

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education (“Superintendent”), pursuant to the authority set forth in Sections 3(b)(8), 3(b)(9), 3(b)(10), 3(b)(11), and 3(b)(15) of the State Education Office Establishment Act of 2000, effective October 21, 2000, (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(8), (b)(9), (b)(10), (b)(11) and (b)(15) (2018 Repl.)); Sections 102(b) and 202(b) of the Enhanced Special Education Services Amendment Act of 2014, effective March 10, 2015 (D.C. Law 20-195; D.C. Official Code §§ 38-2614(a)(1) & (b) and 38-2561.02(a)(2018 Repl.)); Section 115 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.15) (2018 Repl.); Mayor’s Order 2007-149, dated June 28, 2007; Part B and Part C of the Individuals with Disabilities Education Act, approved December 3, 2004 (Pub. L. 108-446; 118 Stat. 2647; 20 U.S.C. § 1400 *et seq.*) (“IDEA”) and regulations promulgated thereunder at 34 C.F.R. Parts 300 and 303; and Title I, Subpart A and Title III, Subpart A of the Elementary and Secondary Education Act of 1965, approved April 11, 1965 (Pub. L. 89-10, 79 Stat. 27), as amended by the Every Student Succeeds Act, approved December 10, 2015 (Pub. L. 114-95, 129 Stat. 1802; 20 U.S.C. §§ 6311-6339 and §§ 6811-6861) and Section 204(f) of the Equal Educational Opportunities Act of 1974, approved August 21, 1974 (Pub. L. 93-380; 88 Stat. 514; 20 U.S.C. § 1703(f)) hereby gives notice of: (1) the adoption of a new Chapter 30 (Special Education) in Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (“DCMR”); (2) conforming amendments to Chapter 28 (Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates) in Title 5-A of the DCMR; and (3) the repeal in its entirety of Chapter 30 (Special Education) in Title 5-E (Original Title 5) of the DCMR.

I. Background

The current special education regulations in 5-E DCMR Chapter 30 were largely promulgated in 2003, which predates the 2004 reauthorization of IDEA, the federal law governing the education of students with disabilities, and its implementing federal regulations, later released in 2006. In 2007, the Office of the State Superintendent (OSSE) was established as the District’s state education agency and authorized to perform all state-level functions under applicable federal law, including grant-making, oversight, and state educational agency functions for standards, assessments, and federal accountability requirements for elementary and secondary education.

Over the last decade, the District has made impactful changes in practice through legislation and formal policymaking, including the issuance of over a dozen state-level policies. Yet, even with major shifts in federal and local law, amendments to the local regulations have occurred in sporadic rulemakings that only addressed a few sections at a time.

Accordingly, this rulemaking repeals, in its entirety, the special education regulations in original Subtitle 5-E DCMR Chapter 30 and establishes a new chapter governing the education of students with disabilities at Subtitle 5-A DCMR Chapter 30.

II. Purpose

The overarching purpose of this rulemaking is to update the regulatory framework governing the education of children with disabilities to comply with changes in both federal law and local law, by making the following changes to Title 5 of the DCMR:

- Adding a new Chapter 30 (Special Education) in Subtitle A;
- Deleting in its entirety Chapter 30 (Special Education) in Subtitle E; and
- Making conforming amendments in Chapter 28 (Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates).

III. Summary of the Rulemaking

This rulemaking provides a comprehensive update to the regulatory framework governing the education of children with disabilities. Furthermore, this rulemaking incorporates existing state-level policy requirements established in longstanding OSSE guidance and policy documents, while clarifying current regulatory language and removing confusing or outdated references.

Accordingly, the rulemaking adopts a new Chapter 30 (Special Education) of Title 5-A to address or clarify requirements in the following areas:

- Local Education Agencies (LEA) responsibilities to provide a free appropriate public education to students with disabilities;
- The identification and evaluation of children suspected of being a child with a disability;
- The development, implementation, amendment, and review of individualized education programs (IEPs) for students with disabilities;
- Placement of students with disabilities in the least restrictive environment, including placement in nonpublic special education schools or programs;
- Procedures and notice requirements related to students exiting from special education;
- Procedural safeguards and due process rights, including dispute resolution and complaints processes, as recently set forth in the Special Education Student Rights Act of 2014, effective March 10, 2015 (D.C. Law 20-195; D.C. Official Code § 38-2571.03 (2018 Repl.));
- Parent participation, observation, notice, and procedural rights, as set forth in the Special Education Student Rights Act of 2014, effective March 10, 2015 (D.C. Law 20-195; D.C. Official Code § 38-2571.03 (2018 Repl.)); and
- Student participation, notice, and procedural rights.

The rulemaking implements substantial changes in the following areas:

- The duration of eligibility for FAPE, by extending eligibility through the end of the school year in which a student turns age twenty-two (22);
- Timelines for IEP development and implementation for students transferring LEAs during the school year; and
- Eligibility criteria for disability categories under which children may qualify for special education and related services.

Finally, the rulemaking establishes new requirements in the following areas, including requirements based on existing District of Columbia law or prior informal policy issued by OSSE:

- Procedures and parental notice when a public charter school LEA closes or ceases to operate;
- Timelines for the completion of a reevaluation;
- Criteria for awarding a non-diploma IEP Certificate of Completion;
- Discipline procedures for students with disabilities; and
- Restraint and seclusion of students with disabilities.

In addition, the sections in this rulemaking have also been reordered to more closely align to the structure of the sections in the IDEA implementing regulations and the natural progression of the special education process. This rulemaking also provides updated or new requirements to address anticipated changes in the authorizing statutory framework, provide clarity on LEA responsibilities, and improve the provision of special education and related services to students with disabilities.

Finally, this rulemaking makes conforming amendments to Chapter 28 (Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates) by repealing 5-A DCMR § 2844, and updating the definition of physical restraint and prone restraint in 5-A DCMR § 2899 to be consistent with the definition established in 5-A DCMR § 3099.

IV. Advanced Notice of Proposed Rulemaking

After years of research and engagement with stakeholders, including focus groups conducted in 2014, on June 26, 2017, OSSE issued an Advanced Notice of Proposed Rulemaking (ANPR) on OSSE's website to provide stakeholders an opportunity to provide advanced comment on proposed amendments to a new Chapter 30 prior to this rulemaking. The comment period was open for thirty (30) days, closing on July 26, 2017. OSSE greatly appreciates the comments received from a wide range of stakeholders, including parents, the District of Columbia Public Schools (DCPS), multiple charter LEAs, Public Charter School Board (PCSB), Friends of Choice in Urban Schools (FOCUS), the Office of the Ombudsman for Public Education, and other key community advocates. OSSE reviewed and thoroughly considered all comments received on the ANPR, and made amendments to the proposed language as appropriate. The amendments made for the first Notice of Proposed Rulemaking included, among others: deleting the nondiscrimination in the application process section; amending disability category eligibility criteria for clarity and consistency with the federal classifications of disabilities; adding requirements related to an LEA's response to a parent request for reevaluation; removing the requirement for LEAs to conduct functional behavioral assessments for any student with a disability who has behavior that impedes the student's learning or the learning of other students and replacing with language encouraging LEAs to consider the use of positive behavior interventions and supports, consistent with federal requirements; clarifying LEA responsibilities related to homebound services, home instruction, and hospital instruction; adding the LEA responsibilities related to the discipline of students with disabilities to determine on a case-by-case basis if a pattern of removal constitutes a change in placement, and to document such decision; clarifying provisions related to state complaints; and updating definitions. OSSE also added a new section Child Count and moved up the section, Exit from Special Education to follow the Secondary Transition section.

V. First Notice of Proposed Rulemaking

On November 8, 2019, a Notice of Proposed Rulemaking was published in the *District of Columbia Register*, which included amendments based on comments received during the ANPR, for a sixty (60) day public comment period at 66 DCR 014963. OSSE also held three (3) public hearings on November 21, 2019; December 2, 2019; and December 12, 2019. The public comment period for the Notice of Proposed Rulemaking closed on January 7, 2020, with OSSE having received twenty (20) written comments representing approximately sixty-five (65) interested parties, including LEAs, the State Advisory Panel for Special Education, community advocates, non-profit organizations, and individual stakeholders throughout the District. In some instances, the written comment was co-signed by multiple entities or adopted by reference by multiple commenters.

VI. Notice of Second Proposed Rulemaking

On Friday, September 3, 2021, a Notice of Second Proposed Rulemaking was published in the *District of Columbia Register* (68 DCR 009091), proposing amendments to the proposed regulations based on public comment received through the first Notice of Proposed Rulemaking and describing OSSE's responses to public comment in the preamble of the proposed rulemaking. The proposed rulemaking was posted for a 30-day public comment period that closed on Monday, October 4, 2021, including two (2) public hearings for the public to provide oral or written comment held on Monday, September 27, 2021 from 12:00 – 2:00 p.m. and Thursday, September 29, 2021 from 5:00 – 7:00 p.m. All comments received by 5:00 p.m. on Monday, October 4, 2021 were considered. OSSE received fourteen (14) comment submissions representing approximately forty (40) entities, including LEAs, the State Advisory Panel for Special Education, community and legal advocates, and non-profit organizations. OSSE made amendments to the second proposed rulemaking, and to provide further transparency and respond to requests for clarification, OSSE (1) responds to stakeholders' comments and (2) identifies language changes included in this final rulemaking, below:

Most of the comments received were restatements of comments provided in response to the November 8, 2019 Notice of Proposed Rulemaking found at 66 DCR 014963 and responded to in the preamble of the Notice of Second Proposed Rulemaking found at 68 DCR 009091. OSSE reconsidered these comments and, in most instances, elected to retain the language as proposed for the reasons enumerated in the preamble of the Notice of Second Proposed Rulemaking. Where appropriate, OSSE re-addressed some of these comments or expanded on its reasoning below.

Some commenters recommended additional sections or provisions to address new topics. One commenter requested that OSSE add sections governing discovery during due process hearings and expedited hearings. OSSE declines to add language regarding discovery because of concerns that doing so would encourage a more adversarial approach to due process proceedings, especially as the recommended language relates to subpoena procedures and provisions for civil contempt. Due process is deliberately distinct from litigation; Congress, in designing the statutory scheme in IDEA, was aware of civil and criminal discovery and elected not to adopt such provisions while creating a robust scheme to allow for hearings but in the context of an ongoing educational relationship with the parents and school. There are existing avenues through which a party may obtain the documents or information it needs (for example, through the disclosure of documents provided for in 34 C.F.R. § 300.512 or a records request in accordance with the Family Educational

Rights and Privacy Act (20 U.S.C. § 1232g)), or through requests to delay hearings until information is produced or provided. Parents may also compel the attendance of witnesses through Section 3051.1 of the rulemaking which is consistent with 34 C.F.R. § 300.512. Current provisions and operating procedures provide for the expedition of hearings consistent with 34 C.F.R. §§300.532-533(c) and are outlined in OSSE’s Office of Dispute Resolution Standard Operating Procedures Manual, available here: <https://osse.dc.gov/publication/office-dispute-resolution-standard-operating-procedures-manual>.

Several commenters made recommendations regarding obligations and entitlements for students with disabilities in correctional facilities. A commenter recommended the addition of a new section addressing such obligations, but the specific language proposed did not seek to establish new obligations for District agencies. LEA and Department of Youth Rehabilitation Services (DYRS) obligations for students housed at New Beginnings Youth Rehabilitation Center are specified throughout the regulations. One commenter reiterated its request that the regulations incorporate the terms of the memorandum of agreement (MOA) governing the education of students with disabilities in the DC Jail and Youth Services Center (YSC). OSSE again declines to incorporate terms of the MOA because it is an operational document and does not memorialize legal obligations conferred through law, and the agencies subject to the MOA are only bound to the terms of the agreement insofar as they voluntarily consent. Regulation is an inappropriate venue for addressing the terms of an agreement that may be changed by the agencies at their discretion.

Commenters also requested additional guidance on several specific topics, including LEA obligations for students transitioning from IDEA Part C early intervention services, conducting the analysis of existing data, eligibility determinations, reevaluations, seclusion and restraint, and graduation and transition planning. OSSE has considered these comments and declines to revise the rulemaking to address them. OSSE will consider these comments in the development of policy and guidance.

Commenters reiterated requests that OSSE further address *Andrew F. v. Douglas Cty. Sch. Dist. Re-1*, 137 S.Ct. 988 (2017) (“*Andrew F.*”) in these regulations. The rulemaking incorporates the primary holding of *Andrew F.* in Section 3017.7 and, as the impacts of this case are still developing as courts interpret and apply *Andrew F.*, OSSE plans to issue policy and guidance that more thoroughly addresses the provisions and impacts of *Andrew F.* than is appropriate or feasible to accomplish in regulation.

A commenter recommended that OSSE extend IDEA entitlements to homeschooled children, suggesting that such services and supports should be equal to or greater than the equitable services to which parentally-placed private school students are entitled, and that OSSE set aside funding for this population. OSSE again declines to extend such entitlements in the rulemaking. In its comments regarding the 2006 reauthorization of IDEA, the US Department of Education declined to include homeschooled children with disabilities as parentally-placed private school children with disabilities, stating, “Whether home-schooled children with disabilities are considered parentally placed private school children with disabilities is a matter left to State law. Children with disabilities in home-schools or home day cares must be treated in the same way as other parentally placed private school children with disabilities for purposes of Part B of the Act only if the State recognizes home schools or home day cares as private elementary schools or secondary

schools.” 71 Fed. Reg. 46,594 (2006). District of Columbia law does not provide such recognition, and therefore homeschooled children with disabilities are not entitled to services under IDEA or District law.

3001 Provision of Free Appropriate Public Education (FAPE)

Section 3001 establishes foundational requirements for the LEA or District agency responsibility to make available a free appropriate public education to children with disabilities.

A commenter requested that OSSE add language providing that a student must only be a resident of the District to be entitled to an offer and provision of FAPE from the District of Columbia Public Schools (DCPS). Pursuant to *District of Columbia v. Vinyard*, 971 F. Supp. 2d 103 (D.D.C. 2013), DCPS must offer or make available FAPE to any student with a disability residing in the District but provision or receipt of FAPE (i.e., provision of special education and related services) is predicated on enrollment. The regulation as written governs DCPS’s obligation to make FAPE available, while the definition of “enrollment” (consistent with 5-A DCMR § 2099) governs the obligation to provide FAPE. While OSSE declines to amend the regulation to address this nuance, this comment will be considered in the development of policy and guidance.

Regarding Section 3001.1, one commenter reiterated its request that OSSE change “resides in” to “is a resident of” the District of Columbia because of concerns that the proposed language is overly and inappropriately limiting and requires that a child be actually physically located in the District. OSSE again retained the proposed language because it is aligned with IDEA at 34 C.F.R. § 300.101(a) and the proposed language appropriately describes a student’s entitlement to FAPE. The phrasing “resides in” and “is a resident of” are treated as having the same meaning by courts in interpreting a child’s entitlement to FAPE, and neither requires that the child be physically located in the District. Children who are wards of the District, in the custody of the Child and Family Services Agency (CFSA), or committed to DYRS are considered to be “residing in” the District for the purposes of their entitlements to FAPE. To ensure clarity on related student entitlements and LEA obligations, OSSE will further address this concern in the development of policy, guidance, and LEA trainings.

OSSE declined to make edits to Section 3001.2 in response to a commenter’s request for clarification. The commenter’s proposed amendment would eliminate language clarifying that DCPS’s FAPE responsibilities extend beyond those for children enrolled in the LEA as governed by Section 3001.1.

In response to a commenter’s request for clarity, OSSE made a nonsubstantive edit to Section 3001.3 to reference exceptions provided in Section 3001.12 and Section 3001.13. This amendment did not change the intent of the provision, but rather references existing exceptions provided later in the same section. A commenter requested that Section 3001.3 be amended to require that all IEPs include challenging goals aligned with educational and functional standards appropriate for the child’s age such that the instruction received is reasonably calculated to permit the child to advance grades each year. Section 3001.3 describes an LEA’s obligations to provide FAPE, and does not implicate IEP content. Consistent with OSSE’s plans to further address IEP development and implementation of *Andrew F.* in subsequent policy and guidance, OSSE will consider this comment in developing such policy and guidance. OSSE also removed the reference in Section

3001.3 to the definition of “enrollment” as found in 5-A DCMR § 2199. The rulemaking includes the identical definition of “enrollment” in Section 3099, and OSSE revised Section 3001.3 to refer to that definition.

Commenters requested that OSSE add to Section 3001.6 language regarding DYRS’s existing child find obligations for students committed to DYRS and housed at the Youth Services Center (YSC). Consistent with OSSE’s intent to address in the current regulation the existing child find responsibilities for DYRS in accordance with D.C. Official Code § 16-2301, OSSE added reference to students housed at YSC to Section 3001.6.

A commenter recommended adding children in the custody of the Department of Youth Rehabilitative Services (DYRS) as a population for which LEAs must make FAPE available under Section 3001.7. A drafting error resulted in this language not being added to the second proposed rulemaking; in the preamble of the Notice of Second Proposed Rulemaking, OSSE stated: “OSSE also amended language to clarify that other entities or LEAs may have FAPE obligations for youth committed to DYRS who are not housed [sic] the New Beginnings Youth Development Center, and will ensure such obligations are addressed in guidance.” As such, OSSE has adopted this commenter’s suggestion and corrected the drafting error by adding reference to children committed to DYRS, consistent with LEA child find obligations for these populations as established in Section 3003.1(a).

A commenter recommended that Section 3001.11 be amended to specify the timeframe in which an LEA must implement the IEP for a child whose third birthday occurs on a non-school day or during the summer. Another commenter expressed concern about LEAs’ abilities to comply with the requirements of Section 3001.11 without timely access to student records. OSSE will establish in policy this timeframe and related requirements for IEP implementation for a child whose third birthday occurs on a non-school day or during the summer to more thoroughly address the operational and practical obligations of LEAs in these circumstances.

A commenter requested that OSSE address in Section 3001.12 the provision and funding of extended school year (ESY) services for students enrolled in closing public charter school LEAs. OSSE recognizes there is a need to clearly delineate expectations around public charter school LEA closures, and addresses the details of charter closure in its Charter School Closure Policy, available here: <https://osse.dc.gov/publication/charter-school-closure-policy>, and ESY services, records, and transportation for students transitioning from closing charters in guidance available here:

https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Policy%20Bulletin_Extended%20School%20Year%20%28ESY%29%20Services.pdf; however, OSSE declines to further address public charter school LEA closure in this rulemaking.

A commenter requested that OSSE revise Sections 3001.12 and 3001.13 to replace “make FAPE available” with “determine eligibility for special education services and develop an IEP, as applicable, or to provide education services in accordance with an existing IEP.” The phrasing “make FAPE available” as been interpreted by courts to mean that the LEA conducts an evaluation and, if the child is determined eligible, develops an IEP. This is distinguished from “the provision

of FAPE”, which is implementation of the IEP or the provision of special education and related services. OSSE declines to adopt the commenter’s proposed language, but will consider this comment in developing policy and guidance to address these nuances.

In regards to Section 3001.13 which addresses duplicative enrollments in multiple LEAs, a commenter suggested an exception be added providing that the LEA responsible for FAPE for students in a detention facility becomes responsible for a student with a disability upon placement in that facility, and that parental consent is not required. OSSE declines to add the proposed language because this provision governs registration in the student information system (SIS) as provided for in the definition of “enrollment”, subpart (d) (commonly referred to as “stage 4 enrollment”) which occurs prior to a student’s attendance or receipt of educational services (subpart (e) of “enrollment”, commonly referred to as “stage 5 enrollment”). A student enrolled in a correctional facility is “stage 5” enrolled, which would supercede any “stage 4” enrollment. However, OSSE acknowledges the concerns raised by this commenter and will clarify in guidance the operational processes for enrolling students in correctional facilities.

