes assisting in the determination of:
- (a) Appropriate positive behavioral interventions and strategies for the child; and
  - (b) Supplementary aids and services, program modifications, or supports for school personnel, in accordance with § 3009.1(d).
- 3003.6 Parental Participation
- (a) The LEA shall take the steps set out in subsections (b) through (h) of this section to ensure that one or both of the parents of the child with a disability are present or are afforded an opportunity to attend and participate at all meetings of the IEP team.
  - (b) The parent of a child with a disability shall be provided with notice early enough to ensure that he or she will have an opportunity to attend the meeting.
  - (c) Efforts to obtain the participation of the parent include:
    - (1) Scheduling the IEP meeting at a mutually agreed upon time and place; and
    - (2) Indicating, as part of the written notice:
      - (i) The purpose, time, date, and location of the meeting;
      - (ii) Who will be in attendance; and

- (iii) That parents may bring other individuals to participate on the IEP team who have knowledge or special expertise regarding the child.
- (d) For a child with a disability who is fourteen years old, or younger if appropriate, the written notice shall indicate that:
  - (1) a purpose of the meeting will be the development of a statement of the transition services needs of the child; and
  - (2) the LEA will invite the child.
- (e) For a child with a disability who is sixteen years old, or younger if appropriate, the written notice shall:
  - (1) include the information in paragraph (d) above;
  - (2) indicate that a purpose of the meeting will be the development of a statement of the transition services needed by the child; and
  - (3) identify any other agencies that will be invited to send a representative.
- (f) If neither parent can attend, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.
- (g) A meeting may be conducted without a parent in attendance if the LEA:
  - (1) Is unable to convince the parent to attend and the LEA has a record of its attempts to arrange a mutually agreed on time and place, such as:
    - (i) Detailed records of telephone calls made or attempted and the results of those attempts;
    - (ii) Copies of correspondence sent to the parent and any responses received; or
    - (iii) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (h) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for a parent with deafness or whose native language is other than English and providing material and/or handouts in the parent's native language where available.
- (i) The LEA shall provide a copy of the IEP to the parent at no cost to the parent.

3003.7 The determination of the knowledge or special expertise of any individual described in Section 3003.1(f) of this section shall be made by the party (parent or LEA) who invited the individual to be a member of the IEP team.

SOURCE: Final Rulemaking published 30 DCR 2972, 2991 (June 17, 1983); as amended by Final Rulemaking published at 37 DCR 6809 (October 26, 1990); and by Final Rulemaking published 42 DCR 1956 (April 28, 1995); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003).

## **3004 IDENTIFICATION**

### 3004.1 Referral to IEP Team

- (a) A child with a suspected disability who may need special education and is at least two years, eight months of age and less than twenty-two years of age, shall be referred, in writing, to an IEP team.
- (b) A referral, which shall state why it is thought that the child may have a disability may be made by the following:
  - (1) A child's parent or person in a parental relationship; or
  - (2) A child (self-referral) who is between the ages of eighteen (18) and twenty-two (22) years of age or an emancipated minor who is eligible to attend the LEA; or
  - (3) A professional staff employee of the LEA; or
  - (4) A staff member of a public agency who has direct knowledge of the child.
- (c) If the child to be referred attends a D.C. public school or is enrolling in a D.C. public school at the time this referral is made, this referral shall be submitted by his or her parent to the building principal of his or her home school, on a form to be supplied to the parent by the home school at the time of the parent's request.
- (d) If the child to be referred does not attend a D.C. public school and the parent does not register the child to attend a D.C. public school at the time the referral is made, this referral shall be submitted by the parent to a site designated by the Superintendent on a form to be supplied to the parent by that site at the time of the parent's request.
- (e) Following a referral, an IEP team shall meet to review:
  - (1) Existing Data;
  - (2) Information from the parent;
  - (3) Pre-referral interventions and strategies;
  - (4) Current classroom-based assessments; and
  - (5) Observations by teachers and related service providers.

SOURCE: Final Rulemaking published 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 52 DCR 10558 (December 2, 2005).

## **3005 EVALUATION AND REEVALUATION**

### 3005.1 The LEA shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine:

- (a) if the child is a "child with a disability" under this Chapter; and
- (b) the educational needs of the child.

- 3005.2 The IEP team shall conduct an initial evaluation of a child within a reasonable time of receiving a written referral and parental consent to proceed and within timelines consistent with Federal law and D.C. Code § 38-2501(a).
- 3005.3 To conduct an evaluation, the IEP team shall:
- (a) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
  - (b) carefully consider and document information used as a basis of the team decision.
- 3005.4 As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team, including other qualified professionals, as appropriate, shall:
- (a) review existing evaluation data on the child, including:
    - (1) evaluations and information provided by the parents of the child;
    - (2) current classroom-based assessments and observations; and
    - (3) observations by teachers and related service providers; and
  - (b) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
    - (1) whether the child has a particular category of disability under this Chapter or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
    - (2) the present levels of performance and educational needs of the child;
    - (3) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.
- 3005.5 Qualified evaluators, under the direction of the IEP team, shall administer tests and other assessment procedures as may be needed to produce the data required to make the determinations described in § 3005.4.
- 3005.6 If the determination under § 3005.4 is that no additional data are needed to determine whether the child continues to be a child with a disability, the IEP team shall notify the child's parents of that determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services under this section, the child continues to be a child with a disability. The IEP team is not required to conduct assessments under § 3005.4 unless requested to do so by the child's parents.
- 3005.7 A reevaluation under the procedures identified in §§ 3005.4-3005.6 shall be conducted at least once every three years, or more frequently if conditions warrant reevaluation; if the child's parent

or teacher requests a reevaluation; or before determining a child is no longer a child with a disability.

3005.8 The LEA shall ensure that testing and assessment materials and procedures used to evaluate a child's need for special education and related services are:

- (a) selected and administered in a manner that is not racially or culturally discriminatory; and
- (b) provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

3005.9 The LEA shall ensure that:

- (a) materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills;
- (b) a variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability under this Chapter and the content of the child's IEP;
- (c) any standardized tests that are given to a child:
  - (1) have been validated for the specific purpose for which they are used; and
  - (2) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;
- (d) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are to provide a single general intelligence quotient;
- (e) tests are selected and administered to ensure that if the child has impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect impaired sensory, manual or speaking skills (unless those skills are the factors that the test purports to measure);
- (f) no single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;
- (g) the child is assessed in all areas related to the suspected disability, including, if appropriate:
  - (1) academic performance;
  - (2) health;
  - (3) vision;

- (4) hearing;
  - (5) social and emotional status;
  - (6) general intelligence (including cognitive ability and adaptive behavior);
  - (7) communicative status; and
  - (8) motor abilities
- (h) in evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and services needs, whether or not commonly linked to the disability category in which the child has been classified;
  - (i) the IEP team uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
  - (j) the IEP team uses assessment tools and strategies that provide information that directly assists persons in determining the educational needs of the child.