OSSE received many comments on Section 3001.14 regarding the closure of charter schools. OSSE responds as follows:

- A commenter requested language specifying whether the timeframes referenced in 3001.14 are in calendar or business days. As defined in Section 3099, “day” shall mean a calendar day unless otherwise specified as a school day or business day.
- A commenter recommended that 3001.14(b) be amended to provide that a closing public charter school LEA cannot make substantive changes to an IEP without an IEP team meeting. OSSE declines to add language because OSSE’s IEP Amendment Policy, available here: <https://osse.dc.gov/node/1561>, governs amendments or substantive changes to IEPs and provides appropriate protections for students in closing public charter school LEAs, including requiring parental participation and consent for any changes made to an IEP through documented written agreement or an IEP team meeting.
- A commenter suggested language be added to Section 3001.14(c) requiring the LEA to provide a copy of the IEP to the parent within twenty-one (21) calendar days of the official action to close a public charter school LEA. OSSE has retained the provision as written, which protects a parent’s ability to access a copy of the student’s IEP by requiring an LEA to provide the IEP prior to the end of the regular school year or within five (5) business days of a parent’s request, because it believes this provision is sufficient to protect the parent’s ability to access a copy of the student’s IEP.
- A commenter recommended that LEAs be required to resolve child-level findings within thirty (30) calendar days of the official action taken by the chartering authority. OSSE declines to establish an additional timeline for resolution of such findings, which are subject to deadlines pursuant to the authority making the finding (for example, the court or impartial hearing officer may establish a timeline for resolution that may conflict with or supersede the timeline established in regulation).
- A commenter recommended that language be added to Section 3001.14 to provide that a child and parent shall not be denied due process rights because of a public charter school LEA closure. OSSE declined to add such language because students and parents have existing entitlements to due process protections through IDEA and this chapter.

3002 Continuum of Alternative Placements

Section 3002 addresses the LEA responsibility to provide a full continuum of special education placements, which is the educational environment in which the child will be educated determined by the services and supports designed on the IEP.

A commenter requested that OSSE provide definitions for the terms “regular education classroom” and “special education classroom” as found in Section 3002.3. OSSE declines to establish such definitions, as IDEA is similarly silent on defining these terms. To ensure clarity on how these terms apply to the continuum of alternative placements and least restrictive environment, OSSE will address these environments in policy and guidance.

Commenters requested clarity on changes made to Section 3002.4 and suggested that supplementary aids and services be provided in conjunction with all placements identified in Section 3002.3. Such requirement was changed from the first Notice of Proposed Rulemaking based on stakeholder feedback, and the current language in Section 3002.4 is consistent with 34 C.F.R. § 300.115(b)(2). OSSE will also consider this comment and the need for further clarity in the development of policy and guidance.

3003 Child Find

Section 3003 addresses the LEA responsibility to identify, locate, and evaluate children who may be in need of special education and related services.

A commenter recommended that language be added requiring an LEA to initiate a referral for initial evaluation if a general education student is secluded or restrained. OSSE declines to make such an amendment to the regulations because an adult’s application of seclusion or restraint is not an indicator that the student may be a student with a disability, that the student’s behavior has an educational impact, or that the student’s behavior is consistent with a disability as defined by IDEA or this chapter.

Commenters recommended that the regulations be amended to require LEAs to display physical posters providing information on child find and appropriate contacts to request an initial evaluation, that contact information for the parent training and information center be included in child find materials, and that LEAs be required to conduct screenings for all students under the age of seven (7). Appropriate child find processes and practices are a matter of LEA discretion, as child find policies and practices must be designed to meet the needs of the specific population of the LEA. While these may be best practices, OSSE believes these recommendations are best addressed in guidance and would be inappropriate to address in regulation.

A commenter requested that OSSE define the phrase “practical method” as it is used in Section 3003.1(b). OSSE declines to establish a definition of “practical method” because it is not defined by IDEA and child find methods are a matter of LEA discretion, the practicality of which is subjective to the specific needs of the LEA and its student populations. A commenter reiterated its recommendation that OSSE specify that LEAs must establish child find procedures for students incarcerated in an adult correctional facility. In *Letter to Yudian*, 103 LRP 37913 (August 19, 2003) and a subsequent Dear Colleague Letter, 64 IDELR 249 (December 5, 2014), the U.S. Department

of Education clarified that states and LEAs must include in child find systems students with disabilities incarcerated in adult correctional facilities only to the extent that age ranges under state law would require it. In the District, only students aged eighteen (18) and above are housed in adult correctional facilities; as such, LEAs and public agencies do not have child find obligations for students incarcerated in adult correctional facilities.

A commenter requested that Section 3003.4 be amended to include highly mobile children, those in the custody of CFSA and DYRS, and children in prekindergarten programs or community-based organization prekindergarten programs located in the District be added as student populations for which DCPS has child find obligations under Section 3003.4. OSSE retained the provision as written because it accurately describes DCPS' general child find obligations. Child find obligations for highly mobile students, students in the custody or care of CFSA, and students enrolled in LEA prekindergarten programs are the responsibility of the student's LEA of enrollment. The child find obligations for students in the custody of DYRS are governed by an Memorandum of Agreement, available on OSSE's website, addressing the respective responsibilities of OSSE, DCPS, and DYRS to this population of court involved youth.

3004 Request for Initial Evaluation

Section 3004 addresses requirements for the request for an initial evaluation, also known as the referral process, including establishing referral sources.

Commenters reiterated recommendations to expand referral sources to include any individual or organization expressing concern on behalf of a child, and to specifically name mental health providers, social workers, and CFSA as referral sources. Pursuant to 34 C.F.R. § 300.301(b), either a parent or a public agency may initiate a request for an initial evaluation. OSSE maintains that some of these entities are represented within the categories already identified in the regulations, and that IDEA does not specifically mandate such a broad range of referral sources. However, LEAs have discretion to accept a referral from any source. OSSE will continue to address this nuance in policy, guidance, trainings, and other resources to ensure individuals knowledgeable about a child's educational or developmental needs may appropriately seek special education services for that child.

3005 Initial Evaluation Process

Section 3005 establishes requirements for the initial evaluation process, including the initial evaluation timeline, the analysis of existing data, providing appropriate prior written notice to parents, and obtaining parental consent.

A commenter expressed belief that it is unnecessary for Section 3005.2 to prescribe additional content for the prior written notice provided to a parent when the LEA is seeking consent for the initial evaluation. Another commenter requested that the same language requiring LEAs to provide parents with information about the purpose of the evaluation process, the types of child-level data being assessed, and any additional assessments needed be reinserted in Section 3005.3 to ensure the parent's consent is fully informed. OSSE elected to retain the language as written to ensure parents are provided with appropriate information regarding the proposed evaluation so as to constitute informed consent, and because requiring LEAs to include this information in the prior written notice is both appropriate and feasible.

A commenter requested that OSSE clarify in Section 3005.4 that the referral and initial evaluation timeline start whether the referral is provided orally or in writing. OSSE believes this requirement is adequately addressed in Section 3004, and will address this clarification and concern in policy, guidance, and trainings. A commenter reiterated concerns that the requirement to begin reasonable efforts to obtain parental consent within ten (10) business days is too long and should be shortened to five (5) business days. Prior commenters have expressed concern that the ten (10) business day requirement is too short to support a quality review of student data, because an LEA must complete the analysis of existing data to determine if the LEA will move forward with conducting an initial evaluation prior to requesting parental consent. OSSE recognizes the importance of expediency in conducting initial evaluations, and has elected to retain the language as written because it balances both concerns and establishes a reasonable timeframe for the LEA to gather and review relevant data and make a determination about the initial evaluation. OSSE also separated the requirements applicable to the LEA in Subection 3005.4 from the circumstances in which those requirements do not apply, by creating a new Subsection 3005.5 and renumbering the remaining subsections.

A commenter restated its concerns that Section 3005.5 allows an LEA to conduct an initial evaluation for a child in the custody of CFSA without parental consent, and again recommended that language be added to require the LEA to request an educational surrogate parent be appointed for a child in the custody of the CFSA in the event that the LEA cannot otherwise identify a parent from whom to request parental consent. OSSE again retained the proposed language because it is consistent with 34 C.F.R. § 300.300(a)(2).

3006 Evaluation Procedures

Section 3006 establishes requirements for evaluation procedures and conducting assessments for both initial evaluations and reevaluations. A commenter reiterated its request that OSSE establish an expedited initial evaluation timeline for children involved with CFSA or DYRS because such students are a high risk and vulnerable population. OSSE recognizes the need to protect these high risk and vulnerable populations, but does not intend to address this issue through the current rulemaking. OSSE will continue to work closely with District agencies to ensure students in those settings are served in compliance with local and federal requirements, and will consider this comment for the development of policy and guidance addressing operational barriers.

A commenter requested that Section 3006.7(f)(5) require students to be assessed for trauma. OSSE has elected to retain the language as written because it is consistent with 34 C.F.R. § 300.304(c)(4), and will consider this comment in the development of policy and guidance, as a student's experience with trauma may be assessed as part of the student's social and emotional needs.

A commenter recommended changing the phrase "evaluation report" to "eligibility determination report" in Section 3006.11 for consistency with language currently found in the Special Education Data System (SEDS). OSSE has elected to retain the provision as written because it is consistent with 34 C.F.R. § 300.306(a)(2), and will consider this comment to ensure consistency of phrasing across policies, guidance, and data systems where appropriate.

OSSE made conforming edits in Sections 3006.5 and 3006.8 to clarify that the requirements contained therein apply both to the initial evaluation process as well as the reevaluation process used to determine to continued eligible.

OSSE renumbered the subparagraphs of Section 3006.12(f) to ensure clarity and ease of reading.

3007 Reevaluation

Section 3007 establishes requirements related to the obligation to conduct a reevaluation at least once every three (3) years to determine a child's continued eligibility and needs.

A commenter requested the timeline for reevaluation established in Section 3007.5 be shortened to forty-five (45) days, while another commenter expressed concern that the timeline is not long enough to allow LEAs sufficient time to review data, request consent, and conduct the reevaluation. OSSE has considered both comments and elected to retain the language as written, given its reasonableness and relation to the existing initial evaluation timeline.

A commenter requested nonregulatory guidance regarding an LEA's obligations when a parent refuses to provide consent for a reevaluation. OSSE will consider this comment in the development of guidance, resources, and training.

OSSE revised Section 3007.2 to clarify that a reevaluation may occur not more than once a year unless the parent and LEA agree otherwise. The language as revised aligns to 34 C.F.R. § 300.303(b).

3008 Individualized Education Program Team

Section 3008 establishes requirements for the members of the individualized education program (IEP) team, including mandatory and permissive participants, and excusal from meetings.

A commenter recommended that Section 3008.2 be amended to require parent consent before a potential participant is added to IEP team meetings, expressing concern for student privacy and confidentiality. OSSE has elected to retain the language as written because it is consistent with 34 C.F.R. § 300.321(a)(6), but will consider this comment and the concerns regarding student privacy in the development of guidance and trainings.

A commenter suggested the addition of language to Section 3008.2 requiring the LEA to invite a transition representative to all IEP meetings for students age fourteen (14) or older where transition services will be discussed. Because Section 3008.2(c) addresses additional IEP team members for the purposes of transition planning, it is not necessary to insert additional regulatory language. OSSE declines to amend this provision from "may" to "shall" because such a representative may not always be a mandatory participant in the IEP team meeting.

OSSE also revised Section 3008.2 to remove redundant references to "as appropriate."

3009 Parent Participation in IEP Team Meetings

Section 3009 establishes requirements to ensure the meaningful participation of parents in IEP team meetings, including notice and invitation requirements.

A commenter reiterated recommendations intended to underscore the cooperative nature of ensuring parent participation in the IEP process. OSSE again reviewed these suggestions and

recognizes the importance of LEA and parent collaboration and flexibility in scheduling IEP team meetings. Although it does not intend to address this further in the rulemaking, OSSE reserves these comments for consideration in the development of policy and guidance.

A commenter requested phrasing changes to Section 3009.1 to emphasize that the five (5) day notice period is the minimum notice required, and that LEAs should provide as much notice as possible. OSSE has elected to retain the language as written, which is consistent with current practice, and will consider this comment in the development of guidance and trainings. A commenter suggested adding an exception to Section 3009.1(a) for when a meeting is scheduled fewer than five (5) days in advance with parental consent. Such an exception to the reasonable efforts requirements is provided in Section 3009.2.

A commenter suggested amending Section 3009.4 to ensure LEAs are not inappropriately delaying scheduling meetings and to account for the impacts of an LEA's failure to provide documents in a timely manner, including presuming such a failure amounts to impeding the parent's meaningful participation. OSSE has retained the language as written because it is consistent with D.C. Official Code § 38-2571.03(3) and will consider the comment in the development of policy, guidance, and trainings.

A commenter recommended noting that parents can participate through alternate means in Section 3009.6, which provides instances in which an LEA may hold a meeting without a parent in attendance. OSSE declines the requested amendment because adding such language would allow the LEA to hold a meeting without a parent who indicates that he or she will participate through alternate means. The IDEA regulation at 34 C.F.R. § 300.322(d) only permits an LEA to hold a meeting without a parent when the LEA is unable to convince the parent to attend or participate.

OSSE made a grammatical correction to Section 3009.3(c) to clarify that it is the names of the participants in IEP meetings that must be included in the notice to parents.

3010 Eligibility Determination

Section 3010 addresses the IEP team's obligation to make an eligibility determination as part of an initial evaluation, including adopting exclusionary factors as established in IDEA.

A commenter reiterated its request that language be added to Section 3010.7 requiring LEAs to consider a child's entitlement to accommodations in accordance with Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 and implementing regulations at 34 C.F.R. Part 104. The rulemaking only addresses LEA obligations related to IDEA, and OSSE does not have the authority to require LEAs to consider a child's eligibility under Section 504. OSSE will consider this comment in the development of guidance and training.

In response to a commenter's suggestion, OSSE corrected a drafting error in Section 3010.8 by deleting an extra space.

3011 Disability Categories

Section 3011 establishes eligibility criteria for each of the 14 disability categories.

A commenter recommended adding language clarifying that a child with an initial identification of the disabilities enumerated in Section 3011.4(c) may be reevaluated to determine eligibility under developmental delay. OSSE will consider this comment in the development of policy and guidance. A commenter reiterated its recommendation that eligibility for developmental delay be extended from age seven (7) to age nine (9) and to align eligibility criteria with that of IDEA Part C. OSSE considered these comments, however OSSE has elected not to incorporate the commenter's suggested changes at this time. A commenter also requested the addition of language from *DL v. District of Columbia*, 194 F.Supp.3d 30 (2016) requiring that children transitioning from IDEA Part C services be presumptively eligible under the developmental delay category. The presumption of eligibility provided for in *DL v. District of Columbia* means that "the information available at the time of the referral of a child... shall be presumed to be sufficient to make a decision about the child's eligibility for Part B special education services, unless indicated otherwise by the Part B IEP Team." (*Id.* at 102); it is not a presumption that the child is eligible under Part B, and the discretion for making an eligibility determination remains with the group of persons knowledgeable about the child who are conducting the evaluation. OSSE acknowledges the importance of presumptive eligibility for students transitioning from IDEA Part C and will consider this comment for the development of policy, guidance, training, and resources. A commenter requested clarifying language to address confusion over the meaning of "through age seven" under current regulations. OSSE will consider this comment for the development of policy, guidance, and trainings.

A commenter recommended adding language to ensure LEAs and IEP teams are employing equity-based decision making, especially due to concerns that changes in the eligibility criteria for emotional disability under Section 3011.5 could result in overidentification of Black/ African American or Hispanic/ Latino boys. OSSE will consider this comment in the development of policy, guidance, and trainings to support LEA implementation of the requirements of this section.

OSSE made a grammatical correction to Sections 3011.8(a) to clarify that the regulatory requirement for multiple disabilities shall not include deaf-blindness. OSSE made the same grammatical correction to Section 3011.11(a) to clarify what shall not be included in the specific learning disability classification.

3012 Related Services

Section 3012 establishes requirements for an IEP team's determination of whether a child with a disability requires related services, as well as definitions for each related service. A commenter suggested changes to the definitions of speech-language pathology services and occupational therapy services to reflect additional roles or common services provided by each. OSSE retained the proposed language because it is consistent with 34 C.F.R. § 300.34(c)(6) and (15).

3015 Extended School Year Services

Section 3015 establishes requirements for an IEP team to determine a child's eligibility for extended school year services consistent with IDEA and existing District policy. Commenters restated comments regarding ESY services being provided in the least restrictive environment, additional considerations to determine eligibility for ESY, and establishing a presumption of eligibility for ESY for children with certain disabilities. OSSE reconsidered these comments and

again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble.

A commenter suggested adding language to Section 3015.4 providing that ESY should be provided in combination with existing summer school programs and made available during winter and spring breaks, and during after school hours. OSSE declines to add this language because Section 3015.4 already prohibits LEAs from limiting ESY to being provided during summer school programming and hence the provision of ESY during other times is presumed. OSSE, however, will consider this comment in the development of policy, guidance, and trainings.

In Section 3015.6, OSSE added language to clarify that the date through which an LEA must ensure the provision of extended school year services to a student who will transfer to another LEA is July 31 or the last day of summer ESY services, “whichever is later.”

3016 Parental Consent for Initial Provision of Services

Section 3016 establishes requirements related to the parental consent for the initial provision of services. A commenter expressed concern that Section 3016.2 and Section 3016.3 conflict because Section 3016.2 provides that a parent may not decline consent for any particular service, while Section 3016.3 provides that a parent’s refusal to consent to a particular service cannot be used to deny access to any other service or activity. The “services and activities” contemplated by Section 3016.3 are broad, and do not refer only to individual services or special education services as addressed in Section 3016.2. OSSE has retained the language as proposed because it is consistent with 34 C.F.R. § 300.300(d)(3), and will consider this comment in the development of guidance.

3017 Individualized Education Program Development

Section 3017 establishes procedures for developing an IEP, as well as requirements related to the content of an IEP. Commenters reiterated recommendations for this section to address the *Andrew F.* decision. OSSE has elected to not further incorporate *Andrew F.* in this rulemaking, but continues to appreciate stakeholders’ comments and input on this topic. OSSE also recognizes the importance of providing LEAs and stakeholders with robust guidance to ensure appropriate implementation of *Andrew F.* to ensure District students are provided an appropriate FAPE through IEPs that are reasonably calculated to enable students to make progress appropriate for each student’s circumstances. OSSE will take these comments into consideration in the development of policy, guidance, and continued trainings, as OSSE currently provides a training series on how to incorporate *Andrew F.* into the development of IEPs and designing of IEP goals. OSSE corrected a citation error in Section 3017.11.

A commenter suggested adding language to Section 3017.2 to provide that, if the IEP is not completed by the fifth business day after the IEP meeting, the LEA shall provide staff and related service providers with the latest available draft of the IEP, expressing concern that requiring a finalized IEP could result in a delay in service delivery. OSSE retained the provision as written because an LEA is under no obligation to implement a draft IEP, but will consider this comment in the development of guidance and training.

A commenter recommended adding to Section 3017.5(d) that the IEP team must consider the social-emotional needs of the child while developing the IEP. OSSE has elected to retain the

language as written because it is consistent with 34 C.F.R. § 300.324(a). However, OSSE will consider this comment in the development of policy, guidance, and trainings, especially given the impacts of COVID-19 on student mental health and social-emotional needs.

3020 Individualized Education Program in Effect

Section 3020 establishes requirements for implementation of IEPs and when an LEA must ensure an IEP is in effect for each student with a disability, including students who transfer between LEAs throughout the school year. Commenters restated comments regarding specific timelines, replacing references to enrolled students to “students in its jurisdiction,” and consulting parents and other knowledgeable sources if the LEA is unable to obtain the student’s existing IEP. OSSE reconsidered these comments and again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble. OSSE will consider these comments in the development of policy and guidance, as appropriate.

A commenter requested that OSSE clarify in Section 3020.5 that comparable services are similar or equivalent to the services described in the student’s existing IEP. OSSE has replaced the word “comparable” with “similar or equivalent to,” consistent with the definition of “comparable” as provided by Merriam-Webster and the comments to the final IDEA regulations where the U.S. Department of Education explained that it interprets “comparable” to have the plain meaning of the word, which is “similar” or “equivalent.” 71 Fed. Reg. 46,681 (2006). The amended language is consistent with the original intent of the proposed rulemaking but eliminates unnecessary ambiguity.

3022 Placement Determination

Section 3022 establishes requirements for determining a child’s appropriate educational placement, which is the child’s learning environment, classified by level of restrictiveness, as determined by the group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the continuum of alternative placement options. A commenter reiterated its recommendation that placement decisions should consider broader factors than those contemplated by these regulations, and that the current special education data system does not allow IEP teams to document those broader concerns. OSSE will consider this comment in the development of guidance and supporting data systems.

3023 Homebound Services and Hospital Instruction (Not Required for FAPE)

Section 3023 addresses requirements for homebound services and hospital instruction, which are educational services that an LEA may provide to a child with a disability who is unable to attend school due to an illness or injury. In light of the Students’ Right to Home and Hospital Instruction Act of 2020 (D.C. Official Code § 38-251.01 *et seq.*) which requires OSSE to promulgate implementing regulations, OSSE has reserved this section for consideration and inclusion in forthcoming implementing regulations.

3024 Home and Hospital Instruction (Required for FAPE)

OSSE corrected drafting errors in this section to include appropriate reference to hospital instruction consistent with the intent of the regulations.

3025 Placement Outside of the LEA

Section 3025 establishes requirements and procedures for the placement of a child in a nonpublic special education school or program or a residential facility.

A commenter reiterated its request that OSSE replace references to “location assignment” with “service location” consistent with D.C. Official Code § 38-2571. OSSE confirms that such amendments were adopted throughout the Notice of Second Proposed Rulemaking and the final rulemaking.

Commenters expressed concerns over the timelines established in this section. OSSE again elected to retain the proposed language because the timelines are consistent with current practice and the process of identifying and securing a service location for a student, with appropriate flexibility for delays and challenges outside of the control of the SEA, LEA, parent, or child. OSSE will also consider these comments in the development of policy and guidance.

A commenter recommended that OSSE strike Section 3025.8(d), which prohibits a service location for a nonpublic special education school or program that requires all children to attend extended school year programming regardless of need or as a condition of enrollment. The commenter reasoned that such a restriction on a longer school year is inappropriate given that many LEAs have adopted longer school calendars. The “extended school year programming” cited in this provision is referencing extended school year (ESY) services, not a longer school year. OSSE has considered this comment and elected to retain the language as proposed because it is protective of children and their families, and consistent with the requirement to make individualized determinations of need for ESY services.

A commenter suggested adding language to Section 3025.16 specifying that a parent’s refusal to consent to the LEA’s request to contact the District of Columbia Department of Behavioral Health (DBH) or the Department of Health Care Finance (DHCF) may not delay or deny the student’s placement. OSSE elected to retain the language as written but will consider this comment in the development of policy and guidance.

A commenter reiterated its request that Section 3025.18 be amended to specify that tuition payments for students with disabilities placed in nonpublic special education schools or programs are state level costs. OSSE has retained the proposed language because it is consistent with D.C. Official Code § 38-2561.03(c).

A commenter requested that OSSE clarify that Section 3025.19 does not apply to students with disabilities who are unilaterally placed by the parent in nonpublic special education schools or programs. Such placements are the subject of Section 3039 and this comment will be considered for the development of guidance.

A commenter restated its request that language be added to Section 3025.21 requiring the parental notice that a child will exceed the maximum age or grade served by the LEA to include information about the lottery process, and contact information for the parent training and information center, the Ombudsman for Public Education, and the Office of the Student Advocate. OSSE will consider

this comment for the development of policy, guidance, and other supporting resources, including form or model notices.

3026 Secondary Transition

Section 3026 establishes requirements related to planning and considerations for a child's transition to postsecondary education, career, and life. Commenters restated comments regarding evaluations needed to access adult services and timelines for inviting a representative of a participating transition services agency to an IEP team meeting. OSSE reconsidered these comments and again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble.

A commenter requested guidance and clarifications related to determining the necessity of transition services, graduation plans, and appropriate documentation. OSSE will consider this comment in the development of policy and guidance.

A commenter requested that OSSE strike Section 3026.2 due to concerns that it unlawfully terminates a student's IDEA eligibility because the student may be incarcerated when they exceed the age of 22. OSSE has elected to retain the language because it is consistent with 34 C.F.R. § 300.324(d)(1)(ii). Under this provision, an LEA is not required to conduct transition planning for a student who is convicted as an adult and incarcerated in an adult prison when the student's eligibility will expire while the student remains incarcerated. In its reference to "section", the provision is speaking only to secondary transition planning; the language as written does not affect a student's eligibility under IDEA or this chapter.

3027 IEP Certificate of Completion for Special Education

Section 3027 establishes a framework for awarding an IEP Certificate of Completion, including requiring LEAs to establish minimum criteria or adopt the criteria set forth in the rulemaking. A commenter restated concerns and recommendations regarding content areas and minimum credits or hours required for the IEP Certificate of Completion. OSSE reconsidered these comments and again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble. OSSE updated in Section 3027.2 the date on which LEAs must establish policies related to this section from July 1, 2022 to July 1, 2023, consistent with OSSE's intent for LEAs to have a year to develop such policy, and corrected a non-substantive drafting error in Section 3027.3.

3029 System of Record

Section 3029 requires LEAs to fully utilize state-level special education data systems to maintain and update student records related to the implementation of IDEA. A commenter restated its recommendation that this section establish a requirement for the LEA to record in the system of record the start and end dates for provision of special education and related services. OSSE reconsidered this comment and again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble.

3031 Paraprofessionals

The section was reserved to assist stakeholders in comparing the second proposed rulemaking to the first proposed rulemaking, and has been removed from this final rulemaking. Multiple

commenters expressed concern regarding the absence of minimum qualifications for paraprofessionals. OSSE appreciates these comments and the specific recommendations provided for moving forward, and acknowledges the importance of ensuring high quality paraprofessional personnel and services to students with disabilities. OSSE intends to support paraprofessionals and special education dedicated aides through training and professional development opportunities while it determines the most appropriate avenue for proposing and implementing minimum qualifications, certification, or licensure requirements for paraprofessionals outside of the current rulemaking. For the final rulemaking, OSSE has deleted the prior section reserved to address paraprofessionals, renumbered all remaining sections, and updated internal cross-references to sections to align with the renumbering.

3031 Parental Consent

Section 3031 establishes requirements for the LEA obligation to obtain parental consent and for parental revocation of consent. A commenter suggested adding language to require the LEA to hold a meeting to discuss and confirm a parent's revocation of consent for services. OSSE declines to adopt this recommendation because a parent's decision-making authority is paramount under IDEA. However, OSSE will consider this comment in the development of guidance and training.

3034 Educational Surrogate Parent

Section 3034 establishes requirements and procedures for the appointment of an educational surrogate parent for a student, including outlining when an LEA must request an educational surrogate parent, procedures for the SEA to review a request and appoint an educational surrogate parent, and the responsibilities of an educational surrogate parent. A commenter restated comments regarding timelines and previously adopted amendments to the provisions. OSSE elected to retain the timelines for the reasons previously discussed in the preamble of the Notice of Second Proposed Rulemaking. A commenter expressed concern about language that was eliminated in favor of IDEA provisions, and provided suggestions for how to incorporate the previous language to ensure LEAs are aware of rights, roles, and responsibilities of foster parents. OSSE has elected to retain the language as written, but will consider this comment and the additional suggestions in the development of guidance.

3038 Independent Educational Evaluations

Section 3038 establishes requirements and procedures related to the provision of an independent educational evaluation (IEE) consistent with IDEA. Multiple commenters recommended adding language entitling the parent to an IEE if an LEA does not complete an evaluation in a timely fashion. The right to an IEE is predicated on the parent's disagreement with an evaluation completed by the LEA; if the LEA has not completed an evaluation, the parent is not entitled to an IEE (See *Letter to Zirkel* (2008), available here: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-4/zirkel121108iee4q2008.pdf>). Rather, the parent may pursue redress through available procedural safeguards. As such, OSSE declines to create this new entitlement by adding the requested language. Commenters also requested that OSSE establish specific timelines for responding to parent requests for IEEs. At this time, OSSE declines to establish a timeline as the language as written is consistent with IDEA. OSSE will consider these comments for the development of policy and guidance.

3041 Parent Observation

Section 3041 establishes requirements and procedures related to the parent’s right to observe a child’s current or proposed educational environment consistent with D.C. Official Code § 38-2571.03. OSSE corrected a drafting error in Section 3041.2. In response to a commenter’s request, OSSE corrected a drafting error in Section 3041.3 to align the language with D.C. Official Code § 38-2571.03(5)(B). A commenter recommended adding that the observation may be across multiple settings and multiple times of the day because it may be important to observe the student in more than one classroom setting and at varying times of day. OSSE declines to add this language because it is not consistent with D.C. Official Code § 38-2571.03, but acknowledges the commenter’s concern and will consider this comment in the development of guidance.

3043 Disciplinary Removal

Section 3043 adopts IDEA requirements for the disciplinary removal of a student with a disability. OSSE corrected a drafting error in Section 3043.4 and added language to Section 3043.7 to clarify the services to which a child with a disability is entitled following certain disciplinary removals, regardless of whether the child’s behavior was a manifestation of the child’s disability.

3044 Restraint, 3045 Seclusion; 3046 Restraint and Seclusion: Reporting

Section 3044 establishes requirements, prohibitions, and child protections related to the use of restraints on children with disabilities. Section 3045 establishes requirements, prohibitions, and child protections related to the use of seclusion with children with disabilities. Section 3046 establishes documentation and reporting requirements for incidents of seclusion and restraint. Commenters restated prior comments regarding recommendations that the prohibitions established in these sections apply to all students in the District; that OSSE enhance data collection and reporting around seclusion and restraint; state oversight and monitoring of seclusion and restraint; parental notification and documentation procedures; and staff training and certification requirements. OSSE reconsidered these comments and retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble. OSSE appreciates stakeholders’ continued engagement and thoughtful input on this topic, and will continue to seek input from stakeholders on implementing seclusion and restraint requirements. OSSE will also consider these comments in the development of policy and guidance.

A commenter recommended stronger prohibitions around the use of seclusion, suggesting that language from Section 3044.1 regarding restraints be adapted and applied to seclusion. Section 3045.1 as proposed prohibits the use of seclusion except in emergency circumstances, similar to the approach taken for physical restraints. As such, no additional regulatory language is necessary.

Commenters expressed concerns about Section 3044.3 prohibiting the use of chemical restraints but allowing for medications ordered by a medical professional, and recommended that clarifying phrasing be added that a medication must be voluntarily taken by the student to ensure schools do not employ forced injections. OSSE believes the language as written is sufficiently protective of students and will consider this comment in the development of policy, guidance, and trainings.

A commenter requested that OSSE define “inappropriate nonphysical interventions” as mentioned in Section 3044.4. This subsection refers to “other less intrusive, nonphysical interventions” but does not contain the phrase “inappropriate nonphysical interventions.” OSSE declines to establish

a regulatory definition of either phrase but will consider this comment in the development of policy, guidance, and trainings.

Multiple commenters restated comments that restraints should only be utilized as a method of last resort and only when there is imminent danger of serious physical harm to self or others. OSSE elected not to amend language because it believes the definition of “emergency circumstances” appropriately restricts the use of restraints, and that Section 3044.4 and Section 3044.6 address this concern. OSSE will consider these comments in the development of policy and guidance.

A commenter requested that OSSE prohibit application of physical restraints on students with disabilities with histories of abuse or trauma, including students who have been sexually or physically abused in the past two (2) years. OSSE has previously addressed this in Section 3044.9(c), which prohibits the use of physical restraint if a child has a medical or psychological condition contraindicative to restraint, which provides broader protections. OSSE will consider for the development of policy and guidance how this provision may include students with histories of trauma, physical abuse, or sexual abuse.

A commenter recommended that Section 3045 be amended to prohibit the use of locked seclusion rooms, and to allow for a staff member to be physically present inside the seclusion room. OSSE declines to amend the regulations as requested because of existing language that establishes reasonable boundaries around the use of locked rooms that is intended to protect the safety of both students and staff.

3049 Impartial Due Process

Section 3049 adopts IDEA provisions related to the rights of a parent or public agency to initiate a due process hearing when there is a dispute about a child’s evaluation, eligibility, educational placement, or the provision of FAPE. A commenter requested that Section 3049.4 be amended to remove the requirements related to financial disclosures by the submitting attorney due to concerns that the provision would disadvantage parents of students with disabilities. OSSE elected to retain the language as this is a longstanding requirement previously provided at 5-E DCMR § 3029.5 and narrowly applies to financial interests related to nonpublic providers or services that may be at issue in the due process hearing.

3052 Resolution Meetings

Section 3052 adopts IDEA provisions related to resolution meetings held after the filing of a due process complaint but prior to the due process hearing. A commenter restated comments regarding scheduling meetings at a mutually convenient time and location, and a parent’s failure to respond to scheduling requests. OSSE reconsidered these comments and again retained the language as written for the reasons previously enumerated in the Notice of Second Proposed Rulemaking preamble.

3053 Due Process Hearings and Hearing Officer Determinations

OSSE removed the reference to the “Student Hearing Office” in Section 3053.8. The name of this office within OSSE has changed over time (the current name is the Office of Dispute Resolutions). To account for possible future changes to the name of the office, OSSE has revised this section to refer generically to the state education agency or “SEA.”

3055 Attorney's Fees

Section 3055 adopts IDEA requirements related to the award of reasonable attorney's fees. OSSE received no comments on this section and retained the language as proposed. A commenter requested that OSSE include language regarding attorney abuses provided for in D.C. Official Code § 38-2572.04. OSSE declines to add such language and defers to the authority of the statute to govern the topic. A commenter requested that Section 3055.2 be amended to align with language used by District of Columbia federal courts by stating that attorney's fees must be based on rates prevailing in the community in which the administrative proceeding arose for the kind and quality of services furnished. OSSE has elected to retain the language as written because it is consistent with 34 C.F.R. § 300.517(c).

3099 Definitions

Section 3099 establishes definitions and meanings of terms and phrases used in the rulemaking.

Commenters reiterated requests that OSSE define "meaningful educational progress" as discussed in *Andrew F.*. In its decision, the Court stated: "We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Andrew F.*, 137 S.Ct. at 1001. As such, OSSE declines to establish a regulatory definition of "meaningful educational progress" but will take commenters' suggestions into consideration for the development of policy and guidance.

A commenter recommended that OSSE add definitions of "educational performance" and "child-level data." OSSE declines to establish such definitions in this rulemaking, but will consider this comment in the development of policy and guidance.

A commenter suggested amendments to the definition of "enrollment." OSSE elected to retain the language as written because it is consistent with the definition of "enrollment" in 5-A DCMR § 2099 and is widely employed across educational programs and relevant data systems.

OSSE made numbering changes to the definition of "behavior intervention plan or BIP" for clarity of reading. OSSE also revised the definition of "meeting" to add additional ways to participate in a meeting other than in person. This revision aligns with proposed Section 3009.5.

Technical Edits

OSSE corrected the reference for IEP in Section 3001.3 by defining individualized education program as an "(IEP)" and later referring to it as such in the same section. OSSE also corrected Section 3011.11(e)(1) to refer to "IEP Team" rather than "IEP." This was a drafting error. Also, in Section 3011.11(e)(2)(B), OSSE deleted an incorrect parenthetical numeral reference, revising "one (1) and one half (1.5)" to instead read "one and one half (1.5)."

OSSE made corrections to internal cross-references in Sections 3001.3, 3001.4(b), 3010.3, 3017.15, and the Section 3099 definition of *Special Education* to align with the intent of the rulemaking. OSSE also made corrections to the internal cross-references in Sections 3001.2, 3005.2, 3007.4, 3009.7, 3016.2, 3026.9, 3033.2(b), 3033.3(n), 3033.4(c), 3035.1, 3036.1(c),

3036.2, 3037.1, 3039.5, 3039.6, 3042.2, 3045.3, 3048.4, 3048.6, 3050.3, 3051.3, 3052.2, and 3053.1 to account for changes due to the renumbering of sections following deletion of Section 3031 *Paraprofessionals* formerly contained in the Second Notice of Proposed Rulemaking. A conforming correction to the cross-reference in Section 3043.6 was made to align language with the federal regulations under IDEA.

OSSE made nonsubstantive grammatical corrections to Sections 3003.2(c), 3006.7(d), , 3006.10, 3006.11(a), 3006.12, 3008.2(d), 3009.3(e), 3011.14(b), 3012.9(b) and (c), 3028.3, 3040.6(b), 3040.15, 3043.3(c), 3054.2, and 3099 (definitions of “consent” and “evaluation”). OSSE made these nonsubstantive grammatical corrections to more accurately connect language in paragraphs and subparagraphs of subsections to the introductory language of the subsection.

OSSE made a conforming edit in Section 3021.1, replacing “student with a disability” with “child with a disability,” consistent with the use of the latter throughout the rulemaking. OSSE also made a conforming edit in Section 3033.3(e), adding reference to a “state” complaint to align with Section 3048 *State Complaints*. A minor wording change was made in Section 3042.1, replacing the word “child” with “pupil” to align with the cited reference to the D.C. Code. OSSE made a conforming edit in the definition of “educational representative” by replacing reference to OSSE to say “SEA” instead.

In Sections 3003.2(c)(1)(B) and (c)(2)(B), 3008.1(e), 3011.11(e), 3017.8(e), 3032.3(c), 3040.18(b), and 3054.2, OSSE clarified references to the applicable paragraph and/or subsection. Similarly, OSSE revised the reference to “part” in the Section 3099 definition of “Parent” to say “chapter” instead. This was a drafting error. In Sections 3030.1 and 3031.1(d), OSSE added the citation to the U.S. Code for the Family Educational Rights and Privacy Act (FERPA). OSSE made formatting edits in Section 3040.15 for clarity of reading.

OSSE revised the reference to “Special Education Data System” (known as SEDS) in the Section 3099.1 definition of *Student Information System or SIS* to say the “District of Columbia special education data system.” This revision is consistent with Section 3029 *System of Record*, which adopts a generic reference to the SEA level special education data system.

OSSE made a grammatical correction to “functional behavior assessment” to instead read “functional behavioral assessment” in Section 3046.6 and the definition of this term in Section 3099. OSSE also removed parenthetical abbreviations for “(FBA)” and “(BIP)” in Section 3046.6 and the definitions of “functional behavioral assessment” and “behavior intervention plan” in Section 3099 as unnecessary because the rulemaking does not otherwise use these acronyms.

Other minor non-substantive punctuation changes, formatting edits, and correction of grammatical or typographical errors were made throughout the regulations. The changes made since the Notice of Second Proposed Rulemaking are non-substantive in nature, and stakeholders have actively participated in the multiple opportunities provided since 2014 to give input on the requirements. Accordingly, a Third Proposed Rulemaking is not warranted and the State Superintendent herein provides Notice of Final Rulemaking.

VII. Effective Date

The State Superintendent adopted the rulemaking as final on May 11, 2022 and the rulemaking shall become effective on July 1, 2022.

A new Chapter 30, SPECIAL EDUCATION, of Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5, EDUCATION, of the DCMR is added to read as follows:

CHAPTER 30 SPECIAL EDUCATION

3000	GENERAL PROVISIONS
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3003	CHILD FIND
3004	REQUEST FOR INITIAL EVALUATION
3005	INITIAL EVALUATION PROCESS
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- 3035 TRANSFER OF RIGHTS: GENERAL PROVISIONS AND SUPPORTED DECISION-MAKING**
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- 3049 IMPARTIAL DUE PROCESS**
- 3050 CHILD’S STATUS DURING PROCEEDINGS**
- 3051 HEARING RIGHTS**
- 3052 RESOLUTION MEETINGS**
- 3053 DUE PROCESS HEARINGS AND HEARING OFFICER DETERMINATIONS**
- 3054 EXPERT WITNESS FEES**
- 3055 ATTORNEY’S FEES**
- 3099 DEFINITIONS**

3000 GENERAL PROVISIONS

3000.1 This chapter establishes state-level requirements implementing and supplementing Part B of the Individuals with Disabilities Education Act (IDEA), (20 U.S.C. §§ 1400 *et seq.*), its implementing regulations (34 C.F.R. Part 300), and District of Columbia law governing special education.

3001 PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION

3001.1 The local education agency (LEA) shall make a free appropriate public education (FAPE) available to each child with a disability, ages three (3) to twenty-two (22), who resides in, or is a ward of, the District of Columbia 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.

3001.2 For the District of Columbia Public Schools (DCPS), the responsibility to make FAPE available extends to all children with disabilities between the ages of three (3) and twenty-two (22) years old, who are residents of the District of Columbia but are not enrolled in a public charter school LEA as described in Section 3001.3,

and children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA and Section 3040 of this chapter.