3005.10 In evaluating a child suspected of having a learning disability, in addition to the procedures described above, the IEP team shall ensure that at least one team member other than the child's regular teacher observes the child's academic performance in the regular classroom setting; or, in the case of a child of less than school age or out of school, observes the child in an appropriate setting for a child of that age.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2974 (June 17, 1983); as amended by Final Rulemaking published 36 DCR 180, 187 (July 5, 1991); as amended by Final rulemaking published at 47 DCR 2188 (March 24, 2000); as amended by Final rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3006 ELIGIBILITY DETERMINATION**

3006.1 Reports of assessment procedures administered to a child in each area related to the suspected disability shall be available to the IEP team at the time of the eligibility determination meeting.

3006.2 Each assessment report shall include the following:

- (a) the date of assessment and the date of the report;
- (b) a description of the child's performance in each area assessed, including specific strengths and weaknesses;
- (c) information relevant to determinations under § 3005.4(b);
- (d) instructional implications for the child's participation in the general curriculum;
- (e) if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration); and
- (f) the signature and title of the qualified examiner(s) who administered the assessment procedure and who wrote the report.

- 3006.3 The IEP team shall consider all assessment reports in completing any evaluation of a child suspected of having a disability, or, in the case of reevaluation, any child identified as having a disability under this section. As the result of its consideration, the IEP team will determine whether the child:
- (a) is a child with a disability under this Chapter (or, in the case of reevaluation, whether the child continues to be a child with a disability); and
  - (b) whether the child needs special education and related services (or, in the case of reevaluation, whether the child continues to need special education and related services).
- 3006.4 The IEP team shall determine that a child has an SLD if:
- (a) a disorder is manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.
  - (b) Disorder includes such conditions as:
    - (1) perceptual disabilities;
    - (2) brain injury;
    - (3) minimal brain dysfunction;
    - (4) dyslexia and;
    - (5) developmental aphasia.
  - (c) Disorder does not include a learning problem that is primarily the result of:
    - (1) a visual, hearing or motor disability;
    - (2) mental retardation;
    - (3) emotional disturbance; or
    - (4) environmental, cultural or economic disadvantage.
  - (d) In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.
- 3006.5 As the result of any evaluation or reevaluation, whether or not procedures in addition to those already available are conducted, the IEP team will prepare a written evaluation (reevaluation) report, including the following:
- (a) information provided by the parent(s);
  - (b) results of assessment procedures considered and used as a basis for making an eligibility determination;
  - (c) a statement whether the assessment procedures were valid for the purposes intended and valid for the child;

- (d) whether the child is a child with a disability;
- (e) whether the child needs special education and related services; and
- (f) the signatures of team members participating in the determinations.
- (g) if the child was suspected of having SLD, in addition to (a)-(f):
  - (1) a statement of whether the child has SLD;
  - (2) the basis for making the determination;
  - (3) the relevant behaviors noted during the observation of the child;
  - (4) the relationship of the behaviors to the child's educational performance;
  - (5) educationally relevant medical findings, if any;
  - (6) a statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
  - (7) the determination of the IEP team concerning the effects of environmental, economic, or cultural disadvantage; and
  - (8) the written certification of each IEP team member as to whether the written report reflects the member's conclusions. If the written report does not reflect a member's conclusion, the team member shall submit a separate statement presenting the team member's conclusion. This separate statement will be included as part of the evaluation report.

3006.6 The IEP team may not determine that a child is a child with a disability if it determines that the determinant factor for the child's eligibility determination is:

- (a) lack of instruction in reading or mathematics; or limited English proficiency; and
- (b) the child does not otherwise meet the eligibility criteria.

3006.7 The LEA shall provide the parent with a copy of the evaluation report and each assessment report, at no cost to the parent.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2975 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final rulemaking published at 50 DCR 8810 (October 17, 2003); as amended by Final rulemaking published at 52 DCR 10561 (December 2, 2005).

### **3007 INDIVIDUALIZED EDUCATION PROGRAM (IEP) DEVELOPMENT**

3007.1 The IEP team shall meet and develop an IEP for a child with a disability within thirty days of a determination that a child needs special education and related services.

3007.2 In developing an IEP for a child with a disability, the IEP team shall consider and document:

- (a) Strengths of the child;
- (b) Concerns of the parent for enhancing the education of the child;
- (c) Results of the initial or most recent evaluation; and
- (d) As appropriate, the results of the child's performance on any District-wide assessment programs.

3007.3 If a child's behavior impedes the child's learning or the learning of others, the IEP team shall consider strategies, including positive behavioral intervention, strategies, and supports, to address that behavior. An individual behavior plan shall be developed and incorporated into the IEP. A copy of that individual behavior plan shall be provided to the child's parents and to each teacher and service provider.

3007.4 If a child has limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.

3007.5 If a child is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

3007.6 The IEP team shall consider the communication needs of the child and, if a child is deaf or hard of hearing, the IEP team shall consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and mode of communication, academic level, and full range of needs, including opportunities for direct instruction in the child's language and mode of communication.

3007.7 The IEP team shall consider whether the child requires assistive technology devices and services.

3007.8 When considering the factors as described in this section, if the IEP team determines that a child with a disability needs a particular device or service, including intervention, assessment, accommodations, or other program modifications, to receive FAPE, the child's IEP shall include a statement to that effect.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2976 (June 17, 1983); as amended by Final Rulemaking published at 37 DCR 6809 (October 26, 1990); and by Final Rulemaking published at 42 DCR 1956 (April 28, 1995); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3008 IEP REVIEW**

3008.1 The IEP team shall meet periodically, but not less than annually, to review and revise the IEP, as appropriate, to:

- (a) Determine whether the annual goals and objectives for the child are being achieved;
- (b) Address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- (c) Review and consider data and information from assessment procedures conducted as part of a reevaluation;

- (d) Consider any information about the child provided to or by the parent;
- (e) Address the child's anticipated needs; and
- (f) Address other matters.