- 3001.3 Unless otherwise provided in Sections 3001.11 through 3001.13, a public charter school LEA's obligation to determine eligibility for special education services and develop an individualized education program (IEP), as applicable, or to provide special education services in accordance with an existing IEP is triggered upon completion of the registration of the student in the Student Information System (SIS) by the school upon receipt of required enrollment forms and letter of enrollment agreement, in accordance with paragraph (d) in the definition of enrollment in this chapter.
- 3001.4 A child with a disability shall remain eligible for special education and related services through the end of the school year in which the child turns twenty-two (22) years old unless:
- (a) The IEP team determines the child is no longer a child with a disability in accordance with this chapter; or
 - (b) The child receives a regular high school diploma pursuant to Section 3001.15.
- 3001.5 If a child with a disability turns twenty-two (22) after the end of a school year but prior to the first day of the following school year, the child shall be ineligible for further special education and related services under this chapter.
- 3001.6 Notwithstanding other legal obligations to provide FAPE, the District of Columbia Department of Youth Rehabilitation Services (DYRS) shall make FAPE available for youth committed to DYRS and housed at the New Beginnings Youth Development Center and the Youth Services Center.
- 3001.7 The LEA's responsibility to make FAPE available extends to any child with a disability who is in the custody of the District of Columbia Child and Family Services Agency (CFSA), who is committed to DYRS, who is suspended or expelled by the LEA, and highly mobile children enrolled in the LEA such as migrant or homeless children.
- 3001.8 The LEA shall 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 a disability, or the child's need or potential need for special education services, supplementary aids or services, or any other accommodation.
- 3001.9 With prior approval by the District of Columbia Public Charter School Board (PCSB), in accordance with D.C. Official Code § 38-1802.06(c-1), an LEA may give a preference in admission to an applicant who is a child with a disability with

an IEP or an applicant who is eligible for special education and related services under a particular disability category.

- 3001.10 The LEA shall not require any child to have a medical diagnosis or medical documentation, or obtain or utilize prescription medication as a condition of access to FAPE, or receipt of an evaluation or reevaluation.
- 3001.11 For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to 34 C.F.R. § 300.124, including ensuring that:
- (a) The LEA participates in transition planning conferences, as appropriate;
 - (b) The LEA has developed an IEP by the child's third birthday, including:
 - (1) For public charter school LEAs, the LEA has developed an IEP by the third birthday of any child who is currently enrolled in the public charter school LEA or has completed the registration process for the upcoming school year; or
 - (2) For DCPS, the LEA has developed an IEP by the third birthday of any child who resides in the District of Columbia who is not enrolled in a public charter school LEA; and
 - (c) The LEA is implementing the IEP by the child's third birthday or, if the third birthday occurs on a non-school day or during the summer, within a timeframe established by the state education agency (SEA), including ensuring the provision of all special education and related services in the child's IEP.
- 3001.12 Except as provided in Section 3001.11, if a child transfers between LEAs between school years, the new LEA's obligation to make FAPE available begins on the new LEA's first day of the school year.
- 3001.13 If a child is registered in the Student Information System (SIS) for more than one (1) LEA, the most recent date of documented parental consent for enrollment shall determine the LEA that is responsible for making FAPE available to the child.
- 3001.14 If a public charter school LEA closes or ceases to operate, in full or in part, for any reason, including without limitation voluntary relinquishment or revocation of its charter by the chartering authority, the public charter school LEA shall adhere to charter closure procedures established by the SEA and the chartering authority, as follows:

- (a) Within fourteen (14) days of the official action taken by the chartering authority to revoke, not renew, or acknowledge the relinquishment of a charter, the LEA shall make and document reasonable efforts to notify:
 - (1) The parents of all enrolled children with disabilities, including children with disabilities placed at a nonpublic special education school or program, of the parent's responsibility to enroll the child with a disability in another LEA; and
 - (2) Each nonpublic school where the LEA has placed students to inform the school of the timing and full implications of the closure and the nonpublic school's responsibility to assist the LEA in communications with parents regarding the LEA closure and the parent's responsibility to enroll the child with a disability in another LEA;
- (b) The LEA shall ensure all student records are updated in the District of Columbia special education data system, including reviewing and revising any IEP that has expired or will expire within thirty (30) days of the closure of the public charter school;
- (c) The LEA shall provide to the parent a copy of the child's IEP and other documentation relevant to the provision of special education or related services prior to the last day of the regular school year or within five (5) business days of a request by the parent, if earlier; and
- (d) The LEA shall address or resolve all outstanding child-level findings of noncompliance made by the SEA, a court of competent jurisdiction, or an impartial hearing officer pursuant to IDEA.

3001.15 The LEA shall not be obligated to make FAPE available to a child with disability who has graduated from high school with a regular high school diploma. This provision does not apply to children with disabilities who were awarded an IEP Certificate of Completion (or equivalent) or were awarded a credential other than a high school diploma.

3001.16 The LEA shall not be obligated to make FAPE available to a child with a disability aged eighteen (18) to twenty-two (22) who, in the last educational placement prior to incarceration in an adult correctional facility:

- (a) Was not actually identified as being a child with a disability in accordance with this chapter; and
- (b) Did not have an IEP in accordance with this chapter.

3001.17 The LEA shall be obligated to make FAPE available to a child with a disability described in Section 3001.16 if the child:

- (a) Had been identified as a child with a disability and had received services in accordance with an IEP, but left school prior to his or her incarceration; or
- (b) Did not have an IEP in his or her last educational setting, but had actually been identified as a child with a disability in accordance with this chapter.

3002 CONTINUUM OF ALTERNATIVE PLACEMENTS

3002.1 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.

3002.2 The LEA shall provide the full continuum of alternative placements to accommodate the needs of a child with a disability, regardless of a lack of existing placement options that exist at the time of enrollment or because educating the child with a disability would result in additional costs, administrative inconvenience, or changes to school programming, staff, or schedule.

3002.3 The LEA's continuum of alternative placements shall include instruction in all of the following environments:

- (a) Regular education classroom;
- (b) Special education classroom;
- (c) Special education day program, through the process described in Section 3025;
- (d) Special education residential program, through the process described in Section 3025;
- (e) Home instruction; and
- (f) Hospital instruction.

3002.4 The LEA shall make provision for supplementary aids and services to be provided in conjunction with regular class placement.

3003 CHILD FIND

3003.1 Each LEA and public agency shall publish and implement child find policies and procedures to ensure that:

- (a) All children with disabilities between the ages of three (3) and twenty-two (22) years old enrolled in the LEA, including children with disabilities who are homeless, children who are in the custody of the District of Columbia CFSA or committed to DYRS, children who are suspected of being a child with a disability even though they are making progress grade to grade, and highly mobile children, who are in need of special education and related services, are identified, located, and evaluated; and
- (b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

3003.2 DCPS shall also implement child find policies and procedures to ensure that:

- (a) All children with disabilities between three (3) and twenty-two (22) years who are residents of the District of Columbia but are not enrolled in a public charter school LEA, and who are in need of special education and related services, are identified, located, and evaluated;
- (b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services;
- (c) With regard to children under the age of six (6) years old, DCPS:
 - (1) Maintains, and updates at least annually, a list of primary referral sources, including physicians, hospitals, and other health providers; day care centers, child care centers, and early childhood programs; District departments and agencies; community and civic organizations; and advocacy organizations; and
 - (A) Contacts primary referral sources at least once a month until a referral relationship is established and then every three (3) months thereafter;
 - (B) Develops a system to track the frequency and type (in person, email, phone, etc.) of contacts with the primary referral sources described in paragraph(c)(1) of this subsection to ensure that outreach occurs on a regular basis; and
 - (C) Develops, publishes, and distributes printed materials for primary referral sources to inform them of the preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to make a referral;

- (2) Develops and publishes printed materials for parents and guardians to provide information regarding preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to obtain the services. These materials shall be:
 - (A) Written at an appropriate reading level and translated into multiple languages as required by local law; and
 - (B) Distributed to all primary referral sources described in paragraph (c)(1) of this subsection, all DCPS and public charter schools, District of Columbia Public Libraries, Economic Security Administration (ESA) Service Centers, District of Columbia Parks and Recreation facilities, and other locations designed to reach as many parents or guardians of preschool children who may be eligible for special education and related services as possible; and
- (3) Ensures that appropriate DCPS outreach staff (e.g., the Child Find Field Coordinators) contact primary referral sources or a staff member in the primary referral source's office who are instrumental in making referrals at least once a month until a referral relationship is established and then every three (3) months thereafter. The initial meeting shall be face-to-face whenever possible when pursuing referrals from new referral sources and then less frequently thereafter, using the method of contact preferred by the referral sources (e.g., e-mail, texting, or telephone calls).

3003.3 DCPS shall conduct public awareness activities sufficient to inform parents and the community regarding the availability of special education and related services and the methods available to request those services and programs. District public charter school LEAs shall conduct similar awareness activities to inform parents and community members that interact with the public charter school LEA of the availability of special education and related services and the methods available to request those services and programs.

3003.4 DCPS is responsible for conducting child find activities for resident children who are homeschooled as well as resident and nonresident parentally-placed private school children over three (3) years of age attending religious and other private elementary and secondary schools located in the District and may not require enrollment in DCPS prior to evaluation or development of an IEP.

3003.5 To determine if a child is suspected of being a child with a disability, the LEA may:

- (a) Conduct screenings;

- (b) Consider existing child data and information; and
- (c) Consult with the parent.

3004 REQUEST FOR INITIAL EVALUATION

3004.1 The LEA shall treat a referral from the following individuals as a request for initial evaluation in accordance with 34 C.F.R. § 300.301(b):

- (a) The child's parent;
- (b) The child, provided that educational rights have transferred to the child;
- (c) An employee of the LEA the child is enrolled in, who has knowledge of the child; and
- (d) An employee of a public agency, as defined by 34 C.F.R. § 300.33, who has knowledge of the child.

3004.2 For children under the age of six (6), the LEA shall also treat a referral from the following sources, as a request for initial evaluation in accordance with 34 C.F.R. § 300.301(b):

- (a) Pediatrician or other medical professional including physicians, hospitals, and other health providers;
- (b) Child development facilities, including day care centers, child care centers, and early childhood programs;
- (c) District agencies and programs, including IDEA Part C programs;
- (d) Community and civic organizations; and
- (e) Advocacy organizations.

3004.3 The LEA shall not delay or deny a timely initial evaluation to conduct screenings, implement pre-referral interventions including but not limited to response to intervention strategies, or because of a child's limited English proficiency.

3004.4 The LEA shall notify the parent of receipt of any referral received under Section 3004.2. This notification shall include information regarding:

- (a) The initial evaluation process;
- (b) Parental consent requirements; and

(c) Resources the parent may contact for assistance.

3004.5 A referral for an initial evaluation may be oral or written.

3004.6 Upon receiving an oral referral for an initial evaluation, the LEA shall:

(a) Assist any outside referral source, including but not limited to the parent and other public agencies, to document an oral referral in writing; and

(b) Document the date of any oral referral within three (3) business days of receipt.

3005 INITIAL EVALUATION PROCESS

3005.1 The LEA shall ensure that a full and individual evaluation is conducted for each child suspected of being a child with a disability in need of special education before the initial provision of special education and related services 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 LEA proposing or refusing to conduct an initial evaluation to determine if a child is a child with a disability shall provide the parent with prior written notice in accordance with Section 3032 and a copy of the procedural safeguards notice in accordance with Section 3033. The prior written notice shall also contain:

(a) Information about the purpose of the evaluation process;

(b) The types of child-level data being assessed; and

(c) Any additional assessments needed.

3005.3 After providing prior written notice, the LEA shall obtain consent from the parent of the child before proceeding with the initial evaluation.

3005.4 An LEA shall:

(a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and

(b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty

(60) days from the date that the student's parent or guardian provides consent for the evaluation;

3005.5 The initial evaluation timeline in Subsection 3005.4 does not apply to the LEA if:

- (a) The LEA has made and documented reasonable efforts under this section and the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- (b) The child enrolls in a new LEA after the initial evaluation process timeline has begun, but before an eligibility determination has been made by the child's previous LEA, provided that the new LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and new LEA agree to a specific time when the evaluation will be completed, not to exceed an additional thirty (30) days.

3005.6 In the case of an initial evaluation, if the child is in the custody of the District of Columbia CFSA and is not residing with the child's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if any of the following apply:

- (a) Despite documented reasonable efforts to do so, the LEA cannot determine the whereabouts of the parent of the child;
- (b) The rights of the parent of the child have been terminated in accordance with District of Columbia law; or
- (c) The rights of the parent to make educational decisions have been limited or terminated by a judge in accordance with District of Columbia law, and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

3005.7 If the parent does not provide consent for the initial evaluation or fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child through mediation or due process procedures consistent with this chapter.

3005.8 Parental consent for the initial evaluation shall not be construed as consent for the initial provision of special education and related services, in accordance with Section 3016.

3006 EVALUATION PROCEDURES

3006.1 To conduct an evaluation, the LEA 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) Document information used as a basis of the decision.

3006.2

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and 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;
- (b) Review, for children under the age of six (6):
 - (1) Relevant information provided by any agency, medical professional, service provider, child care provider, early childhood program, or relative who may have relevant information regarding the child; and
 - (2) IDEA Part C assessments and other related data; and
- (c) On the basis of that review, and input from the child's parent, 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 education curriculum.

3006.3

Parental consent is not required for the IEP team to review existing data as part of a reevaluation.

3006.4 Qualified evaluators, under the direction of the LEA, shall administer assessment procedures as may be needed to produce the data required to make the determinations described in Section 3006.2.

3006.5 If the determination under Section 3006.2 is that no additional data are needed to determine whether the child is a child with a disability or 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 chapter, the child is or continues to be a child with a disability. The IEP team is not required to conduct assessments under Section 3006.2 unless the IEP team determines that an assessment is necessary or is requested to do so by the child's parents.

3006.6 The LEA shall ensure that 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;
- (b) Used for the purposes for which the assessments or measures are valid and reliable;
- (c) Administered by trained and knowledgeable personnel in accordance with any instructions provided by the developer of the assessments; and
- (d) Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

3006.7 The LEA shall ensure that:

- (a) A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
 - (1) Whether the child is a child with a disability under this chapter; and
 - (2) The content of the child's IEP, including information related to enabling the child to be involved and progress in the general education curriculum;
- (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

- (c) 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);
- (d) Each assessment report includes the following:
 - (1) The date of assessment and the date of the report;
 - (2) A description of the child's performance in each area assessed, including specific strengths and weaknesses;
 - (3) Information relevant to determinations under Section 3006.2;
 - (4) Instructional implications for the child's participation in the general curriculum;
 - (5) 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
 - (6) The signature and title of the qualified examiner(s) who administered the assessment procedure and who wrote the report;
- (e) No single assessment or source of data or information 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;
- (f) 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 needs;

- (6) General intelligence (including cognitive ability and adaptive behavior);
 - (7) Communication needs; and
 - (8) Motor abilities;
- (g) In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and service needs, whether or not commonly linked to the disability category in which the child has been classified;
 - (h) 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
 - (i) The IEP team uses assessment tools and strategies that provide information that directly assists persons in determining the educational needs of the child.

3006.8 If the group of persons described in Section 3006.2 determines that medical services or a medical evaluation provided by a licensed physician are necessary as part of the evaluation to determine if the child is or continues to be a child with a disability or to determine the educational needs of the child, the LEA shall arrange for such services, which shall be free of charge to the parents and not contingent upon health insurance coverage.

3006.9 The LEA shall ensure that 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.

3006.10 If the child is suspected of having a specific learning disability, evaluation procedures shall also include the following:

- (a) The LEA shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty;
- (b) The group described in Section 3006.2, in determining whether a child has a specific learning disability, shall:
 - (1) Use information from an observation in routine classroom instruction in monitoring of the child's performance that was done before the child was referred for an evaluation; or

- (2) Have at least one (1) member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained; and
- (c) In the case of a child less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

3006.11 Upon completion of the evaluation, the group described in Section 3006.2 of this chapter shall:

- (a) Develop a comprehensive written evaluation (or reevaluation) report that includes:
 - (1) Information provided by the parent(s);
 - (2) Results of assessment procedures considered and used as a basis for making an eligibility determination;
 - (3) Results of analysis of existing data if conducted, which shall include local, State and classroom based assessments, as well as classroom observations;
 - (4) A statement that attests to whether the assessment procedures were valid for the purposes intended and for the child, reliable, and administered by a trained professional while following its developer's instructions;
 - (5) A statement as to whether the child is a child with a disability;
 - (6) A statement as to whether the child needs special education and related services;
 - (7) A statement as to whether the child has been evaluated in all areas of suspected disabilities; and
 - (8) The signatures of team members participating in the determinations.; and
- (b) Provide a copy of the evaluation report, and any underlying assessments, at no cost to the parent, no later than five (5) business days before the eligibility meeting, unless the parent agrees to a meeting date within five (5) business days.

3006.12

If the child was suspected of having a specific learning disability, the evaluation report shall also contain:

- (a) A statement of whether the child has a specific learning disability;
- (b) The basis for making the determination, including an assurance that the determination was made in accordance with 34 C.F.R. § 300.306(c)(1);
- (c) A statement of the relevant behaviors, if any, noted during the observation of the child and the relationship of the behaviors to the child's academic functioning;
- (d) A statement containing any educationally relevant medical findings, if any;
- (e) A statement of whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards; and
 - (1) Whether the child does not make sufficient progress to meet age or State-approved grade level standards; or
 - (2) Whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development consistent with 34 C.F.R. § 300.309(a)(2)(ii).
- (f) The determination of the IEP team concerning the effects of the following on the child's achievement level:
 - (1) Visual disability;
 - (2) Hearing disability;
 - (3) Motor disability;
 - (4) Intellectual disability;
 - (5) Emotional disability;
 - (6) Cultural factors;
 - (7) Environmental or economic disadvantage; or
 - (8) Limited English proficiency;

- (g) A statement of whether the child has participated in a process that assesses the child's response to scientific, research-based intervention, and if so, includes:
 - (1) The instructional strategies used and the student-centered data collected; and
 - (2) The documentation that the LEA notified the child's parents regarding:
 - (i) The amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (ii) Strategies for increasing the child's rate of learning; and
 - (iii) The parents' right to request an evaluation at any point during the intervention process; and
- (h) A 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 shall be included as part of the evaluation report.

3006.13 The screening of the child by a teacher, or school-based specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

3006.14 Screenings that are administered to all children shall not be considered to be evaluations for eligibility for special education and related services, and therefore do not require prior parental consent unless consent is required from the parents of all children.

3007 REEVALUATION

3007.1 The LEA shall conduct a reevaluation of each child with a disability to determine continued eligibility for special education in accordance with the requirements of this chapter at least once every three (3) years, unless the parent and LEA agree that a reevaluation is unnecessary, or if:

- (a) The LEA determines that the child's educational or related service needs, including improved academic achievement and functional performance, warrant a reevaluation; or

(b) The child's parent or teacher requests a reevaluation.

3007.2 A reevaluation may occur not more than once a year, unless the parent and the LEA agree otherwise in writing.

3007.3 A reevaluation shall be conducted in accordance with the evaluation procedures described in Section 3006.

3007.4 The LEA shall respond to a parent's request for a reevaluation within ten (10) business days by:

(a) Beginning reasonable efforts to obtain parental consent to reevaluate and providing prior written notice pursuant to Section 3032 proposing to proceed with the requested reevaluation; or

(b) Providing prior written notice pursuant to Section 3032 refusing to proceed with the requested reevaluation.

3007.5 In the event that the LEA and parent agree to a reevaluation prior to the triennial evaluation pursuant to Section 3007.1, the LEA shall complete a reevaluation and make an eligibility determination, if appropriate, for a child within sixty (60) days from the date of parental consent for the reevaluation.

3007.6 The LEA shall make and document all reasonable efforts, as defined in this chapter, to obtain informed parental consent prior to conducting a reevaluation of a child with a disability.

3007.7 The LEA may proceed with a reevaluation without obtaining informed parental consent if the LEA demonstrates:

(a) It made reasonable efforts, as defined in this chapter, to obtain parental consent; and

(b) The child's parent failed to respond.

3007.8 If the parent refuses to consent to the reevaluation, the LEA may, but is not required to, pursue the reevaluation through mediation or due process procedures consistent with this chapter.

3008 INDIVIDUALIZED EDUCATION PROGRAM TEAM

3008.1 The individualized education program (IEP) Team for each child with a disability shall include the following mandatory IEP Team participants:

(a) The child's parent;

- (b) At least one (1) general education teacher of the child, if the child is or may be participating in the general education environment;
- (c) At least one (1) special education teacher, or if appropriate, at least one (1) special education provider of the child;
- (d) A representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, and knowledgeable about the general education curriculum and about the availability of resources of the LEA;
- (e) An individual who can interpret the instructional implications of evaluation results, who:
 - (1) May be a member of the team described in (a) through (d) of this subsection; and
 - (2) When the purpose of the IEP meeting is to evaluate a child to determine his or her eligibility for special education and related 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; and
- (f) Whenever appropriate, the child.

3008.2 The IEP Team for each child with a disability shall include the following additional IEP Team participants, as appropriate:

- (a) Related services personnel;
- (b) A Part C representative if a child was previously served under Part C of IDEA, and if so, an invitation to the initial IEP Team meeting shall, with the consent of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services;
- (c) A secondary transition representative if the IEP Team will discuss secondary transition. If appropriate and in compliance with this section, the LEA shall invite, with parental consent, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
- (d) The child, under the following circumstances:
 - (1) If the child has reached fourteen (14) years of age, or younger if deemed appropriate by the child's IEP Team;

- (2) The LEA shall invite the child with a disability to attend the child's IEP Team meeting if a purpose of the meeting is the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals; and
 - (3) If the child does not attend the IEP Team meeting involving the consideration of the postsecondary goals and transition services, the LEA shall take other steps to ensure that the child's preferences and interests are considered; and
- (e) Other individuals, as follows:
- (1) At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and
 - (2) The determination of the knowledge or special expertise of any individual described in this section shall be made by the party (parent or LEA) who invited the individual to be a member of the IEP Team.

3008.3 The IEP Team for a child suspected of having a specific learning disability shall include the following additional mandatory IEP Team participants:

- (a) The child's regular teacher, or the following:
 - (1) If the child does not have a regular teacher, a teacher qualified to teach a child of his or her age; or
 - (2) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (b) At least one (1) person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

3008.4 A mandatory IEP Team member may be excused from attending an IEP Team meeting, in whole or in part, under the following circumstances:

- (a) The member's area of the curriculum or related services is not being modified or discussed in the meeting and the parent and the LEA agree, in writing, that the attendance of the member is not necessary; or
- (b) The meeting involves a modification to or discussion of the member's area of the curriculum or related services, and all of the following occur:

- (1) The parent and the LEA consent to the excusal in writing;
- (2) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting; and
- (3) The written input includes educational and behavioral strengths and needs of the child as related to the IEP Team member's area of curriculum or related services.

3009 PARENT PARTICIPATION IN IEP TEAM MEETINGS

3009.1 The LEA shall ensure that the parent of a child with a disability is present at each IEP Team meeting or afforded the opportunity to participate by making and documenting all reasonable efforts, as defined in this chapter, to:

- (a) Notify the parent in writing of the meeting no later than five (5) business days prior to the meeting to ensure that the parent will have an opportunity to attend; and
- (b) Schedule the meeting at a mutually agreed on time and place.

3009.2 The LEA shall demonstrate reasonable efforts, as defined in this chapter, to contact the parent for the purposes of inviting the parent to participate in the IEP Team meeting no later than five (5) business days before the meeting, unless the parent agrees to a meeting date within five (5) business days of the initial contact.

3009.3 The notice to the parent required in Section 3009.1 shall include:

- (a) The purpose, time, date, and location of the meeting;
- (b) Information advising the parent how to request participation via alternate methods described in Section 3009.5, including video conferences, conference telephone calls, and online telecommunication applications to which the parent has access;
- (c) The names of the participants who will attend the meeting;
- (d) Information advising that the parent may invite other individuals to participate in the IEP Team meeting who have knowledge or special expertise regarding the child, including related services personnel as appropriate or representatives from the IDEA Part C system for initial IEP meetings; and
- (e) Beginning with the first IEP to be in effect when the child turns fourteen (14) years old, indicate that a purpose of the meeting will be the

consideration of the postsecondary goals and transition services for the child, and that the LEA will:

- (1) Invite the child;
- (2) Identify any other agency that will be invited to send a representative including any participating agency the LEA proposes to invite because the agency is likely to be responsible for providing or paying for transition services; and
- (3) Include consent forms to be signed by the parent for the purpose of allowing the LEA to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services or a representative of any other specified agency.

3009.4 The LEA shall provide, at no cost to the parent, an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed at the meeting. Such accessible copies shall be provided no fewer than five (5) business days before a scheduled IEP Team meeting, if the purpose of which is to discuss the child's IEP or eligibility for special education and related services. However, if a meeting is scheduled fewer than five (5) business days before it is to occur, such accessible copies shall be provided no fewer than twenty-four (24) hours before the meeting.

3009.5 If the parent cannot physically attend the IEP Team meeting, the LEA shall use other methods of inclusion to ensure parent participation, including video conferences, conference telephone calls, and online telecommunication applications to which the parent has access.

3009.6 The IEP Team meeting may be conducted without the parent in attendance or participating by other means if the LEA:

- (a) Is unable to convince the parent to attend or participate;
- (b) The LEA has a record of its reasonable efforts, as defined in this chapter, to arrange a mutually agreed on time and place consistent with Section 3009.1; and
- (c) The parent was offered at least two (2) meeting options on different dates or different times.

3009.7 The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings and materials provided at the IEP Team meeting, including the following, as appropriate:

- (a) Arranging for an interpreter for a parent with deafness or whose native language is other than English;
- (b) Providing written material in the parent's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so; and
- (c) Providing a hard copy of the procedural safeguards, meeting the requirements of Section 3033, upon request by the parent.

3009.8 The LEA shall provide the parent with a copy of the child's new or amended completed IEP at no cost no later than five (5) business days after the IEP Team meeting, as follows:

- (a) If the IEP has not been completed by the fifth business day after the meeting or additional time is required to comply with the D.C. Language Access Act of 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931), the LEA shall provide the parent with the latest available draft IEP; and
- (b) Under the circumstances outlined in Section 3009.8(a), the LEA shall provide a completed copy of the IEP to the parent no later than fifteen (15) business days after the IEP Team meeting to develop the new or amended IEP.

3010 ELIGIBILITY DETERMINATION

3010.1 As part of the initial evaluation procedures described in Sections 3005 and 3006, the IEP Team shall complete its eligibility determination including determining:

- (a) Whether the child is a child with a disability under this chapter; and
- (b) The educational needs of the child.

3010.2 The IEP Team may not determine that the child is a child with a disability if the determinant factor for that eligibility determination is:

- (a) Lack of appropriate instruction in reading, including the essential components of reading instruction;
- (b) Lack of appropriate instruction in math; or
- (c) Limited English proficiency.

3010.3 Except as provided in Section 3010.5, if a child has a disability that does not adversely affect the child's educational performance, and requires a related service

but not special education, the child is not considered a child with a disability under this chapter.

- 3010.4 Notwithstanding an eligibility determination on the basis of multiple disabilities as defined by Section 3011.8, the IEP team may determine that a child meets the eligibility criteria for more than one (1) eligibility category as defined in Section 3011 and designate one (1) primary disability and one (1) or more secondary disabilities.
- 3010.5 Speech-language pathology services may be considered special education, and may be designated as special education on a child's IEP.
- 3010.6 The IEP Team shall develop an IEP only for an eligible child with disabilities who requires special education services.
- 3010.7 A determination by the IEP team that a child is a child with a disability but that the child does not require special education services under this chapter does not preclude a child's eligibility for services or protections under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and implementing regulations at 34 C.F.R. Part 104.
- 3010.8 The LEA shall provide a copy of the documentation of the determination of eligibility at no cost to the parent no later than five (5) business days after the meeting at which the determination of eligibility was made.

3011 DISABILITY CATEGORIES

- 3011.1 In determining eligibility on the basis of autism, the following shall apply:
- (a) Autism shall mean a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in Section 3011.5;
 - (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child displays difficulties or differences or both in interacting with people and events, including an inability to establish and maintain reciprocal relationships with people or demonstration of rigidity of routines;

- (2) Whether the child displays problems which extend beyond speech or language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or lacking the usual communicative form which may involve deviance or delay, or both;
 - (3) Whether the child exhibits delays, arrests, abnormalities, or regressions in motor, sensory, social, or learning skills or the development of such skills;
 - (4) Whether the child exhibits abnormalities in thought or processing skills;
 - (5) Whether the child exhibits unusual, inconsistent, repetitive, or unconventional responses to sounds, sights, smells, tastes, touch, or movement; and
 - (6) Whether the child displays marked distress over changes, insistence on following routines, and a persistent preoccupation with or attachment to objects;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for autism, including medical documentation or a medical diagnosis, if available; and
 - (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance is adversely affected by the suspected disability and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.2 In determining eligibility on the basis of deaf-blindness, the following shall apply:

- (a) Deaf-blindness shall mean concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness;
- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child displays a hearing impairment consistent with Section 3011.6 or deafness consistent with Section 3011.3;
 - (2) Whether the child displays a visual impairment consistent with Section 3011.14; and

- (3) Whether the child displays severe communication and other developmental and educational needs that cannot be accommodated in programming solely addressing deafness or blindness;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for deaf-blindness, including medical documentation or a medical diagnosis of hearing impairment, deafness, visual impairment, or blindness, if available; and
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by deaf-blindness and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.3 In determining eligibility on the basis of deafness, the following shall apply:

- (a) Deafness shall mean a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification and that adversely affects a child's educational performance;
- (b) The IEP Team shall consider assessments and child data related to whether the child displays an impairment in processing linguistic information through hearing, with or without amplification;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for deafness, including medical documentation or a medical diagnosis, if available; and
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by deafness and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.4 In determining eligibility on the basis of developmental delay, the following shall apply:

- (a) Developmental delay shall mean a condition in which a child, age three (3) through seven (7), experiences severe developmental delays in one (1) or more of the following areas:
 - (1) Physical development;
 - (2) Language and communication development;
 - (3) Social or emotional development;

- (4) Cognitive development; or
- (5) Functional or adaptive development;
- (b) The IEP Team shall consider assessments and child data related to whether the child experiences severe developmental delays of at least two (2) years below his or her chronological age or at least two (2) standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures in the following areas:
 - (1) Physical development;
 - (2) Language and communication development;
 - (3) Cognitive development;
 - (4) Adaptive development; or
 - (5) Social or emotional development;
- (c) Developmental delay does not include:
 - (1) Autism;
 - (2) Traumatic brain injury;
 - (3) Intellectual disability;
 - (4) Emotional disability;
 - (5) Other health impairment;
 - (6) Visual impairment;
 - (7) Hearing impairment; or
 - (8) Speech/ language impairment;
- (d) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for developmental delay, including medical documentation or a medical diagnosis if available;
- (e) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by the

suspected disability and not any of the inappropriate determinant factors as listed in Section 3010.2; and

- (f) To remain eligible for special education and related services, a child identified as having a developmental delay shall qualify as having another category of disability prior to the child's eighth birthday.

3011.5 In determining eligibility on the basis of emotional disability, the following shall apply:

- (a) Emotional disability shall mean a condition exhibiting one (1) or more of the following characteristics over a minimum duration of three (3) months and to a marked degree that adversely affects a child's educational performance:
 - (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (3) Inappropriate types of behavior or feelings under normal circumstances;
 - (4) A general pervasive mood of unhappiness or depression; or
 - (5) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (b) Emotional disability includes schizophrenia;
- (c) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child exhibits one (1) or more of the following characteristics:
 - (i) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - (ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (iii) Inappropriate types of behavior or feelings under normal circumstances;
 - (iv) A general pervasive mood of unhappiness or depression; or

- (v) A tendency to develop physical symptoms or fears associated with personal or school problems; and
- (2) Whether the child exhibits characteristics of emotional disturbance to a marked degree over a minimum duration of three (3) months;
- (d) A child shall not be identified as having an emotional disability solely because:
 - (1) The child is socially maladjusted;
 - (2) The child's behavior repeatedly violates the LEA's code of child conduct; or
 - (3) The child is involved with a court or social service agency;
- (e) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for emotional disability, including medical documentation or a medical diagnosis, if available; and
- (f) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by an emotional disability and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.6 In determining eligibility on the basis of hearing impairment, the following shall apply:

- (a) Hearing impairment shall mean a permanent or fluctuating deficit in hearing that adversely affects a child's educational performance;
- (b) The IEP Team shall consider assessments and child data related to whether the child displays a permanent or fluctuating deficit in hearing;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for hearing impairment, including medical documentation or a medical diagnosis, if available; and
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by hearing impairment and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.7 In determining eligibility on the basis of intellectual disability, the following shall apply:

- (a) Intellectual disability shall mean significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. Intellectual disability does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences or a history of inconsistent or inadequate educational programming;
- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child displays intellectual functioning well below the mean on an individually administered standardized intelligence assessment. The IEP Team shall account for the standard error of measurement of the assessment in interpreting the results; and
 - (2) Whether the child displays deficits in adaptive behavior that significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and school performance that is expected of the individual's age level and cultural group, as determined by clinical judgment;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for intellectual disability, including medical documentation or a medical diagnosis, if available; and
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by intellectual disability and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.8 In determining eligibility on the basis of multiple disabilities, the following shall apply:

- (a) Multiple disabilities shall mean concurrent impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Multiple disabilities shall not include deaf-blindness;
- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child meets all eligibility criteria required for two (2) or more of the following disability categories as defined in this section:

- (A) Autism;
 - (B) Emotional disability;
 - (C) Hearing impairment, if not concurrent with visual impairment;
 - (D) Intellectual disability;
 - (E) Orthopedic impairment;
 - (F) Other health impairment;
 - (G) Specific learning disability;
 - (H) Speech or language impairment;
 - (I) Traumatic brain injury; or
 - (J) Visual impairment, if not concurrent with hearing impairment;
- (2) Whether the combination of coexisting impairment is so severe, complex, and interwoven that identification in a single category of disability cannot be determined; and
 - (3) Whether the impairment results in multisensory or motor deficiencies and delays in the cognitive, affective, or psychomotor areas designed solely to address single impairments;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for multiple disabilities, including medical documentation or a medical diagnosis, if available;
 - (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by multiple disabilities and not any of the inappropriate determinant factors as listed in section 3010.2; and
 - (e) Multiple disabilities shall be treated as a separate and distinct classification from all other disability categories, and shall not be utilized due merely to the child not meeting the criteria of other categories.

3011.9

In determining eligibility on the basis of orthopedic impairment, the following shall apply:

- (a) Orthopedic impairment shall mean a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g. poliomyelitis, bone tuberculosis), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures);
- (b) The IEP Team shall consider assessments and child data related to whether the child displays a severe orthopedic impairment caused by:
 - (1) A congenital anomaly;
 - (2) Disease; or
 - (3) Other causes, as appropriate;
- (c) The IEP Team shall review and consider medical documentation of an orthopedic impairment, if available;
- (d) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for orthopedic impairment; and
- (e) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by orthopedic impairment and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.10 In determining eligibility on the basis of other health impairment, the following shall apply:

- (a) Other health impairment shall mean having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems and adversely affects a child's educational performance;
- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child displays limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment; and

- (2) Whether the child exhibits a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or Tourette syndrome;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for other health impairment, including medical documentation or a medical diagnosis, if available;
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by an other health impairment and not any of the inappropriate determinant factors listed in Section 3010.2; and
- (e) The other health impairment category shall be treated as a separate and distinct classification from all other disability categories, and shall not be utilized due merely to the child not meeting the criteria of other categories.

3011.11

In determining eligibility on the basis of specific learning disability, the following shall apply:

- (a) Specific learning disability shall mean a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may affect the ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability shall not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disability, of environmental, cultural, economic disadvantage, or limited English proficiency;
- (b) The IEP Team shall consider assessments and child data related to whether the child achieves adequately for the child's age or meets State-approved grade-level standards, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards, in one (1) or more of the following areas:
 - (1) Oral expression;
 - (2) Listening comprehension;
 - (3) Written expression;

- (4) Basic reading skills;
 - (5) Reading fluency skills;
 - (6) Reading comprehension;
 - (7) Mathematics calculation; or
 - (8) Mathematics problem solving;
- (c) The IEP Team shall determine that its findings in accordance with this section are not primarily the result of:
- (1) A visual, hearing, or motor disability;
 - (2) Intellectual disability;
 - (3) Emotional disability;
 - (4) Cultural factors;
 - (5) Environmental or economic disadvantage; or
 - (6) Limited English proficiency;
- (d) To ensure underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the IEP Team shall consider:
- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction, which was provided to the child's parents;
- (e) The IEP Team shall determine eligibility for specific learning disability using one (1) of the following methods:
- (1) Eligibility using scientific, research-based interventions. In determining eligibility on the basis of specific learning disability using scientific, research-based interventions, the IEP Team shall consider assessments and child data related to:

- (A) The criteria set forth in paragraph (a) of this subsection;
 - (B) Whether the child makes sufficient progress to meet age or grade-level standards in one (1) or more of the areas identified in Section 3011.11(b) when using a process based on the child's response to scientific, research-based intervention, or a Response-to-Intervention model; or
 - (C) Whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with this chapter; or
- (2) Eligibility using the discrepancy model. In determining eligibility on the basis of specific learning disability using the discrepancy model, the IEP Team shall consider assessments and child data related to:
- (A) The criteria set forth in paragraph (a) of this subsection; and
 - (B) If a discrepancy is demonstrated between achievement and intellectual functioning as measured by the educational evaluation and the intellectual evaluation of at least one and one half (1.5) standard deviations, as measured by appropriate standardized diagnostic instruments and procedures;
- (f) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for specific learning disability, including medical documentation or a medical diagnosis, if available; and
- (g) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by a specific learning disability and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.12 In determining eligibility on the basis of speech or language impairment, the following shall apply:

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

speech or language impairment shall not be attributed to characteristics of second language acquisition or dialectic differences;

- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child displays an articulation impairment, including atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interferes with intelligibility in conversational speech;
 - (2) Whether the child displays a fluency impairment, including:
 - (A) Interruption in the flow of speech characterized by an atypical rate or rhythm;
 - (B) Repetition in sounds, syllables, words, and phrases that significantly reduces the child's ability to participate within the learning environment;
 - (C) Excessive tension, struggling behaviors, or ritualistic behaviors or movements;
 - (D) Stuttering; and
 - (E) Cluttering;
 - (3) Whether the child displays a language impairment, including:
 - (A) Impaired comprehension or use of spoken language which may also impair written or other symbol systems;
 - (B) Impairment in the form of language (phonology, morphology, and syntax);
 - (C) Impairment in the content of language (semantics); and
 - (D) Impairment in the use of language in communication (pragmatics);
 - (4) Whether the child displays a voice impairment, including:
 - (A) Interruption in one (1) or more processes of pitch, quality, intensity, or resonance resonance that significantly reduces the speaker's ability to communicate effectively;

- (B) Aphonia, or the abnormal production of vocal quality, pitch, loudness, resonance, or duration, which is inappropriate for an individual's age or gender, or both;
- (c) Fluency impairment does not include dysfluencies evident in only one (1) setting or reported by one (1) observer;
- (d) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for speech or language impairment, including medical documentation or a medical diagnosis, if available; and
- (e) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by speech or language impairment and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.13 In determining eligibility on the basis of traumatic brain injury, the following shall apply:

- (a) Traumatic brain injury shall mean 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 applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual, and motor abilities, psychosocial behavior, physical functions, information processing, and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma;
- (b) The IEP Team shall consider assessments and child data related to:
 - (1) Whether the child acquired injury to the brain caused by an external force that resulted in total or partial functional disability or psychosocial impairment;
 - (2) Whether the child displays a deficit in cognition, including memory, attention, reasoning, abstract thinking, judgment, problem solving, speed of information processing, cognitive endurance, organization, receptive and expressive language, and speed of language recall;
 - (3) Whether the child displays deficit in psychosocial behavior, including awareness of self and others, interactions with others, responses to social rules, emotional responses to everyday situations, and adaptive behavior; and

- (4) Whether the child displays deficit in physical or motor abilities, including hearing and vision acuity, speech production, hand-eye coordination, mobility, and physical endurance;
- (c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for traumatic brain injury, including medical documentation or a medical diagnosis, if available; and
- (d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by traumatic brain injury and not any of the inappropriate determinant factors listed in Section 3010.2.