3008.2 The IEP team of a child with a disability, who is convicted as an adult under District or state law and incarcerated in an adult prison, may modify the child's IEP or placement if the District has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

3008.3 The requirements of §§ 3003-3013 of this Chapter do not apply with respect to modifications described in section 3008.2 above.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2977 (June 17, 1983); as amended by Final Rulemaking published at 37 DCR 2128 (March 30, 1990); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3009 INDIVIDUALIZED EDUCATION PROGRAM CONTENT**

3009.1 The IEP for a child with a disability shall include:

- (a) A description of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (the same curriculum as for non-disabled children), and for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (b) For preschool children, as appropriate, a description of how the disability affects the child's participation in appropriate activities;
- (c) A statement of measurable annual goals, including academic and functional goals, designed to:
  - (1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (2) Meet each of the child's other educational needs that result from the child's disability;
- (d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or support for school personnel that will be provided for the child:
  - (1) To advance appropriately toward attaining the annual goal;
  - (2) To be involved and make progress in the general education curriculum in accordance with § 3011.1 of this Chapter and to participate in extracurricular and other nonacademic activities; and
  - (3) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this section;

- (e) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the general education class and in the activities described in paragraph (d) of this subsection;
- (f) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with the guidelines established for alternate assessments;
- (g) If the IEP Team determines that the child shall take an alternate assessment on a particular District-wide assessment of student achievement, a statement by the team of:
  - (1) Why the child cannot participate in the regular assessment; and
  - (2) How the particular alternate assessment selected is appropriate for the child;
- (h) The projected date for the beginning of the service and modifications described in paragraph (d) of this section and the anticipated frequency, location, and duration of those services and modifications;
- (i) A statement of how the child's progress toward the annual goals will be measured and how the child's parent will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled child's progress, of:
  - (1) The child's progress toward annual goals; and
  - (2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

3009.2 The LEA does not guarantee achievement of the goals of the IEP.

3009.3 The IEP for a child with a disability, beginning not later than the first IEP to be in effect when the child is sixteen (16), and updated annually thereafter, shall include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

3009.4 For each child beginning at age sixteen, or younger if determined appropriate by the IEP team, the IEP shall include a statement of needed transition services including, if appropriate, a statement of inter-agency responsibilities or any needed linkages, or both, before the child leaves the school setting.

3009.5 If the IEP team determines that transition services are not needed, the IEP shall include a statement to that effect and the basis upon which the determination was made.

3009.6 The requirements set out in §§ 3009.3 and 3009.4 above shall not apply to children with disabilities who are convicted as adults under District or state law and incarcerated in adult prisons whose eligibility under Part B of IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

3009.7 Beginning at least one year before a child with a disability reaches the age of eighteen, his or her IEP must include a statement that the child has been informed of his or her rights under Part B of

the Act that will transfer to the child on reaching the age of eighteen, unless the child has been determined to be incompetent under District law.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 52 DCR 10562 (December 2, 2005).

### **3010 IEP IN EFFECT**

- 3010.1 An IEP must be in effect before special education and related services are provided to a child with a disability, including children with disabilities placed in or referred to a nonpublic school by the LEA; provided, that an eligible child may be placed in a special education program temporarily, for the purposes of assessment, before the IEP is finalized.
- 3010.2 The LEA shall implement an IEP as soon as possible after the meeting where the IEP is developed or revised.
- 3010.3 The LEA shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.
- 3010.4 The LEA shall ensure that each teacher and provider described in § 3010.3 of this section is informed of:
- (a) His or her specific responsibilities related to implementing the child's IEP; and
  - (b) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- 3010.5 In the case of a child with a disability aged three through five, an Individualized Family Service Plan (IFSP) that contains the material described in § 636 of the Act and that is developed in accordance with applicable Federal regulations may serve as the IEP of the child if using that plan is agreed to by the LEA and the child's parents.
- 3010.6 In implementing the requirements of § 3010.5 above, the LEA shall:
- (a) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
  - (b) If the parents choose an IFSP, obtain written informed consent from the parents.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2978 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3011 LEAST RESTRICTIVE ENVIRONMENT (LRE)**

- 3011.1 The LEA shall ensure that:
- (a) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and
  - (b) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2980 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3012 CONTINUUM OF ALTERNATIVE PLACEMENTS**

3012.1 The LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

3012.2 Alternative placements shall include instruction in:

- (a) Regular classes;
- (b) Special classes;
- (c) Special schools;
- (d) Home instruction; and
- (e) Instruction in hospitals and institutions.

3012.3 Provision for supplementary services, such as resource rooms and itinerant instruction, shall be available in conjunction with regular class placement.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2973 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3013 PLACEMENT**

3013.1 The LEA shall ensure that the educational placement decision for a child with a disability is:

- (a) Made by a group of persons, including the parents and other persons, knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- (b) Made in conformity with the Least Restrictive Environment (LRE) provision of the Act and § 3011 of this Chapter;
- (c) Made within timelines consistent with applicable local and Federal law;
- (d) Determined at least annually after his or her initial placement;
- (e) Based on the child's IEP; and
- (f) Is as close as possible to the child's home.

3013.2 Unless the IEP of a child requires some other arrangement, the child shall be educated in the school that the child would attend if not disabled.

3013.3 In selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs.

3013.4 A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

- 3013.5 If a child with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, the IEP team:
- (a) May determine that the needs of the child with a disability cannot be met in the regular classroom; and
  - (b) Shall document supplementary aids and services that have been provided, and the specific behaviors and incidents that support the determination.
- 3013.6 The LEA shall place each child in need of special education who requires a non-public day school in a program within the District if a suitable program is available therein. Only if there is no appropriate program within the District shall a child be placed in a program outside of the District.
- 3013.7 In consultation with the parent, the LEA shall place each child with a disability-requiring placement outside the LEA in the program that meets the requirements of the LEA and the child's IEP that is closest to the child's residence.
- SOURCE: Final Rulemaking published at 30 DCR 2972, 2987 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3014 RESIDENTIAL PLACEMENT**

- 3014.1 If it is necessary to place a child with a disability in a public or private residential program in order to provide special education and related services to that child, the program, including non-medical care and room and board, shall be at no cost to the parents of the child.
- SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3015 PHYSICAL EDUCATION**

- 3015.1 The LEA shall make physical education services, specially designed if necessary, available to every child with a disability receiving FAPE.
- 3015.2 Each child with a disability must be afforded the opportunity to participate with non-disabled students in the regular physical education program unless:
- (a) The child is enrolled full time in a separate facility; or
  - (b) The child needs specially designed physical education pursuant to the child's IEP.
- 3015.3 If specially designed physical education is prescribed in the child's IEP, the LEA shall provide the services directly or make arrangements for those services to be provided through an alternative public or private program.
- 3015.4 The LEA shall ensure that a child with a disability who is enrolled in a separate facility receives appropriate physical education services.
- SOURCE: Final Rulemaking published at 30 DCR 2972, 2985 (June 17, 1983); as amended by Final Rulemaking published at 43 DCR 5779 (October 25, 1996); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3016 ASSISTIVE TECHNOLOGY**

- 3016.1 The LEA shall ensure that assistive technology devices and/or services are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services.
- 3016.2 The use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines, on a case-by-case basis, that the child needs access to those devices in the home or other settings in order to receive FAPE.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2986 (June 17, 1983); as amended by Final Rulemaking published at 43 DCR 3431 (June 28, 1996); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3017 EXTENDED SCHOOL YEAR SERVICES**