3011.14 In determining eligibility on the basis of visual impairment, the following shall apply:

- (a) Visual impairment, including blindness, shall mean an impairment in vision that, even with correction, adversely affects a child's educational performance. Visual impairment includes partial sight and blindness;
- (b) The IEP Team shall consider assessments and child data related to whether the child exhibits an impairment in vision, including:
 - (1) Partial sight;
 - (2) Blindness; or
 - (3) Other visual conditions that, even with correction, adversely affect the child's educational performance;
- (c) The IEP Team shall review and consider medical documentation of visual impairment, if available, including:
 - (1) Exact measures of visual field and corrected visual acuity at a distance and at close range in each eye;
 - (2) Diagnosis of cortical visual impairment; or
 - (3) Diagnosis of degenerative condition that is likely to result in significant loss of vision in the future;
- (d) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for visual impairment, including medical documentation or a medical diagnosis, if available;

- (e) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by a visual impairment and not any of the inappropriate determinant factors listed in Section 3010.2;
- (f) For a child identified as having a visual impairment, an LEA shall assess the child's need for special aids, materials, tactual media such as Braille, and equipment for learning, literacy, activities of daily living, social interaction, and self-advocacy; and
- (g) For children identified as having a visual impairment who have a visual acuity of 20/200 or less after routine refractive correction, or who have a peripheral field of vision restricted to not more than twenty (20) degrees, the LEA shall obtain an evaluation by an orientation and mobility specialist. The orientation and mobility specialist shall also include in the report a set of recommended procedures to be used by a mobility specialist or a teacher of children with visual impairment in conducting orientation and mobility training activities.

3012 RELATED SERVICES

3012.1 The IEP Team shall determine whether a child with a disability requires any related services to benefit from special education.

3012.2 The LEA shall ensure that related services personnel who deliver services in their discipline or profession:

- (a) Have qualifications consistent with any District of Columbia approved or recognized credential, certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing related services; and
- (b) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

3012.3 Audiology as a related service includes:

- (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, including language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- (d) Creation and administration of programs for prevention of hearing loss;
- (e) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (f) Determination of the child's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

3012.4 Counseling services as a related service includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

3012.5 Early identification and assessment of disabilities in children as a related service includes the implementation of a formal plan for identifying a disability as early as possible in a child's life.

3012.6 Interpreting services as a related service includes:

- (a) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, including communication access real-time translation (CART), C-Print, and TypeWell for children who are deaf or hard of hearing; and
- (b) Special interpreting services for children who are deaf-blind.

3012.7 Medical services as a related service includes 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.

3012.8 Occupational therapy as a related service is a service provided by a qualified occupational therapist that includes:

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

3012.9 Orientation and mobility services as a related service includes 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, and includes teaching children the following, as appropriate:

- (a) Spatial and environmental concepts and use of information received by the senses (i.e. 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) 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) To use and understand remaining vision and distance low vision aids; and
- (d) Other concepts, techniques, and tools.

3012.10 Parent counseling and training as a related service includes:

- (a) Assisting parents in understanding the special needs of their child;
- (b) Providing parents with information about child development; and
- (c) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP including, as appropriate, the use of assistive technology as set forth in Section 3013.

3012.11 Physical therapy as a related service includes services provided by a qualified physical therapist.

3012.12 Psychological services as a related service includes:

- (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 educational needs of children as indicated by psychological tests, interviews, direct observation, 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.

3012.13 Recreation as a related service includes:

- (a) Assessment of leisure function;
- (b) Therapeutic recreation services;
- (c) Recreation programs in schools and community agencies; and
- (d) Leisure education.

3012.14 Rehabilitation counseling services as a related service means services provided to a child with a disability by qualified personnel, in individual or group sessions that focus specifically on the child's career development, employment preparation, achievement of independence, and integration in the workplace and community. The term also includes vocational rehabilitation services provided to a child with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*

3012.15 School health services and school nurse services as related services include health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP and are provided as follows:

- (a) School nurse services are services provided by a qualified school nurse; and
- (b) School health services are services that may be provided by either a qualified school nurse or other qualified person.

3012.16 Social work services as a related service in schools includes:

- (a) Preparing a social or developmental history on 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 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.

- 3012.17 Speech-language pathology services as a related service includes:
- (a) Identification of children with speech or language impairments;
 - (b) 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.
- 3012.18 Transportation as a related service:
- (a) Includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment, if required to provide special transportation for a child with a disability; and
 - (b) Shall be provided if the IEP Team determines that the provision of transportation services is necessary for the provision of FAPE and the child is eligible for transportation, using State-established criteria as prescribed in State-level policy.

3013 ASSISTIVE TECHNOLOGY

- 3013.1 The IEP Team shall consider whether a child with a disability requires assistive technology devices or assistive technology services, or both, on an annual basis. The IEP Team shall document the need for any assistive technology devices or services in the child's IEP.
- 3013.2 As part of its consideration of assistive technology services, the IEP Team shall consider training necessary for the child with a disability to utilize required assistive technology devices or the child's parent and teachers to support the child's use of required assistive technology devices.
- 3013.3 The LEA shall ensure that assistive technology devices and services are made available to a child with a disability in accordance with the child's IEP.
- 3013.4 The LEA shall not require the child with a disability or parent to purchase or otherwise provide assistive technology devices or assistive technology services as a condition of accessing FAPE, if such devices are deemed necessary by the IEP Team.

3013.5 The LEA shall allow the child with a disability to utilize LEA-purchased assistive technology devices in the child's home or other settings if the IEP Team determines that the child requires access to those devices in the home or other settings in order to receive FAPE.

3014 PHYSICAL EDUCATION AND ADAPTED PHYSICAL EDUCATION

3014.1 Each LEA shall make physical education services, adapted if necessary, available to every child with a disability receiving FAPE, including any supplementary aids and services or modifications necessary for a child's successful participation in the general or adapted physical education program, unless the LEA does not provide physical education to children without disabilities in the same grade or program.

3014.2 Adapted physical education may include, but is not limited to, the development of physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports.

3014.3 Each child with a disability shall be afforded the opportunity to participate with children without disabilities in the general physical education program unless:

- (a) The child with a disability is educated full-time in a separate facility; or
- (b) The child needs specially designed instruction in physical education pursuant to the child's IEP that cannot be accommodated within a general physical education setting for practical reasons not related to lack of funding or staffing.

3014.4 If adapted physical education is prescribed in the child's IEP, the LEA shall provide the physical education services directly or make arrangements for those services to be provided through an alternative public or private provider.

3014.5 The LEA shall ensure that a child with a disability who is educated full-time in a separate facility receives appropriate physical education services or adapted physical education services, in compliance with this section.

3015 EXTENDED SCHOOL YEAR SERVICES

3015.1 The IEP Team shall determine, whether the provision of extended school year services is necessary for the provision of FAPE to a child with a disability on an individual basis, as part of the initial IEP development and the annual IEP review.

3015.2 In determining whether extended school year services are necessary for the provision of FAPE, the IEP team shall utilize at least three (3) months of progress monitoring data from the current school year, or any relevant current data or information if three (3) months of progress monitoring data from the current school year is not available, to consider and document each of the following:

- (a) The impact of a break in service on previously attained or emerging critical skills;
- (b) The likelihood and degree of regression related to previously attained or emerging critical skills; and
- (c) The time required for recoupment of previously attained or emerging critical skills.

3015.3 For the purposes of determining whether extended school year services are necessary for the provision of FAPE, a critical skill is a skill that is essential to a student's overall educational progress and may include an academic skill, such as reading, or a non-academic skill that has a direct educational impact, such as a fine motor skill.

3015.4 The LEA shall not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of these services, including that the LEA shall not limit provision of extended school year services to only the summer or to periods during which the LEA provides summer school programming.

3015.5 A child's status as a child with a disability, or a child with a disability who receives extended school year services, shall not limit the child's access to summer school in order to earn credits needed to advance between grades or graduate from high school.

3015.6 If a child with a disability transfers between District of Columbia LEAs between school years and has an IEP which includes extended school year services, the child's prior LEA shall ensure the provision of such services through July 31 or the last day of summer extended school year services, whichever is later.

3015.7 If a child with a disability receives extended school year services, the IEP Team shall determine whether extended school year related transportation services are necessary for the provision of FAPE. The determination regarding extended school year services provided during the summer, including the location of those services, shall be made in accordance with timelines established by the SEA.

3016 PARENTAL CONSENT FOR INITIAL PROVISION OF SERVICES

3016.1 The LEA shall obtain consent from the parent of a child with a disability before initiating the provision of special education and related services to the child.

3016.2 A parent who consents to the initial provision of special education and related services is consenting to the provision of services generally, and may not decline consent for any particular special education or related service designated in the IEP.

If a parent disagrees with a particular special education or related service designated in the IEP, the parent may utilize the procedural safeguards in Sections 3049 through 3055.

- 3016.3 An LEA may not use a parent's refusal to consent to one (1) service or activity to deny the parent or child any other service, benefit, or activity of the LEA.
- 3016.4 The LEA shall maintain a record that demonstrates reasonable efforts as defined in this chapter to obtain consent from the parent for the initial provision of special education and related services.
- 3016.5 If the parent of a child with a disability fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, all of the following apply:
- (a) The LEA is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services;
 - (b) The LEA shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
 - (c) The LEA may not use mediation or due process procedures to obtain agreement or a ruling that the services can be provided to the child without parental consent.
- 3016.6 A parent who consents to the provision of special education and related services may revoke consent at any time, as follows:
- (a) A parent who revokes consent shall submit the revocation in writing;
 - (b) If the parent revokes consent, that revocation is not retroactive and does not negate an action that has occurred after the consent was initially given and before the consent was revoked; and
 - (c) If the parent revokes consent after the child is initially provided special education and related services, the LEA is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- 3016.7 If a parent revokes consent prior to the initial provision of special education and related services, the LEA:
- (a) Shall provide prior written notice of the LEA's intent to not initiate the provision of special education and related services;

- (b) May not initiate the provision of special education and related services to the child;
- (c) Is not required to convene an IEP Team meeting or develop an IEP for the child;
- (d) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with special education and related services; and
- (e) May not use mediation or due process procedures consistent with this chapter to obtain agreement or a ruling that the services can be provided to the child.

3016.8 If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the LEA:

- (a) Shall provide prior written notice of the LEA's intent to discontinue the provision of special education and related services;
- (b) May not continue the provision of special education and related services to the child;
- (c) Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services;
- (d) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with special education and related services; and
- (e) May not use mediation or due process procedures to obtain agreement or a ruling that the services can be provided to the child.

3017 INDIVIDUALIZED EDUCATION PROGRAM DEVELOPMENT

3017.1 The LEA shall ensure that the IEP Team completes its development of the initial IEP for a child with a disability within thirty (30) days of a determination that a child is eligible for special education and related services.

3017.2 The LEA shall provide school staff and related service providers with access to the completed IEP no later than five (5) business days after the IEP is finalized.

3017.3 The LEA shall ensure that each teacher and provider described in Section 3017.2 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.

3017.4 The LEA shall provide the child's parent with the completed IEP as required by Section 3009.8.

3017.5 In developing an IEP for a child with a disability, the IEP Team shall consider and document:

- (a) The child's strengths and needs;
- (b) The concerns of the parent for meeting the educational needs of the child;
- (c) The results of the most recent evaluation;
- (d) The academic, developmental, and functional needs of the child; and
- (e) The child's need for assistive technology devices and services.

3017.6 The LEA shall develop an IEP and provide special education and related services that are based upon the individual needs of the child and not upon the child's disability category.

3017.7 The IEP team shall develop an IEP that is reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances.

3017.8 An IEP shall include:

- (a) A statement of the child's present levels of academic achievement and functional performance, including:
 - (1) How the child's disability affects the child's involvement and progress in the general education curriculum; or
 - (2) For preschool children, as appropriate, how the disability affects the child's participation in developmentally appropriate activities and environments;
- (b) A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved and make progress in the general education curriculum that is appropriate in light of the child's

circumstances, and meet each of the child's other educational needs that result from the child's disability, including a description of:

- (1) How the child's progress toward meeting the annual goals will be measured; and
 - (2) When periodic reports on the child's progress toward meeting the annual goals will be provided;
- (c) A description of benchmarks or short-term objectives for children with disabilities who take alternate assessments aligned to alternate achievement standards;
- (d) A statement of the special education and related services and supplementary aids and services, including assistive technology, to be provided to the child, and a statement of the program modifications or supports for LEA personnel that will be provided to enable the child to do all of the following:
- (1) Advance appropriately toward attaining the annual goals;
 - (2) Be involved in and make progress in the general education curriculum, and to participate in other nonacademic activities and extracurricular; and
 - (3) Be educated and participate with other children with disabilities and children without disabilities in the activities described in this section;
- (e) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education environment and in the activities described in paragraph (d) of this subsection;
- (f) A statement of any individual appropriate accommodations necessary to measure the academic achievement and functional performance of the child on statewide assessments or, if the IEP Team determines that the child shall take an alternate assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child; and
- (g) The projected date for the initial provision of services and modifications designated, and the anticipated frequency, location, and duration of those services and modifications.

3017.9

The IEP Team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the language and communication needs, including:

- (a) Opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- (b) The LEA shall provide the necessary assistive technology devices and services to accommodate the student's language and communication needs.

3017.10 If the behavior of a child with a disability impedes the student's learning or the learning of other students, the IEP team shall consider:

- (a) The use of positive behavioral interventions and supports and other strategies to address that behavior and shall document which interventions were considered and selected; and
- (b) Whether to conduct a functional behavioral assessment and develop a behavioral intervention plan for the child.

3017.11 If a child with a disability is an English learner pursuant to 5-E DCMR Chapter 31:

- (a) The IEP Team shall consider the language needs of the child as those needs relate to the child's educational performance, IEP services, and IEP goals; and
- (b) The LEA shall provide the individualized services and accommodations required by the student's IEP and the student's language instruction educational program.

3017.12 If a child is blind or visually impaired:

- (a) The LEA shall conduct an assessment of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs) in order to assess the student's need for instruction in Braille or the use of Braille;
- (b) The IEP Team shall consider the results of the assessment to determine if the use of Braille is appropriate, and document such material needs in the child's IEP; and
- (c) The LEA shall provide the necessary assistive technology devices and services to accommodate the child's vision-related needs.

3017.13 The IEP Team shall consider whether the child needs assistive technology devices and services not otherwise considered in accordance with this section.

3017.14 The general education teacher of a child with a disability, as a member of the IEP Team, shall assist in determining the supplementary aids and services, program modifications, or supports for school personnel that shall be provided for the child in conjunction with general education classroom placement.

3017.15 Except as required in Section 3001.11(c), the LEA shall implement an IEP as soon as possible after the meeting where the IEP is developed or revised.

3018 INDIVIDUALIZED EDUCATION PROGRAM REVIEW AND REVISION

3018.1 The LEA shall ensure that the IEP Team convenes to review the child's IEP at least once annually to determine whether the child is making progress toward the annual IEP goals.

3018.2 The IEP Team shall revise the IEP, as appropriate, to address:

- (a) Any lack of expected progress toward the annual IEP goals, including academic and functional goals designed to meet the child's needs and which enable the child to be involved in and make progress in the general education curriculum;
- (b) The results of any reevaluation conducted in accordance with Section 3007;
- (c) Information about the child provided to or by the parent;
- (d) The child's anticipated needs; or
- (e) Other matters.

3019 INDIVIDUALIZED EDUCATION PROGRAM AMENDMENT

3019.1 Proposals to revise an IEP that occur after a child's annual IEP Team meeting for a school year, may be considered by the entire IEP Team at an IEP Team meeting or by the LEA and parent through documented written agreement, except that the LEA and parent may not agree in writing to revise the child's eligibility status, disability category, or placement to a more restrictive setting outside the LEA.

3019.2 When proposing to revise the types or amounts of special education or related services through documented written agreement, the LEA shall provide the parent with a written explanation supporting the proposed change including current data and, if relevant, input from the appropriate special education instructor or related service provider.

3019.3 A proposed revision through documented written agreement shall include signatures from both the LEA and the child's parent to execute the IEP amendment.

3019.4 If the LEA and parent agree to an amendment, the LEA shall provide the IEP Team with the amendment no later than five (5) business days after a meeting has occurred or documented written agreement has been executed to amend the IEP.

3019.5 The LEA shall provide the student's parent with a copy of the revised IEP with the amendments incorporated in accordance with Section 3009.8.

3020 INDIVIDUALIZED EDUCATION PROGRAM IN EFFECT

3020.1 The LEA shall ensure that there is an IEP in effect for each enrolled child who has been determined eligible for special education and related services throughout the calendar year, including the summer months.

3020.2 For students who enroll in an LEA after the start of the LEA's school year, as soon as possible but no later than five (5) school days after enrollment, the LEA shall send a written request for the child's educational records to the child's previous LEA, including a request for all documentation pertaining to the referral for or provision of special education or related services to the child, that are not maintained in the District of Columbia special education system of record or the Statewide longitudinal education database including, but not limited to, disciplinary actions, course completion, and credit accrual.

3020.3 The LEA shall respond to a request for educational records of a previously enrolled child by providing such records as soon as possible, but no later than ten (10) business days after the receipt of the request, even if the provision of such records necessitates the physical transfer of paper records.

3020.4 The child's new LEA shall ensure that any existing IEP or supporting special education documentation received from the child's parent or previous LEA is uploaded into the appropriate State-level data system no later than five (5) business days after receipt.

3020.5 The LEA, in consultation with the parent, shall make FAPE available to a child who transfers into the LEA in the form of comparable services, as follows:

- (a) Comparable services shall be provided as soon as possible, and all comparable services shall be in place no later than twenty (20) calendar days of the LEA's receipt of the child's existing IEP, IFSP, or services plan;
- (b) The LEA shall provide the parent of a child with disabilities with prior written notice before the provision of comparable services; and
- (c) Comparable services means similar or equivalent to those described in the child's existing IEP from the prior LEA.

- 3020.6 The LEA is not required to provide special education and related services to the child, including comparable services, if it is unable to obtain the existing IEP after exercising and documenting reasonable efforts to obtain the child's educational records. However, if the LEA suspects that the child is a child with a disability, the LEA shall fulfill its child find responsibilities under Section 3003 to evaluate the student to determine eligibility.
- 3020.7 For students who enroll in an LEA after the start of the LEA's school year, the LEA shall, upon enrollment, begin collecting and reviewing child-level data to assist in its determination of whether a transfer child's existing IEP is appropriate to meet the unique needs of the child.
- 3020.8 If a child transfers from an LEA outside of the District of Columbia, the new LEA shall determine whether it is necessary to conduct an evaluation to determine the child's eligibility under this chapter, as follows:
- (a) If the LEA determines it is not necessary to conduct an evaluation, the LEA shall document adoption of the child's existing eligibility within thirty (30) calendar days of enrollment; or
 - (b) If the LEA determines it is necessary to conduct an evaluation, or if the LEA is unable to obtain the existing IEP or other necessary student records, the LEA shall:
 - (1) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within fifteen (15) calendar days from the date on which the child is referred for an initial evaluation;
 - (2) Conduct an evaluation and determine eligibility within sixty (60) calendar days from the date that the student's parent or guardian provides consent for the evaluation or assessment; and
 - (3) Develop an IEP within fifteen (15) calendar days of the eligibility determination.
- 3020.9 If a child transfers from an LEA within the District of Columbia, the new LEA shall determine whether to adopt the existing IEP or develop a new IEP within thirty (30) calendar days of enrollment, as follows:
- (a) If the LEA determines that the existing IEP is appropriate, the LEA shall document adoption of the IEP within thirty (30) calendar days of enrollment; or
 - (b) If the LEA determines that the existing IEP is not appropriate, the LEA shall develop and finalize a new IEP within sixty (60) calendar days of enrollment.

- 3020.10 The LEA may not adopt an existing IEP that is expired or will expire within thirty (30) calendar days of the child's enrollment. However, the LEA is obligated to provide FAPE in the form of comparable services consistent with Section 3020.5.
- 3020.11 Upon receipt of an expired IEP, the LEA shall presume that the child remains a child with a disability and provide FAPE in the form of comparable services consistent with Section 3020.5 unless it has record or documentation of a formal exit from special education, as follows:
- (a) The LEA shall request appropriate records, provide comparable services, and conduct an evaluation to ensure that the child receives appropriate services;
 - (b) The LEA shall adhere to the procedures and timelines set forth in this chapter to determine whether the child continues to be a child with a disability and, if necessary, to develop an IEP for the child; and
 - (c) If the child's IEP Team determines that the child is no longer eligible for services, the LEA shall complete all procedural and documentation requirements before ceasing the provision of comparable services and exiting the child from special education pursuant to Section 3028.

3021 LEAST RESTRICTIVE ENVIRONMENT

- 3021.1 An LEA shall provide a child with a disability a free and appropriate public education in an appropriate special education placement in accordance with this chapter and IDEA; provided, that an LEA shall not remove a child with a disability from an age-appropriate classroom solely because of needed modifications in the general education curriculum.
- 3021.2 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 do not have disabilities; and
 - (b) Special education classrooms, separate schooling, or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 3021.3 The LEA shall provide and arrange for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, after-school activities and athletics, and other nonacademic and extracurricular services and

activities in the least restrictive environment for children with disabilities to the same extent that it provides such services and activities for children without disabilities.