- 3017.1 The LEA shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability.
- 3017.2 Extended school year services must be provided only if a child's IEP team determines, on an individual basis (in accordance with § 3007, Individualized Education Program (IEP) Development), that the child needs those services in order to receive FAPE.
- 3017.3 In implementing the requirements of this section, the LEA shall not:
- (a) Limit extended school year services to particular categories of disability; or
  - (b) Unilaterally limit the type, amount or duration of these services.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3018 STUDENTS WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOL WHEN FAPE IS AT ISSUE**

- 3018.1 The SEA is not required to pay for the cost of education, including special education and related services, of a child with a disability if the LEA has made FAPE available to the child and the parents elected to place the child in a private placement.
- 3018.2 Disagreements between the LEA and parents regarding the availability of an appropriate program for an LEA child and financial responsibility for the provision of such a program are subject to due process procedures in §§ 3029-3031 of this Chapter, judicial mandates, and Federal law.
- 3018.3 If the parents of a child with a disability, who previously received special education and related services under the authority of the LEA, enroll the child in a private placement without the consent of or a referral by the LEA, a court or hearing officer may require the SEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
- 3018.4 The cost of reimbursement may be reduced or denied if:
- (a) At the most recent IEP meeting that the parents attended prior to the child's removal from public school, the parents did not inform the IEP team that they were rejecting

the placement proposed by the LEA to provide FAPE to the child, including stating their concerns and their intent to enroll the child in a private school at public expense;

- (b) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from public school, the parents did not give written notice to the LEA and the SEA that they were rejecting the placement proposed by the LEA to provide FAPE to the child, including stating their concerns and their intent to enroll the child in a private school at public expense;
- (c) Prior to the parents' removal of the child from public school, the LEA informed the parents, consistent with the notice requirements described in this Chapter, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (d) Upon a judicial finding that the actions taken by the parents were unreasonable.

3018.5 The cost of reimbursement may not be reduced or denied for failure to provide notice as required by § 3018.4 if:

- (a) The parent is illiterate and cannot write in English;
- (b) Compliance with this section would likely result in physical or serious emotional harm to the child;
- (c) The LEA failed to meet its obligations to the child or prevented the parent from providing notice; or
- (d) The parents had not received notice of the notice requirement in § 3018.4.

SOURCE: Final Rulemaking published at 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3019 CHARTER SCHOOLS**

3019.1 Enrollment in a public charter school shall be open to all residents and wards of the District of Columbia regardless of disability or special needs. A public charter school in the District of Columbia may not deny enrollment or otherwise discriminate in its admissions policies or practices on the basis of a child's disability or status as a child with special needs, the child's need or potential need for special education services, supplementary aids or services, or any other accommodation.

3019.2 Pursuant to section 2202 of the District of Columbia School Reform Act of 1995, (School Reform Act) approved April 26, 1996 (P.L. 104-134; 110 Stat.1321; D.C. Code §38-1802.02(19) (2009 Supp.), each public charter school shall elect to either:

- (a) Have the District of Columbia Public Schools serve as its local education agency (LEA) for purposes of the IDEA (a District Charter); or

- (b) Be an independent local education agency (an LEA Charter).

3019.3

*Responsibilities of LEA Charters.* Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEA and its implementing regulations (34 C.F.R. Part 300), and local laws, regulations, and policies, including, without limitation, the following:

- (a) *Least Restrictive Environment.* An LEA Charter shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. Special classes, separate schooling, or other practices involving removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (b) *Evaluation and Reevaluation.* An LEA Charter shall evaluate and reevaluate enrolled children in accordance with the IDEA, District of Columbia law and regulations, and state policy.
- (c) *Special Education and Related Services.* An LEA Charter shall develop and implement an IEP for an eligible child within the timelines set by IDEA, District of Columbia law, regulations and state policy, and shall provide special education and related services consistent with that IEP.
- (d) *Statewide Assessments.* Consistent with Title 5-A, chapter A-23 of the DCMR, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in the statewide student assessments. In particular, an LEA Charter shall:
  - (1) Ensure that each of its District of Columbia resident children and wards, including those placed in a nonpublic school setting, participates in the annual state education agency (SEA)-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.
  - (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP an alternative assessment may not be substituted for the standard statewide assessment.

- (3) Ensure that the statewide assessments are administered according to the state test security guidelines.
  - (4) Ensure that in the event a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this chapter, the child shall continue to participate in the statewide assessment. Consistent with the ESEA (20 U.S.C. §6311) and the District of Columbia's accountability workbook, the score of each LEA Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of the LEA Charter and the determination of adequate yearly progress for the LEA Charter.
- (e) *Policies and procedures.* An LEA Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under federal regulations, including 34 C.F.R. §§300.101 through 300.163 and 34 C.F.R. §§300.165 through 300.174.
- f) *Annual Reporting Requirements.* An LEA Charter shall conform to the following annual reporting requirements of the IDEA, including the following:
- (1) Pursuant to federal regulations, 34 C.F.R. §§300.640 through 300.644, an LEA Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to the SEA each year the information required by the IDEA (20 U.S.C. §1418) no later than the first Tuesday in January.
  - (2) The LEA Charter shall certify to the SEA that the information provided under the IDEA (20 U.S.C. §1418) is an accurate and unduplicated count of children with disabilities receiving special education and related services.
- (g) *Special Education Data System (SEDS).* An LEA Charter shall fully utilize, implement, and enter accurate and complete data into the state-designated District-wide special education data system for all aspects of special education practice, and ensure that an accurate, complete, and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those placed in a nonpublic school.

- (h) *Due Process Complaints.* Pursuant to the IDEA (20 U.S.C. §1415(a)), an LEA Charter shall establish and implement policies and procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). An LEA Charter is responsible for responding to any due process complaint made in respect of a child enrolled in the LEA Charter, including any child who attends a nonpublic school. The Student Hearing Office, located within the OSSE, will continue to adjudicate due process complaints.
- (i) *Mediation.* Pursuant to the IDEA (20 U.S.C. §1415(e)), an LEA Charter shall ensure that procedures are established and implemented to allow parties to dispute any matter, including matters arising prior to the filing of the due process complaint, to resolve such disputes through a mediation process. The mediation process shall be available to a parent of a child enrolled in the LEA Charter, including any child who attends a nonpublic school. The OSSE shall maintain a list of qualified mediators and shall bear the cost of the mediation process.

3019.4 *Responsibilities of District Charters.* If a public charter school elects, pursuant to the School Reform Act (D.C. Official Code §38-1802.02(19) (2009 Supp.)), to have DCPS serve as its LEA for purposes of the IDEA, DCPS shall be the LEA responsible for meeting the requirements applicable to an LEA under the IDEA, Part B and its implementing regulations (34 C.F.R. Part 300), as well as all local laws, regulations, and policies, with respect to the children enrolled in the District Charter. Each District Charter shall follow the policies, procedures, and guidelines established by DCPS for the referral of individual child needs and IEP matters to DCPS to be addressed consistent with the requirements of IDEA. Referrals shall include, without limitation, requests for evaluations, due process complaints, requests for mediation, and implementation of Hearing Officer Determinations, for all children enrolled in the District Charter. In addition, a District Charter shall:

- (a) *Statewide Assessments.* Consistent with Title 5-A, chapter A-23 of the DCMR, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in statewide assessments. In particular, a District Charter shall:
  - (1) Ensure that each of its District of Columbia resident children, including those placed in a nonpublic school setting, participates in the annual SEA-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.