3021.4 The LEA shall ensure that all programs and services are considered in terms of the least restrictive environment for each child with a disability, starting with the general education classroom as the first environment for consideration.

3021.5 In determining the least restrictive environment for a child, the LEA shall consider any potential harmful effect of the level of restrictiveness on the child or on the quality of services that the child needs.

3021.6 The IEP Team shall justify and document on the IEP the extent to which the child will not participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities, and indicate the percentage of time spent outside of the general education environment, as well as placement in separate schools or facilities.

3022 PLACEMENT DETERMINATION

3022.1 The LEA shall ensure that the appropriate educational placement for a child with a disability is:

- (a) Based on the child's current level of need as documented in the child's IEP;
- (b) Reviewed and determined annually by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the continuum of alternative placement options;
- (c) As close as possible to the child's home; and
- (d) Determined in conformity with the least restrictive environment provisions of Section 3021.

3022.2 The LEA shall determine the child's placement based upon the child's needs, regardless of existing placement options, services, staff, or space that exists at the time.

3022.3 The LEA shall not determine a child's placement based solely on additional costs or administrative inconvenience that would result from educating the child within the general education classroom.

3022.4 A child with a disability shall be educated in the school that the child would attend if the child did not have a disability unless the child's unique needs or the nature or severity of the child's disability warrant a more restrictive placement.

3023 [RESERVED]

3024 HOME AND HOSPITAL INSTRUCTION (REQUIRED FOR FAPE)

3024.1 Home instruction and hospital instruction are placements provided to a child with a disability if the IEP Team determines that the child cannot receive educational benefit in a less restrictive setting.

3024.2 A child with a disability may be placed in home or hospital instruction only if the IEP team determines that the child cannot receive an educational benefit in a less restrictive setting.

3024.3 The IEP Team shall document in the child's IEP:

- (a) The determination of placement in home or hospital instruction; and
- (b) The type of educational services to be provided in the home or hospital, based on the child's needs.

3024.4 The LEA shall ensure that children with disabilities placed in home or hospital instruction receive timely notice of extracurricular activities and are permitted to participate in extracurricular activities to the extent they are able to do so.

3025 PLACEMENT OUTSIDE OF THE LEA

3025.1 If an LEA anticipates that it may be unable to provide a child with a disability with an appropriate special education placement in accordance with IDEA and other applicable laws or regulations, the LEA shall notify the SEA in writing.

3025.2 Prior to submitting a written request to the SEA for placement outside of the LEA, the IEP Team shall consider the appropriateness of the child's IEP and the appropriateness of the LEA's delivery of services to the child in placements within the LEA.

3025.3 The LEA shall submit a written request to the SEA with required supporting documentation and child-level data, in accordance with State-established procedures.

3025.4 The SEA shall conduct its review of a complete written request within thirty (30) business days of submission, unless one (1) of the following occurs:

- (a) The LEA submits a written request for expedited review of the placement request to the SEA; or

- (b) In the event of extenuating circumstances and with notice to the LEA and parent, the SEA review of a written request may be extended for additional periods of fifteen (15) business days.

3025.5 After review of all supporting documentation from the LEA and meeting to discuss a possible placement outside of the LEA, the SEA representative shall make a recommendation indicating whether a placement outside the LEA is warranted, as follows:

- (a) The SEA representative shall make a verbal recommendation at the conclusion of the meeting to discuss the proposed change in placement;
- (b) The group of persons identified in Section 3022.1(b) remains responsible for selecting the appropriate educational placement of the child; and
- (c) Following the meeting to discuss the proposed change in placement, the SEA shall issue a written memorandum documenting its recommendation.

3025.6 If the group of persons identified in Section 3022.1(b) decides to proceed with placement outside the LEA, the SEA shall issue a service location within fifteen (15) business days of the decision absent extenuating circumstances as determined by the SEA. The SEA shall assess the child's needs and ensure that the location selected is able to implement the child's IEP.

3025.7 If the SEA is unable to issue a service location within fifteen (15) business days due to extenuating circumstances, the SEA shall provide notice to the parent and the LEA describing the circumstances and establishing an extended timeline for issuance of a service location.

3025.8 The SEA shall not issue a service location for a nonpublic special education school or program that:

- (a) Is unable to implement the child's IEP or meet the unique needs of the child;
- (b) Does not hold a current certificate of approval, issued by the SEA in accordance with D.C. Official Code § 38-2561.07 and applicable regulations, to serve children with disabilities from the District;
- (c) Holds a current certificate of approval but is not authorized to serve the child's age, grade, or disability;
- (d) Requires all children to attend extended school year programming regardless of need or as a condition of enrollment; or

- (e) Requires all children to attend programming that is offered outside the time frame of the regular instructional day and is not included in the school or program's per diem educational rate approved by the SEA.

3025.9 Consistent with D.C. Official Code § 38-2561.03, unless the placement of a child has been ordered by a District of Columbia Court, federal court, or impartial hearing officer pursuant to IDEA and D.C. Official Code § 38-2561.03(b)(2), no child whose education is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

- (a) Allows the use of aversive intervention in its policy or practice; or
- (b) Has not received and maintained a certificate of approval in accordance with D.C. Official Code § 38-2561.03 and applicable regulations.

3025.10 SEA decisions regarding a child's service location shall give preference to appropriate special education schools or providers located in the District of Columbia; provided that the placement is appropriate for the child and made in accordance with IDEA, local law, and this chapter. Service locations shall be determined in the following order of priority:

- (a) Private or residential facility located in the District of Columbia; or
- (b) Facility located outside the District of Columbia.

3025.11 The group of people determining the educational placement of a child with a disability shall ensure that the child's placement is determined annually, is based on the child's IEP and is located as closely as possible to the child's home.

3025.12 The LEA shall submit to the SEA a request for a change in service location from one (1) nonpublic special education school or program to another nonpublic special education school or program. The SEA shall issue a service location in accordance with State-established procedures.

3025.13 A request from the LEA for a change in placement from a nonpublic placement to a more restrictive nonpublic placement, such as a residential or psychiatric residential treatment facility, shall be submitted through the SEA's procedures for placement outside of the LEA in accordance with this section.

3025.14 A recommendation for a special education placement at a residential treatment facility shall assure that priority is given to a facility that:

- (a) Meets the District of Columbia Department of Health Care Finance (DHCF) requirements for a Psychiatric Residential Treatment Facility (PRTF), consistent with 29 DCMR § 948; and

(b) Is located in the District of Columbia.

3025.15 If a PRTF placement within the District of Columbia is not deemed to be appropriate for a child, the appropriate PRTF selected outside of the District of Columbia shall be located at a distance as close as possible to the child's home.

3025.16 If a child's placement is made at a residential treatment facility, the LEA shall request parental consent authorizing the LEA to contact:

(a) The District of Columbia Department of Behavioral Health (DBH) to determine whether the child qualifies for a certification that admission to a PRTF is medically necessary; and

(b) DHCF to determine whether the child is eligible or entitled to receive Medicaid benefits.

3025.17 If a child's service location is a residential treatment facility that does not meet DHCF requirements for classification as a PRTF consistent with 29 DCMR § 948, a decision for service location shall first give preference to an appropriate residential treatment facility located in the District of Columbia; and if an appropriate facility cannot be found within the District of Columbia, the residential facility selected for the child shall be located at a distance as close as possible to the child's home.

3025.18 The SEA shall be responsible for paying the costs of education, including special education and related services, of a child with a disability when the child is placed at a nonpublic special education school or program pursuant to this section; provided, that, in conformity with IDEA, the SEA shall not be responsible for paying the cost of education, including special education and related services, of a child with a disability who attends a nonpublic special education school or program if:

(a) An LEA made FAPE available to the child; and

(b) The child's parent or guardian elected to place the child in a nonpublic special education school or program.

3025.19 A child with a disability who is placed at a nonpublic special education school or program shall remain enrolled in and is the responsibility of the LEA, unless and until the parent enrolls the child in another LEA.

3025.20 When a child with a disability enrolled in an LEA is placed in a nonpublic special education school pursuant to this section, the LEA shall:

(a) Ensure that the child participates in statewide assessments in accordance with procedures and guidelines issued by the SEA;

- (b) Transition the child with a disability back to the lesser restrictive environment as soon as practicable;
- (c) At all times while the child with a disability is placed at the nonpublic school, maintain the capacity to serve the child at the LEA (i.e., hold an open seat for the child) unless and until the child's parent enrolls the child in another LEA;
- (d) Continue to monitor each child's academic and social-emotional progress at the nonpublic school; and
- (e) Remain responsible for compliance with IDEA and local requirements for a child placed into a nonpublic school.

3025.21 During the school year in which a child with a disability placed in a nonpublic school will exceed the maximum age or grade for children served by the LEA as specified in its charter, the LEA shall:

- (1) Provide written notification to the parent of their responsibility to enroll the child at another LEA; and
- (2) Provide such notification before December 31 of the school year.

3025.22 Pursuant to 34 C.F.R. § 300.208, any LEA 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.

3026 SECONDARY TRANSITION

3026.1 The first IEP in effect after a child with a disability reaches fourteen (14) years of age, which shall be updated annually thereafter, shall include transition assessments and services, including:

- (a) 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 needed to assist the child in reaching those goals;
- (b) For children with disabilities covered by this section and attending middle school, at least one (1) goal shall address readiness for and transition to high school;
- (c) A statement of inter-agency responsibilities or any needed linkages before the child leaves the school setting; and

- (d) 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.
- 3026.2 The requirements in this section shall not apply to children with disabilities who are convicted as adults under District of Columbia 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.
- 3026.3 The LEA shall invite a child with a disability to attend his or her IEP Team meeting if a purpose of the meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, and the LEA shall take other steps to ensure that the child's preferences and interests are considered if the child does not attend the IEP Team meeting.
- 3026.4 To the extent appropriate and with the consent of the parent or a child who has reached the age of eighteen (18) years old, the LEA shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services, to an IEP Team meeting if a purpose of the meeting will be the consideration of postsecondary goals for the child and the transition services are needed to assist the child in reaching those goals, as follows:
 - (a) If a participating agency notifies the LEA in advance that it will not be able to attend the meeting, the LEA shall obtain information from the agency necessary for the specific transition services to be included in the IEP; and
 - (b) If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP Team to identify alternative strategies to meet the transition goals for the child specified in the IEP.
- 3026.5 In accordance with 5-A DCMR Chapter 22 beginning with the ninth grade year, the child's course of study shall include a graduation plan that is reviewed annually and modified, when necessary, to reflect the child's changing needs, interests, and performance.
- 3026.6 The LEA shall make available a course of study that affords all children, including those children with significant disabilities, an opportunity to earn a regular high school diploma.
- 3026.7 An IEP Team's decision to alter the child's course of study to an IEP Certificate of Completion shall be justified by child-level performance data and documented in the child's IEP and shall include the following:

- (a) The LEA shall provide the parents and child with written notification that the IEP Team has determined that the child will be placed on an IEP Certificate of Completion course of study;
- (b) With the written notification to the parents and child, the LEA shall provide accessible information about the differences between a regular high school diploma and an IEP Certificate of Completion course of study;
- (c) The LEA shall provide an annual progress report to the parent that includes the child's completed coursework and clearly indicates that the child is on an IEP Certificate of Completion course of study; and
- (d) When appropriate, an IEP Team shall consider changing the child's course of study from an IEP Certificate of Completion course of study to a regular high school diploma course of study and, in such cases, the LEA shall provide the child with access to the appropriate coursework required to earn a regular high school diploma, with modifications if necessary, until the end of the school year in which the child turns twenty-two (22) years old.

3026.8 Not later than one (1) year before a child with a disability's anticipated high school graduation or attainment of an IEP Certificate of Completion, the IEP team shall identify which adult services might be appropriate for the child and, in consultation with the appropriate District of Columbia agency when feasible, what evaluations should occur to determine the child's eligibility for those services; provided, that nothing in this section shall be construed to impose any obligation on an LEA to conduct evaluations to determine eligibility for adult services.

3026.9 Beginning at least one (1) year before a child with a disability reaches the age of eighteen (18), his or her IEP shall include a statement that the child has been informed of his or her rights under Part B of IDEA that will transfer to the child on reaching the age of eighteen (18), unless the child has been determined to be incompetent under District of Columbia law or the child has been certified as unable to provide informed consent pursuant to Sections 3035 through 3037.

3027 IEP CERTIFICATE OF COMPLETION FOR SPECIAL EDUCATION

3027.1 The LEA shall develop, publish, and maintain a uniform IEP Certificate of Completion policy establishing:

- (a) Minimum credit unit requirements in all of the following content areas:
 - (1) English Language Arts;
 - (2) Mathematics;
 - (3) Life Science/ Physical Science; and

(4) History/ Social Studies.

- (b) Requirements related to community service hours;
- (c) Requirements related to completion of the student's IEP goals, as determined by the IEP Team; and
- (d) Any other LEA requirements.

3027.2 If an LEA does not develop and publish a uniform IEP Certificate of Completion policy by July 1, 2023, the following requirements shall apply:

- (a) Completion of a minimum of fourteen (14) unit credits including minimum units in the following content areas:
 - (1) Two (2) units of English Language Arts;
 - (2) Two (2) units of Mathematics;
 - (3) Two (2) units of Life Science/Physical Science; and
 - (4) Two (2) units of History/Social Studies;
- (b) Satisfactory completion of community service hours, as determined by the IEP team; and
- (c) Satisfactory completion of the student's IEP goals, as determined by the IEP Team.

3027.3 The LEA's IEP Certificate of Completion policy in effect when a student enters the ninth grade or transfers into the LEA shall apply until the student obtains an IEP Certificate of Completion or is no longer eligible for special education.

3027.4 In accordance with 5-A DCMR § 2203.8, the decision to pursue a program leading to an IEP Certificate of Completion shall be made by the IEP team including the parent, and where possible, the student. The decision shall be made no earlier than the ninth grade and documented in the student's IEP.

3027.5 A student shall not be eligible to pursue an IEP Certificate of Completion if:

- (a) The student is age twenty (20) or younger and is five (5) credits or fewer away from earning a regular high school diploma;

- (b) The student has satisfactorily completed all coursework required to earn a regular high school diploma, but has not met requirements related to community service hours; or
- (c) The student has the ability to earn a regular high school diploma by age twenty-two (22).

3027.6 A student with an IEP, who successfully earns an IEP Certificate of Completion issued by the LEA, shall be allowed to participate fully in graduation exercises or ceremonies as conducted by the LEA.

3027.7 The LEA is responsible for making FAPE available to a student who earns an IEP Certificate of Completion until the student receives a regular high school diploma or until the end of the school year in which the student turns twenty-two (22) years old, whichever occurs first.

3027.8 If a student earns an IEP Certificate of Completion prior to the end of the school year in which the student turns twenty-two (22) years old, the LEA shall inform the student in writing that the student remains eligible to receive FAPE consistent with Section 3001.4.

3028 EXIT FROM SPECIAL EDUCATION

3028.1 The LEA is responsible for developing and implementing a child's IEP, including all associated procedural and documentation requirements, until:

- (a) The child is determined to no longer be a child with a disability;
- (b) The child receives a regular high school diploma; or
- (c) The end of the school year in which the child turns twenty-two (22) years of age.

3028.2 The LEA shall evaluate a child with a disability in accordance with this chapter before determining that the child is no longer a child with a disability, except that an evaluation is not required if the child's entitlement to receive special education services is terminated due to the child receiving a regular high school diploma or due to the child exceeding twenty-two (22) years of age.

3028.3 The LEA shall provide the parent, or child if over eighteen (18) years old and to whom educational rights have transferred, with prior written notice of the discontinuation of special education services as follows:

- (a) The prior written notice shall be provided:

- (1) Prior to the completion of the last semester of school in which the child with an IEP is expected to obtain a regular high school diploma; or
 - (2) Prior to the completion of the school year in which the child turned twenty-two (22) years old; and
- (b) The prior written notice shall clearly state that the child will no longer be entitled to receive special education and related services from the LEA.

3028.4 The LEA shall continue to make available special education and related services to a child with a disability who has not earned a regular high school diploma in accordance with the child's IEP, until the end of the school year in which the child turns twenty-two (22) years old.

3028.5 The LEA shall provide the child with a summary of performance at no cost, in accordance with this section, no later than sixty (60) calendar days prior to termination of the child's special education and related services due to obtaining a regular high school diploma or completion of the school year in which the child turns twenty-two (22) years old.

3028.6 The summary of performance required in this section shall include:

- (a) A summary of the child's academic achievement,
- (b) A summary of the child's functional performance; and
- (c) Recommendations on how to assist the child in meeting the child's postsecondary goals.

3029 SYSTEM OF RECORD

3029.1 The LEA shall fully utilize designated District of Columbia special education data systems to maintain and update student records and data associated with the implementation of IDEA, this chapter, and any related federal and local reporting responsibilities and to access reporting and other functions to monitor overall LEA progress and compliance.

3029.2 The LEA shall update a student's record or upload appropriate documentation in designated District of Columbia special education data systems no later than five (5) business days after a change.

3030 CONFIDENTIALITY OF EDUCATION RECORDS

3030.1 In accordance with the confidentiality procedures of IDEA and the Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g), the parent of a

child with a disability shall be given the opportunity to inspect, 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 FAPE.

3030.2 The LEA shall ensure the confidentiality of personally identifiable information in accordance with IDEA and FERPA.

3030.3 The LEA shall develop a process, including an opportunity for a hearing, for a parent to correct information in a child's record as follows:

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the LEA that maintains the information to amend the information;
- (b) The LEA shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request; and
- (c) If the LEA decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal in writing, including information advising the parent of the right to a hearing under 34 C.F.R. § 300.619.

3031 PARENTAL CONSENT

3031.1 The LEA shall obtain parental consent before:

- (a) Conducting an initial evaluation of a child to determine if a child qualifies as a child with a disability;
- (b) The initial provision of special education and related services to a child;
- (c) Conducting a reevaluation of a child with a disability; or
- (d) Disclosing the child's personally identifiable information unless the information is contained in educational records and the disclosure is authorized without parental consent under FERPA.

3031.2 Parental consent may be revoked at any time, as follows:

- (a) Revocation shall be provided in writing; and
- (b) If a parent revokes consent, that revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked.

3032 PRIOR WRITTEN NOTICE

3032.1 The LEA shall provide written notice to the parent of a child with a disability a reasonable time before the LEA:

- (a) Proposes to initiate or change the identification, evaluation, educational placement, including the service location of the educational placement, or the provision of FAPE to the child; or
- (b) Refuses to initiate or change the identification, evaluation, educational placement, including the service location of the educational placement, or the provision of FAPE to the child.

3032.2 Prior written notice shall include the following:

- (a) A description of the action the LEA is proposing or refusing to take;
- (b) An explanation of why the LEA proposes or refuses to take the action;
- (c) A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
- (d) A statement that the parent of a child with a disability has protection under the procedural safeguards of IDEA and this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for the parent to contact to obtain assistance in understanding the provisions of IDEA and this chapter, including:
 - (1) Parent Training and Information Center established pursuant to Section 671 of IDEA (20 U.S.C. § 1471);
 - (2) Office of the Ombudsman for Public Education (D.C. Official Code § 38-351 *et seq.*); and
 - (3) Office of the Student Advocate (D.C. Official Code § 38-371 *et seq.*);
- (f) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- (g) If applicable, a description of other factors relevant to the LEA's proposal or refusal.

3032.3 Prior written notice shall be:

- (a) Written in language understandable to the general public;
- (b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and
- (c) If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure all of the following:
 - (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (2) The parent understands the content of the notice; and
 - (3) There is written evidence that the requirements of this subsection have been met.

3033 PROCEDURAL SAFEGUARDS

3033.1 Each LEA shall establish, maintain, and implement procedural safeguards that meet the requirements of IDEA and this chapter, or adopt the procedural safeguards established by the State.

3033.2 The LEA shall provide a copy of the procedural safeguards notice to the parent of a child with a disability:

- (a) At least one (1) time per school year; and
- (b) In a manner that meets the requirements of Section 3032.3.