- (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, an alternative assessment may not be substituted for the standard statewide assessment.
  - (3) Ensure that SEA-approved statewide assessments are administered according to the OSSE's test security guidelines.
  - (4) Ensure that if a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this chapter, the child shall continue to participate in the SEA-approved statewide assessment. Consistent with the ESEA (20 U.S.C. §6311) and the District's accountability workbook, the score of each District Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of DCPS and the determination of adequate yearly progress for DCPS.
- (b) *Policies and procedures.* A District Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under federal regulations, including 34 C.F.R. §§300.101 through 300.163 and 34 C.F.R. §§300.165 through 300.174.
- (c) *Annual Reporting Requirements.* A District Charter shall conform to the following annual reporting requirements of the IDEA, including the following:
- (1) Pursuant to federal regulations 34 C.F.R. §§300.640 through 300.644, a District Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to DCPS each year the information required by the IDEA (20 U.S.C. §418) in sufficient time for DCPS to be able to report such data to the OSSE no later than the first Tuesday in January. Pursuant to 34 C.F.R. §§300.640 through 300.644, DCPS shall count the number of children with disabilities enrolled in DCPS and District Charters who are receiving special education and

related services as of December 1 of each year and shall report and certify to the SEA each year the information required by the IDEA (20 U.S.C. §1418) no later than the first Tuesday in January.

- (2) The District Charter shall certify to DCPS that the information provided under the IDEA (20 U.S.C. §1418) is an accurate and unduplicated count of children with disabilities receiving special education and related services, such that DCPS can make the same certification to the OSSE as required by the IDEA.
- (d) *Special Education Data System (SEDS)*. A District Charter shall fully utilize, implement, and enter accurate and complete data into the state-designated District-wide special education data system for all aspects of special education practice, and ensure that an accurate, complete, and up to date record exists in the SEDS for every child with an IEP enrolled in the District Charter, including those placed in a nonpublic school.

3019.5

*Changes in enrollment.* Transfers between LEA Charters, District Charters, and DCPS shall be conducted as follows, whether the change in enrollment is initiated by the parent or results from the procedures established by DCPS for District Charters:

- (a) If a child with a disability transfers from one LEA to another, the sending LEA shall provide a copy of the child's records to the receiving LEA, including any IEP for that child, within ten (10) days of receipt of notice of enrollment of the child in the receiving LEA.
- (b) The sending LEA and receiving LEA shall cooperate fully in the transfer of all child records.
- (c) If a child transfers between an LEA Charter, a District Charter, or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the evaluation process and fully implementing a resulting IEP in the event one is required. The sending LEA shall cooperate fully to ensure all relevant information follows a child to his or her new school.
- (d) Pursuant to 34 C.F.R. §300.323(e), if a child with an IEP in effect transfers between an LEA Charter, a District Charter, or DCPS, the receiving LEA shall be responsible upon enrollment for ensuring that the child receives special education and related services

according to the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA.

3019.6 *Agreements Between LEA Charters.* Pursuant to 34 C.F.R. § 300.208, any LEA, including an LEA Charter, may use its IDEA Part B funding to establish and implement cost or risk sharing funds, consortia, or cooperatives working in a consortium with other LEAs to pay for high cost special education and related services.

3019.7 *IEP Team Recommendation.* Pursuant to 34 C.F.R. § 300.323(c)(2), if an IEP team at an LEA Charter recommends special education and related services for an enrolled child with a disability that the LEA Charter does not immediately have available, the LEA Charter, as soon as possible following the development of the IEP, shall be responsible for making these services available in accordance with the child's IEP, which may be arranged through an agreement with another LEA or through other appropriate means.

3019.8 *Maintaining Placement in the Least Restrictive Environment.* Pursuant to 34 C.F.R. § 300.114, no child enrolled in a public charter school shall be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

- (a) *District Charters.* If a District Charter anticipates that it may be unable to meet its obligation to provide a free appropriate public education (FAPE) to a child with a disability currently enrolled in its program, it shall make an appeal to DCPS consistent with the policies, procedures, and guidelines established by DCPS for District Charters.
- (b) *LEA Charters.* If an LEA Charter anticipates that it may be unable to meet its obligation to provide a FAPE to a child with a disability currently enrolled in its school:
  - (1) The LEA Charter shall contact the OSSE for technical assistance regarding the provision of FAPE to the child within the LEA Charter;
  - (2) As soon as any member of the IEP team has reason to suspect that the LEA Charter may be unable to meet its obligation to provide FAPE, the LEA Charter shall provide notice to the OSSE at least thirty (30) days prior to the IEP meeting at which a possible change in placement to a more restrictive environment will be discussed;

- (3) The IEP team may request an expedited IEP meeting (i.e., within less than the thirty (30) day notice period) and the OSSE may grant the request upon a showing of good cause by the IEP team, as determined by the OSSE;
- (4) The OSSE shall make a recommendation regarding the ability of the LEA Charter to provide FAPE to the child within the LEA Charter;
- (5) Upon completion of the placement review process consistent with this subsection, if the IEP team for a child enrolled in the LEA Charter makes a placement decision that cannot be implemented within the LEA Charter, the OSSE shall make a location assignment for the placement of the child;
- (6) The OSSE shall provide an opportunity for input from the parent(s) with regard to the location assignment for the placement of the child; and
- (7) The OSSE shall be responsible for making the final decision regarding the location assignment.

3019.9

*Placements from LEA Charters into Nonpublic Schools.* If a child's placement is changed to a nonpublic school (whether by reason of a Hearing Officer Determination, Settlement Agreement, or a placement decision by the IEP Team at the LEA Charter), a child enrolled in an LEA Charter shall remain enrolled in and is the responsibility of the LEA Charter, unless and until his or her parent re-enrolls the child into another LEA (whether another LEA Charter, a District Charter, or DCPS).

- (a) When a child enrolled in an LEA Charter is placed in a nonpublic school in order to ensure the provision of FAPE, the LEA Charter shall:
  - (1) Transition the child back to the less restrictive and more integrated environment as soon as practicable;
  - (2) At all times while the child is placed at the nonpublic school, maintain the capacity to serve the child at the LEA Charter (i.e., hold an open seat for the child) unless and until the child's parent enrolls the child in another LEA; and
  - (3) Continue to monitor each child's academic and social-emotional progress at the nonpublic school.

- (b) To facilitate the return of the child, as soon as appropriate, to the charter school environment, the LEA charter may apply in writing to the Public Charter School Board for an increase in enrollment capacity above the limit set by the school's charter for each child enrolled in the LEA charter and receiving services at a nonpublic school.
- (c) If an LEA Charter enrolled child with special needs attending a nonpublic school has not transitioned out of a nonpublic school within one hundred twenty (120) days of the end of the school year in which the child will exceed the maximum age range for children served by the LEA Charter as specified in its charter, the LEA Charter shall:
  - (1) Provide written notification to the child's parent(s) or guardian(s) of their responsibility to enroll the child at another public charter school or into DCPS; and
  - (2) Provide such notification at least ninety (90) days before the end of a school year.
- (d) Pursuant to 34 C.F.R. §300.114 and 34 C.F.R. §300.325(c), responsibility for compliance with Part B of IDEA and local law and regulations for a child placed into a nonpublic school remains with the LEA in which the child was most recently enrolled (the sending LEA), either an LEA Charter or, in the case of a District Charter, DCPS, unless and until the child's parent or guardian voluntarily re-enrolls the child into another LEA. Such responsibility includes, but is not limited to evaluating the child, attending IEP meetings, monitoring progress, assessments, and accountability as required under ESEA, and developing a plan for the child's return from the nonpublic school to the LEA Charter.
- (e) Pursuant to section 108 of the Charter Schools and Tax Conformity Clarification Amendment Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code §38-2907) tuition payments for District of Columbia children with disabilities placed in nonpublic schools are state level costs and are not the responsibility of the LEA Charter

3019.10

*Hearing Officer Determinations and Settlement Agreements.* A final Hearing Officer Determination (HOD) or Settlement Agreement (SA) resulting from the filing of a due process complaint and an SA resulting from mediation shall be binding upon the parties to the due process complaint and/or SA.

- (a) If a child with a disability who is the subject of a HOD or SA transfers to a new LEA Charter in the District of Columbia during the term of the HOD or SA, the new LEA Charter shall comply with section 3019.5(d) and shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new LEA Charter's ability to provide a free appropriate public education (FAPE) to the child.
- (b) If a child with a disability who is the subject of a HOD or SA transfers to a new District Charter during the term of the HOD or SA, DCPS shall comply with section 3019.5(d). DCPS and the District Charter shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new District Charter's ability to provide FAPE to the child.

3019.11 *Charter School Closures.* If a District Charter or LEA Charter closes and ceases to operate, in full or in part, for any reason, including without limitation voluntary or involuntary revocation of the school's charter, pursuant to District of Columbia compulsory school attendance law, (D.C. Official Code §38-202), the parent of a child who previously was enrolled in the closed District Charter or LEA Charter shall be responsible for enrolling the child in another LEA.

3019.12 *Definitions.* For the purposes of this section, except as otherwise stated herein, all terms used in this section have the meanings assigned by DC Official Code § 38-2561 *et seq.* and the IDEA (20 U.S.C. §1401 *et seq.*), and implementing regulations (34 C.F.R. Part 300).

**Adequate yearly progress** - a statewide educational accountability determination required by the ESEA to measure objectives established in the approved state accountability plan with regard to student proficiency in English and math.

**Compulsory school attendance law** – Article II of an Act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 ( 43 Stat 806; D.C. Official Code §§ 38-202 *et seq.* (2001 and 2009 Supp.).

**ESEA** - the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (P.L. 107-110; 115 Stat. 1425; 20 U.S.C. §6301 *et seq.*)

**IDEA** - the Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773; 20 U.S.C. §1400 *et seq.*).

**Location assignment** - the actual school site or facility at which the child will receive his/her instruction.

**OSSE** - the Office of the State Superintendent of Education for the District of Columbia.

**Placement** - a student placement consistent with 34 C.F.R. Part 300. The term “placement” refers to, without limitation, the learning environment classified by level of restrictiveness (*e.g.*, general education classroom, special education/resource classroom, or private facility).

**State** - the District of Columbia.

SOURCE: Final Rulemaking published at 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 56 DCR 9205 (December 4, 2009).

## **3020 PROCEDURAL SAFEGUARDS - GENERAL PROVISIONS**

### 3020.1

- (a) Copy To Parents - A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one (1) time a year, except that a copy also shall also be given to the parents:
  - (i) upon initial referral or parental request for evaluation;
  - (ii) upon the first occurrence of the filing of a complaint for a due process hearing as described in this Chapter; and
  - (iii) upon a request by a parent.
- (b) Internet Website - A local educational agency may place a current copy of the procedural safeguards notice on its Internet website.

3020.2 The contents of the procedural safeguards notice shall include a full explanation of all of the safeguards available relating to:

- (a) Opportunity to initiate a referral for initial evaluation and reevaluation, including criteria for evaluations;
- (b) Independent educational evaluation;
- (c) Prior written notice;
- (d) Parental consent;

- (e) Access to educational records;
- (f) Opportunity to initiate due process hearings;
- (g) The child's placement during the pendency of due process proceedings;
- (h) Procedures for children who are subject to placement in an interim alternative educational setting;
- (i) Requirements for unilateral placement by parents of children in private schools at public expense;
- (j) Mediation;
- (k) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (l) Civil actions;
- (m) Attorneys' fees; and
- (n) District complaint procedures, including a description of how to file a complaint and the timelines under the complaint procedures.

### 3020.3 Native Language

- (a) The notice shall be written in language that is understandable to the general public, and provided in the native language of the parent, unless it is clearly not feasible to do so.
- (b) If the native language used by the parent is not a written language, the LEA shall ensure that the notice is translated orally or by other means to the parent, and that the parent understands the content of the notice.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2980 (June 17, 1983); as amended by Final Rulemaking published at 35 DCR 3017 (April 29, 1988); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); and Final Rulemaking published at 52 DCR 10558 (December 2, 2005).

## **3021 STUDENT RECORDS**

- 3021.1 In accordance with the confidentiality procedures of 34 C.F.R. §§ 300.560-300.576 and 34 CFR § 99, the parent of a child with a disability shall be given the opportunity to inspect and review and to copy at no cost to the parent all of the child's records relating to the identification, evaluation, and educational placement, and the provision of Free Appropriate Public Education (FAPE).
- 3021.2 The LEA shall ensure the confidentiality of personally identifiable information in accordance with 34 C.F.R. § 99 and 34 C.F.R. §§ 300.560-300.576.
- 3021.3 The LEA shall develop a process for a parent to correct information in a child's record.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2981 (June 17, 1983); as amended by Final Rulemaking published at 37 DCR 6809 (October 26, 1990); Final Rulemaking published at 38 DCR 4095a (July 5, 1991); Final Rulemaking published at 41 DCR 2226 (April 22, 1994);

and by Final Rulemaking published at 49 DCR 8881 (September 27, 2002); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3022 PARENT SURROGATE**

3022.1 The LEA shall ensure that the rights of a child with a suspected or identified disability are protected by the appointment of a surrogate parent when:

- (a) A parent cannot be identified, or
- (b) The LEA, after reasonable efforts, cannot discover the whereabouts of a parent.
- (c) The child with a suspected or identified disability who is a ward of the District, where needed.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2982 (June 17, 1983); as amended by Final Rulemaking published at 41 DCR 2226, 2228 (April 22, 1994); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003).

## **3023 TRANSFER OF RIGHTS**

3023.1 When a child with a disability, except a child with a disability who has been determined to be incompetent under District law, reaches the age of eighteen:

- (a) The LEA shall provide any notice required by Part B of IDEA to both the child and his parents;
- (b) All other rights accorded to parents under Part B of IDEA transfer to the child; and
- (c) All rights accorded to parents under Part B of IDEA transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

3023.2 Whenever the LEA transfers rights, consistent with § 3023.1 above, the LEA shall notify the child and his or her parents of the transfer of rights.

SOURCE: Final Rulemaking published at 30 DCR 2972, 2984 (June 17, 1983); as amended by Final Rulemaking published at 37 DCR 6809, 6810 (October 26, 1990); and by Final Rulemaking published at 38 DCR 4349 (July 12, 1991); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3024 PROCEDURAL SAFEGUARDS - PRIOR WRITTEN NOTICE**

3024.1 Consistent with *20 U.S.C. § 1415(b)(3)*, the LEA shall provide written notice to the parent of a child with a disability before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

SOURCE: Final Rulemaking published at 49 DCR 2236, 2237 (March 8, 2002); as amended by Final Rulemaking published at 49 DCR 8881 (September 27, 2002); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3025 PRIOR WRITTEN NOTICE CONTENT**

3025.1 The notice shall include:

- (a) A description of the action proposed or refused;
- (b) An explanation of why the LEA proposes or refuses to take the action;
- (c) A description of the options the LEA considered and the reason the options were rejected;
- (d) A description of each assessment, evaluation, procedure, test, or record the LEA uses as a basis for the proposal or refusal;
- (e) A description of any other factors relevant to the proposed or refused action;
- (f) A statement that the parent has protections under the procedural safeguards of the Act and the manner in which the parent may obtain a copy of the procedural safeguards; and
- (g) A list of sources a parent may contact to obtain assistance in understanding the provisions of this Chapter.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3026 PROCEDURAL SAFEGUARDS - CONSENT**

3026.1 The LEA shall obtain informed written parental consent before:

- (a) Conducting an initial evaluation or reevaluation; and
- (b) Initial provision of special education and related services to a child with a disability and any change in the child's placement.

3026.2 If a parent refuses consent for initial evaluation or a reevaluation, the LEA may pursue those evaluations through mediation or due process consistent with this Chapter.

3026.3 The LEA is not required to obtain parental consent for assessment procedures as part of a reevaluation, if the LEA can demonstrate that reasonable measures have been taken to obtain consent and the parent has failed to respond.

3026.4 To demonstrate reasonable measures, the LEA shall maintain a record of its attempts to obtain informed parental consent, such as:

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

SOURCE: Final Rulemaking published at 30 DCR 2972 (June 17, 1983); as amended by Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

## **3027 PROCEDURAL SAFEGUARDS - INDEPENDENT EDUCATIONAL EVALUATIONS AND SERVICES**

- 3027.1 A parent of a child with a disability has the right to obtain an independent educational evaluation.
- 3027.2 On request, the LEA shall provide the parent with information about where an independent educational evaluation may be obtained and the applicable LEA criteria.
- 3027.3 If a parent disagrees with the evaluation obtained by the LEA, the parent has the right to obtain an independent educational evaluation at public expense and the LEA shall without unnecessary delay:
- (a) Provide an independent educational evaluation at public expense; or
  - (b) Initiate a due process hearing in accordance with this Chapter, to demonstrate that the LEA evaluation is appropriate.
- 3027.4 When a parent obtains an independent educational evaluation at private expense:
- (a) The results of the evaluation must be considered by the LEA, if it meets LEA criteria, in any decision relating to the provision of FAPE to the child;
  - (b) The results of the evaluation may be presented as evidence at a hearing under this Chapter; and
  - (c) The LEA may advocate in any forum provided in this Chapter, to demonstrate that the evaluation obtained by the parent did not meet the LEA criteria as defined in the parents' rights disclosure described in § 3020 of this Chapter.
- 3027.5 Maximum hourly rates and total amounts to be paid for independent evaluations and services shall be determined periodically by the SEA. The schedule for such rates and amounts shall be commensurate with customary and prevailing rates for the evaluation or service involved and consistent with the criteria used by the LEA when it initiates such evaluations and services. The schedule for such rates and amounts shall be set by the Superintendent or his or her designee and those rates shall be sent to the Board of Education for ratification at its next scheduled meeting. Exceptions to the rates and amounts established by the Superintendent or his or her designee may be made where the requesting party can demonstrate unique circumstances justifying the payment of costs exceeding the established maximum rates or amounts.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003).

## **3028 MEDIATION**

- 3028.1 A parent of a child with a disability or the LEA may request mediation when there is a dispute about any matter related to the eligibility, identification, evaluation, or educational placement, or the provision of FAPE to a child.
- 3028.2 The request for mediation shall be voluntary on the part of the parties.
- 3028.3 The request for mediation may not be used to deny or delay a parent rights to due process in accordance with *20 U.S.C § 1415(f)*.

- 3028.4 Mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and special education law.
- 3028.5 A request to initiate mediation shall be made in writing to the SEA.
- 3028.6 A mediation session shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties of the dispute.
- 3028.7 An agreement reached by the parties to the dispute in the mediation shall be set forth in a written mediation agreement.
- 3028.8 Discussions that occur during mediation shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceeding.
- 3028.9 The parties to the mediation may be required to sign a confidentiality pledge before the commencement of the process.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3029 IMPARTIAL DUE PROCESS**

- 3029.1 A parent of a LEA child or the LEA has the right to initiate a hearing, when there is a dispute about the eligibility, identification, evaluation, educational placement, or the provision of FAPE to a child with a disability, in accordance with *20 U.S.C. § 1415 (f)*.
- 3029.2 A request to initiate a due process hearing shall be made in writing.
- 3029.3 A parent request for a due process hearing must include the following:
- (a) The name of the child;
  - (b) The address of the residence of the child. In the case of a child who is a ward of the District of Columbia, the request shall so state, provided, that a child who is a ward of the District shall be listed "c/o Child and Family Services";
  - (c) The name of the school the child is attending;
  - (d) A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
  - (e) A proposed resolution to the problem to the extent known and available to the parents at the time.
- 3029.4 When an impartial due process hearing is requested, the SEA shall inform the parent of the availability of:
- (a) Mediation, and
  - (b) Any free or low cost legal and other relevant services available.
- 3029.5 As a part of the five-day disclosure submitted before a due process hearing, the submitting attorney must disclose any financial interest, of which he or she is aware, of any participant in the proceeding in a non-public provider or service that may be at issue in that due process hearing.

### **3030 RESOLUTION MEETING, DUE PROCESS HEARING, AND FINAL DECISION PROCEDURE**

3030.1 Resolution Meeting. Within fifteen (15) days after receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, the local education agency (LEA) shall convene a resolution meeting with the parent and the relevant member(s) of the Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the due process complaint. The LEA shall not be required to convene a resolution meeting if the parent and the LEA agree in writing to waive the meeting or agree to use the mediation process described in section 3028. The resolution meeting shall meet the following standards:

- (a) The meeting shall include a representative of the LEA who has decision making authority on behalf of the LEA;
- (b) The meeting may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
- (c) The purpose of the meeting shall be for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has an opportunity to resolve the dispute that forms the basis of the due process complaint.

3030.2 Relevant Team Members. The parent and the LEA shall determine the relevant members of the IEP team to attend the resolution meeting.

3030.3 Resolution Period. If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days after the receipt of the due process complaint, the due process hearing may occur.

3030.4 Except as provided in section 3030.8, the timeline for issuing a final decision under section 3030.11 shall begin at the expiration of the thirty (30) day period identified in section 3030.3.

3030.5 Except where the LEA and the parent have jointly agreed to waive the resolution process or to use mediation, when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request shall include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The

reasonable measures shall be documented using the procedures in section 3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

3030.6 If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable measures have been made and documented using the procedures in section 3026.4, the LEA may, at the conclusion of the thirty (30) day period, request that a hearing officer dismiss the parent's due process complaint. Any such request shall include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The reasonable measures shall be documented using the procedures in section 3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

3030.7 If the LEA fails to hold the resolution meeting specified in section 3030.1 within fifteen (15) days after receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

3030.8 Adjustments to Thirty (30) Day Resolution Period. The forty-five (45) day timeline for the due process hearing in section 3030.11 shall start on the day after any one (1) of the following events occurs:

- (a) The LEA and the parent agree in writing to waive the resolution meeting;
- (b) The mediation or resolution meeting starts but, before the end of the thirty (30) day period, the LEA and parent agree in writing that no agreement is possible; or
- (c) The parent and the LEA agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but the parent or LEA later withdraws from the mediation process.

3030.9 Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in section 3030.1, the parent and the LEA shall execute a legally binding agreement that:

- (a) Is signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

- (b) Contains a provision stating that it shall be enforceable in any state court of competent jurisdiction or in a District Court of the United States.

3030.10 Agreement Review Period. If the LEA and parent execute an agreement pursuant to section 3030.9, either party may void such agreement within three (3) business days after the agreement's execution. The party who voids the agreement shall provide written notice to all other parties to the agreement.

3030.11 Due Process Hearing. Not later than forty-five (45) days after the expiration of the thirty (30) day resolution period or any adjusted time period described in section 3030.8:

- (a) A final decision shall be reached in the hearing; and
- (b) A copy of the decision shall be:
  - (1) Mailed to each of the parties; or
  - (2) Transmitted electronically or by facsimile to each of the parties if all of the parties to the due process complaint consent to such electronic or facsimile transmission.

3030.12 Extension of timeline. An impartial hearing officer may, for good cause shown, grant specific extensions of time beyond the periods set forth in section 3030.11 at the request of either party.

3030.13 Hearing Officer Determination (HOD). The HOD shall be in writing. The hearing officer shall include the following in the HOD:

- (a) The identity of the parties;
- (b) The identity of the student, which shall include the student's name, student identification (ID) number, date of birth, and attending school;
- (c) The case number;
- (d) Findings of fact and conclusions of law, separately stated;
- (e) The final determination;
- (f) What must be done by each party, where applicable, to carry out the decision, including the establishment of timelines for each step or action, and by whom;

- (g) Any appeal rights; and
- (h) The hearing officer's signature, which must be dated and which may be designated by electronic signature.

3030.14 **Burden of Proof.** The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

3030.15 **Publication of HODs.** After deleting personally identifiable information from hearing decisions, the Student Hearing Office of the District of Columbia shall transmit the findings and decisions to the State Education Agency Advisory Panel and make the findings and decisions available to the public.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003); as amended by Final Rulemaking published at 50 DCR 8810 (October 17, 2003); as amended by Final Rulemaking published at 52 DCR 10558 (December 2, 2005); as amended by Final Rulemaking published at 53 DCR 5249 (June 30, 2006); as amended by Final Rulemaking published at 53 DCR 6097 (July 28, 2006); as amended by Final Rulemaking published at 57 DCR 980 (January 22, 2010).

### **3031 HEARING RIGHTS**

3031.1 A party to a due process hearing has the right to:

- (a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
- (d) Obtain a written, or, at the option of the parents, electronic verbatim record of the hearing, at no cost to the parents; and
- (e) Obtain written or, at the option of the parent, electronic findings of fact and decisions at no cost to the parents.

3031.2 At least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

3031.3 A hearing officer may bar any party that fails to comply with this provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3031.4 A parent has the right to:

- (a) Have the child who is the subject of the hearing present; and

(b) Open the hearing to the public.

3031.5 A party aggrieved by the findings and decision of a due process hearing may bring a civil action in any court of competent jurisdiction in accordance with *20 U.S.C. § 1415(1)(2)*.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3032 ATTORNEYS' FEES**

3032.1 In an action or proceeding under this Chapter, courts may award parents reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

3032.2 The LEA shall pay attorneys' fees at rates consistent with applicable local and Federal laws.

3032.3 The LEA shall review all requests for payment of expert fees submitted by parents who prevail against the LEA in proceedings brought under the Act and reimburse for such fees in accordance with applicable law.

3032.4 All requests to the LEA for attorneys fees by parents who have prevailed against an LEA in administrative proceedings brought under IDEA shall be submitted within forty-five (45) days of the issuance of the hearing decision in which the child, parent, or guardian prevailed or execution of a settlement agreement requiring the payment of such fees. Failure to do so may result in delayed processing by the LEA.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).

### **3033 CHILD'S STATUS DURING PROCEEDINGS**

3033.1 Unless the parent and the LEA agree on an alternative placement, the child with a disability shall remain in the present educational placement during the pendency of an administrative or judicial proceeding.

3033.2 If the matter involves an application for initial admission to public school, the child, with the consent of the parent, shall be placed in a public school program until the completion of all proceedings, unless the parent and the public agency agree otherwise.

3033.3 If the decision of a hearing officer in a due process hearing in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the parents and the LEA for purposes of § 3033.1 of this Chapter.

SOURCE: Final Rulemaking published at 50 DCR 1854 (February 28, 2003).