3033.3 The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under IDEA and this chapter relating to:

- (a) Independent educational evaluations;
- (b) Prior written notice;
- (c) Parental consent;
- (d) Access to education records;
- (e) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - (1) The time period in which to file a complaint;

- (2) The opportunity for the agency to resolve the complaint; and
- (3) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (f) The availability of mediation;
- (g) The child's placement during the pendency of any due process complaint;
- (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) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (k) State-level appeals, if applicable;
- (l) Civil actions, including the time period in which to file those actions;
- (m) Attorney fees; and
- (n) Expert fees, consistent with Section 3054.

3033.4 The LEA shall also provide a copy of the procedural safeguard notice to the parent under each of the following circumstances:

- (a) Upon receipt of initial referral or parent request for evaluation;
- (b) Upon receipt of the first complaint and upon receipt of the first due process complaint in a school year;
- (c) In accordance with the discipline procedures in Section 3043; and
- (d) Upon request by a parent.

3033.5 The LEA may place a current copy of the procedural safeguards notice on its website.

3034 EDUCATIONAL SURROGATE PARENT

- 3034.1 The LEA shall ensure the rights of a child with a suspected or identified disability are protected by requesting that the SEA appoint an educational surrogate parent in any of the following situations:
- (a) A parent, as defined in this chapter, cannot be identified;
 - (b) The LEA, after documented reasonable efforts, cannot determine the location of a parent;
 - (c) The child with a suspected or identified disability is in the custody of the District of Columbia Child and Family Services Agency and may need an educational surrogate parent; or
 - (d) The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).
- 3034.2 The LEA shall notify the SEA of any child who may be in need of an educational surrogate parent in a timely manner.
- 3034.3 Upon receiving notice, the SEA is responsible for determining whether a child needs an educational surrogate parent, and for assigning an educational surrogate parent. If the child is in the custody of the District of Columbia Child and Family Services Agency (CFSA), the surrogate parent alternatively may be appointed by the judge overseeing the child's case.
- 3034.4 The SEA shall make reasonable efforts to assign an educational surrogate parent no later than thirty (30) calendar days after a determination that the child needs an educational surrogate parent.
- 3034.5 An educational surrogate parent assigned by the SEA shall meet all of the following requirements:
- (a) The educational surrogate parent shall have the knowledge and skills necessary for adequate representation of the child and shall attend at least one (1) SEA-required training;
 - (b) The educational surrogate parent shall not be employed by the SEA, LEA, or any other public or private agency organization that is involved in the education or care of the child; and
 - (c) The educational surrogate parent shall have no personal or professional interest that conflicts with the interest of the child represented, including serving as the child's guardian ad litem in a court proceeding.

3034.6 The educational surrogate parent has the authority to make decisions regarding the child in all matters relating to:

- (a) The identification, evaluation, and educational placement of the child; and
- (b) The provision of FAPE to the child.

3034.7 If a child is an unaccompanied homeless youth, the SEA may, in its discretion, temporarily appoint appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs without regard to other requirements of this section, until the SEA may appoint an educational surrogate parent who meets all of the requirements of this section.

3034.8 An educational surrogate parent appointed by a judge overseeing the case of a child in the custody of the CFSA shall be recognized by the SEA and the LEA provided that the individual is identified as an educational surrogate parent under IDEA or that the responsibility and authority granted to the individual specifically includes the authority to make decisions regarding special education or rights under IDEA.

3034.9 Unless a court order specifies otherwise, an educational surrogate parent appointed by a judge has authority to make decisions regarding the child in all matters relating to the identification, evaluation, educational placement, and the provision of FAPE to the child.

3035 TRANSFER OF RIGHTS: GENERAL PROVISIONS AND SUPPORTED DECISION-MAKING

3035.1 In accordance with D.C. Official Code § 46–101 and IDEA, a child with a disability (or student) who has reached the age of eighteen (18) shall be presumed to be competent, and all rights under IDEA and local law governing the delivery of special education and related services shall transfer to the student, unless one (1) of the exceptions in Section 3036.1 is met.

3035.2 Any student who has reached eighteen (18) years of age and to whom all rights afforded parents under IDEA have transferred may voluntarily choose to receive support from his or her parents, family members, or other willing adults to aid the student with educational decision-making. The student’s decisional choice shall prevail any time that a disagreement exists between the student and the other adult providing support in this manner and the student may withdraw his or her decision to receive support at any time.

3035.3 Supported decision-making arrangements shall be documented in writing and include the name, contact information, relationship to the student, and the extent to which the student grants the identified adult access to his or her education records

pursuant to District and federal law. The student may change this arrangement, revoke access, or both, to education records at any time.

3036 TRANSFER OF RIGHTS: EXCEPTIONS

3036.1 In accordance with D.C. Official Code § 46–101 and the IDEA, all rights accorded to parents under IDEA and local law governing the delivery of special education and related services shall transfer to the child with a disability at the age of eighteen (18), unless one (1) of the following exceptions is met:

- (a) The student is declared a legally incapacitated individual, as defined in this chapter, by a court of competent jurisdiction and a legal guardian or representative has been appointed by the court to make decisions for the student, including educational decisions.
- (b) The student has designated by power of attorney or similar legal document another adult to be the student’s agent to:
 - (1) Make educational decisions;
 - (2) Receive notices; and
 - (3) Participate in meetings and all other procedures related to the student’s educational program.
- (c) The student has been determined, in accordance with Section 3036.8, to not have the ability to provide informed consent regarding educational decisions and another adult has been appointed by the SEA to represent the educational interests of the student.

3036.2 An adult student who has executed a power of attorney or similar legal document transferring his or her right to make educational decisions to another to be his or her agent in accordance with Section 3036.1(b) may terminate the power of attorney at any time and assume the right to make decisions regarding his or her education. An LEA or responsible public agency shall keep a copy of any written power of attorney in the student’s special education record and shall rely on it until the power of attorney has been revoked by the student in writing or the power of attorney has been superseded by a court order.

3036.3 The SEA shall appoint an educational representative for a student who has reached the age of eighteen (18) only after the following documents have been submitted:

- (a) A written request for the appointment of an educational representative signed by the parent, legal guardian, or other interested adult, and made on a SEA-issued form available on the SEA website or, upon request, in hard copy; and

- (b) Two (2) signed professional certifications that meet all of the requirements of this section.

3036.4 Appointment of an educational representative should be sought only where necessary and where supported decision-making is not appropriate.

3036.5 The SEA will provide written confirmation that all submission requirements have been met and, absent extenuating circumstances, will appoint an educational representative within ten (10) business days of the SEA's receipt of a complete written request with all required information and certifications. A written request shall not be considered complete unless all requested information has been provided in the required manner.

3036.6 The professional certifications shall be completed by two (2) different licensed professionals, one (1) meeting the requirements of (a) and one (1) meeting the requirements of (b):

- (a) A licensed professional who is any of the following:

- (1) Licensed medical doctor;
- (2) Physician assistant, if authorized by a supervising licensed medical doctor; or
- (3) Certified nurse practitioner; and

- (b) A licensed professional who is any of the following:

- (1) Licensed medical doctor;
- (2) Licensed psychiatrist;
- (3) Clinical psychologist; or
- (4) Licensed independent clinical social worker.

3036.7 The professional certifications shall meet the following requirements:

- (a) The professional has conducted a personal examination of or interview with the student within one (1) calendar year of the certification;
- (b) Based on the professional's knowledge and expertise and upon clear evidence, the professional determined that the student is unable to provide informed consent regarding educational decisions as described in this section provided, however, that a finding that the student is unable to make

educational decisions shall not be based solely on the fact that the student has been voluntarily or involuntarily hospitalized for a mental illness or has a diagnosis of an intellectual disability;

- (c) The professional has informed the student of the determination in writing, and verbally or in the manner of communication with which the student is most comfortable; and
- (d) Confirmation that the professional is not employed by the LEA or responsible public agency currently serving the student and does not have a personal conflict of interest with the student or the adult seeking appointment as the student's educational representative. A personal conflict of interest includes, without limitation, being related by blood or marriage to the student or adult seeking appointment as the educational representative.

3036.8 A student shall be deemed unable to provide informed consent regarding educational decisions if two (2) qualified professionals each independently determine at least one (1) of the following:

- (a) The student is unable to understand, on a continuing or consistent basis, the nature, extent, and probable consequences of an educational decision or proposed educational program;
- (b) The student is unable to evaluate the benefits or disadvantages of an educational decision or a proposed educational program as compared with alternative options on a continuing or consistent basis; or
- (c) The student is unable to communicate understanding verbally, in writing, or in the mode of communication used by the student to communicate his or her decisions, an understanding of or an evaluation of the benefits or disadvantages of an educational decision or proposed educational program.

3036.9 Professional certifications may be submitted as early as ninety (90) calendar days prior to the student's eighteenth birthday but shall not be reviewed by the SEA until all documentation requirements have been met, and shall not take effect prior to the student's eighteenth birthday.

3036.10 Upon confirming receipt of the required professional certifications, the SEA shall appoint the parent of the student to act as the student's educational representative. For a student who has already reached the age of eighteen (18), parent means the individual who acted as the parent for purposes of special education before the student reached age eighteen (18). If the parent is unavailable or does not wish to serve as the student's educational representative, the SEA, with notice to the parent or legal guardian seeking the certification, shall appoint another adult relative willing to act as the student's educational representative. If no adult relative is

available to serve as the student's educational representative, the SEA, with notice to the parent or legal guardian seeking the certification, shall appoint a person trained as an educational surrogate parent to serve as the student's educational representative.

3036.11 The term of appointment for an educational representative shall expire when the student is no longer eligible for special education services, or graduates with a regular high school diploma, whichever occurs first.

3036.12 A determination that a student is unable to provide informed consent for educational purposes shall not be construed as a finding of incompetence or incapacity for any other purpose or as relevant or precedential evidence in any future court or legal action seeking to remove decision-making authority for the student.

3036.13 The SEA shall provide notice of the appointment to the educational representative, parent, student, and LEA or responsible public agency. The notice shall include the steps a student may take to challenge the appointment of an educational representative and shall direct the student's LEA or responsible public agency to deliver a hard copy of the appointment to the student and to inform the student of the appointment verbally, or in the manner of communication with which the student is most comfortable.

3036.14 The student may challenge the certification of the student as unable to provide informed consent for educational purposes or appointment of an educational representative in accordance with this section at any time, in accordance with the following requirements:

(a) A challenge made under this section shall be made in writing to the SEA, except that the SEA shall assist a student who is unable to provide a written challenge to document a verbal challenge in writing and may refer the student to a community organization for assistance; and

(b) The SEA shall notify the student, the responsible LEA or public agency, any current appointed educational representative, and the person who submitted the request for the appointment of an educational representative (if different), of any such challenge in writing no later than two (2) business days from the receipt of the challenge.

3036.15 If the certification of a student is challenged by the student, the existing certification is invalidated, and all educational rights transfer back to the student.

3037 TRANSFER OF RIGHTS: NOTICE

3037.1 No later than one (1) year before a child with a disability reaches eighteen (18) years of age, the LEA or responsible public agency shall notify the parent and child

with a disability, in writing, that adult students with disabilities are presumed competent, and that all rights under IDEA will transfer to the child with a disability when he or she reaches eighteen (18) years of age, unless the child with a disability or parent pursues one (1) of the exceptions described in Section 3036.1. The notice shall also describe the supported decision-making provisions of Section 3036 and the necessary procedures to pursue the exceptions described in Section 3036 related to educational decisions.

3038 INDEPENDENT EDUCATIONAL EVALUATIONS

3038.1 The LEA shall provide to the parent, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the LEA criteria applicable for independent educational evaluations, as follows:

- (a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation; and
- (b) Except for the criteria described in this section, the LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3038.2 A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA, subject to the following conditions:

- (a) If the parent requests an independent educational evaluation at public expense, the LEA shall, without unnecessary delay, either:
 - (1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (2) Ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing in accordance with IDEA and this chapter that the evaluation obtained by the parent did not meet the LEA's criteria;
- (b) If the LEA files a due process complaint notice to request a hearing and the final decision is that the LEA's evaluation is appropriate, the parent maintains the right to an independent educational evaluation, but not at public expense; and

- (c) If the parent requests an independent educational evaluation, the LEA may request the parent's reason for objecting to the LEA's evaluation, but may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

3038.3 A parent is entitled to one (1) independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.

3038.4 If the parent obtains an independent educational evaluation at public expense or shares with the LEA an evaluation obtained at private expense, the results of the evaluation:

- (a) Shall be considered by the LEA, if the evaluation meets LEA criteria, in any decision made with respect to the provision of FAPE to the child; and
- (b) May be presented by any party as evidence at a hearing for a due process complaint under this chapter.

3038.5 If an impartial hearing officer requests an independent educational evaluation as part of a hearing regarding a due process complaint, the cost of the evaluation shall be at public expense.

3038.6 Except where the requesting party can demonstrate unique circumstances justifying the payment of costs exceeding the established maximum rates or amounts, the LEA may use the maximum hourly rates and maximum evaluation costs set pursuant to 5-A DCMR § 2800 *et. seq.*, as the maximum hourly rates and maximum evaluation costs to be paid by the LEA for the independent evaluations and services.

3039 PRIVATE PLACEMENT OF CHILDREN BY PARENTS WHEN FAPE IS AT ISSUE

3039.1 The SEA is not required to pay for the cost of special education and related services for a child with a disability if the LEA has made FAPE available to the child and the parent elected to place the child in a private placement.

3039.2 Disagreements between the LEA and the parent regarding the availability of an appropriate program for the child and financial responsibility for the provision of such a program are subject to the due process procedures under IDEA and this chapter.

3039.3 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 impartial hearing officer may require the SEA to reimburse the parents for the cost of that

enrollment if the court or impartial 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 an impartial hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

3039.4 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 make FAPE available 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 make FAPE available 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) A judicial finding states that the actions taken by the parents were unreasonable.

3039.5 The cost of reimbursement shall not be reduced or denied for the parent's failure to provide notice in accordance with Section 3039.4(b) if:

- (a) The school prevented the parent from providing such notice;
- (b) The parents had not received notice, pursuant to the LEA's responsibility under Section 3033 to provide parents with a copy of the procedural safeguards, of the notice requirement; or
- (c) Compliance would likely result in physical harm to the child.

3039.6 Except in the discretion of a court or impartial hearing officer, the cost of reimbursement may not be reduced or denied for the parent's failure to provide notice in accordance with Section 3039.4(b) if:

- (a) The parent is illiterate or cannot write in English; or

- (b) Compliance would likely result in serious emotional harm to the child.

3040 PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WHEN FAPE IS NOT AT ISSUE

3040.1 DCPS is responsible for child find activities that are:

- (a) Designed to ensure the equitable participation of parentally-placed private school children; and
- (b) Similar to and implemented in a comparable timeframe as those activities undertaken for the population of children enrolled in DCPS.

3040.2 DCPS shall provide necessary materials and guidance to private schools to enable private school representatives to facilitate the referral process by providing sufficient information, documentation, and support to parents and other referral sources that can refer parentally-placed private school children for evaluation.

3040.3 To ensure timely and meaningful consultation, DCPS shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities on all of the following:

- (a) The child find process, including:
 - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
 - (2) How parents, teachers, and private school officials will be informed of the process;
- (b) The determination of the proportionate share of funds available to serve parentally-placed private school children with disabilities, including how the proportionate share of those funds was calculated;
- (c) The consultation process among DCPS, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (d) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of all of the following:

- (1) The types of services, including direct services and alternate service delivery mechanisms;
 - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - (3) How and when those decisions will be made; and
- (e) How, if DCPS disagrees with the views of the private school officials on the types of services or provision of services, DCPS will provide the private school officials with a written explanation of the reasons why DCPS chose not to provide services directly or through a contract.

3040.4 When timely and meaningful consultation has occurred, DCPS shall obtain a written affirmation signed by the representatives of participating private schools.

- (a) Written affirmation shall be provided within a reasonable period of time; and
- (b) If the representatives do not provide the affirmation within a reasonable period of time, DCPS shall forward the documentation of the consultation process to the SEA.

3040.5 DCPS is responsible for conducting timely evaluations, reevaluations, and eligibility determinations for resident and nonresident parentally-placed children attending private schools located in the District of Columbia, in accordance with all of the following:

- (a) DCPS shall seek parental consent for initial evaluations and reevaluations;
- (b) If the parent of a parentally-placed private school child declines to consent to an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, DCPS may not use the consent override procedures to seek to conduct the evaluation;
- (c) When parental consent is provided, DCPS shall conduct initial evaluations and determine eligibility within the State-mandated timeline;
- (d) DCPS is responsible for conducting evaluations at least once every three (3) years to determine continued eligibility for equitable services, or when:
 - (1) DCPS determines that the child's educational or related service needs, in light of the child's academic achievement and functional performance, warrant a new evaluation; and

- (2) The child's parent or teacher requests an evaluation; and
- (e) Parents of parentally-placed private school children who disagree with the findings of an evaluation may request an independent educational evaluation from DCPS.

3040.6 Following an initial determination of eligibility and upon any subsequent determination of eligibility, DCPS shall do all of the following:

- (a) Provide written notice to the parent of a resident child that DCPS will make FAPE available to the child if the child enrolls in a DCPS public school; and
- (b) Advise the parent of a nonresident child to contact their resident LEA if they are interested in enrolling the child in a public school to receive FAPE as follows:
 - (1) DCPS shall obtain parental consent prior to releasing evaluation and eligibility determination information or other personally identifiable information to the child's resident LEA; and
 - (2) DCPS is not required to obtain parental consent prior to releasing if the parent seeks enrollment in the child's resident LEA and the resident LEA requests records.

3040.7 No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would be eligible for if enrolled in a public school.

3040.8 For a parentally-placed private school child with a disability determined eligible for equitable services, DCPS shall do all of the following:

- (a) Initiate and conduct meetings to develop, review, and revise a services plan for the child;
- (b) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, DCPS shall use other methods to ensure participation by the private school, including individual or conference telephone calls; and
- (c) Make the final decisions with respect to the equitable services to be provided.

3040.9 Equitable services shall be provided by DCPS through its employees or through contract with an individual, association, agency, organization, or other entity.

- 3040.10 Equitable services personnel shall meet the same standards as personnel providing services in public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet highly qualified special education teacher requirements.
- 3040.11 Equitable services shall be provided:
- (a) In accordance with a services plan developed and implemented to meet the individualized needs of the child; and
 - (b) In a secular, neutral, and non-ideological manner, extending to the materials provided.
- 3040.12 Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with law.
- 3040.13 DCPS is not required to provide transportation between the child's home and the private school. However, if necessary for the parentally-placed private school child to benefit from or participate in services, DCPS shall offer:
- (a) To provide the child with transportation from the child's private school or the child's home to a site other than the private school; or
 - (b) To provide the child with transportation from the service site to the private school or from the service site to the child's home, depending on the timing of services.
- 3040.14 The decision of a parent of a parentally-placed private school child receiving equitable services to decline, in writing, DCPS-provided transportation and make alternative arrangements relieves DCPS of the obligation to provide transportation, until such time as the parent provides two (2) weeks written advance notice that DCPS-provided transportation is needed.
- 3040.15 DCPS may place equipment and supplies in a private school;
- (a) For such period of time needed to meet the equitable participation requirements of IDEA;
 - (b) Only for purposes in accordance with IDEA; and
 - (c) Such equipment and supplies may be removed from the private school without remodeling the private school facility.

Expenditures related to parentally-placed private school children shall adhere to the following:

- (a) DCPS shall spend the following on providing equitable services to parentally-placed private school children with disabilities:
 - (1) For children between three (3) and twenty-two (22) years of age, an amount that is the same proportion of DCPS's total subgrant under IDEA as the number of private school children with disabilities between three (3) and twenty-two (22) years of age who are enrolled by their parent in private, including religious, elementary schools and secondary schools located in the District of Columbia, is to the total number of children with disabilities in the District of Columbia between three (3) and twenty-two (22) years of age; and
 - (2) For children between three (3) and five (5) years of age, an amount that is the same proportion of DCPS's total subgrant under IDEA as the number of parentally-placed private school children with disabilities between three (3) and five (5) years of age who are enrolled by their parent in a private, including religious, elementary school located in the District of Columbia, is to the total number of children with disabilities in the District of Columbia between three (3) and five (5) years of age;
- (b) If DCPS has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which the funds were appropriated, DCPS shall obligate the remaining funds for equitable services to parentally-placed private school children with disabilities during a carry-over period of one (1) additional year;
- (c) State and local funds can supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities;
- (d) DCPS may use funds under IDEA to make public school personnel available in private school facilities, if necessary, to provide equitable services for private school children with disabilities if those services are not normally provided by the private school;
- (e) DCPS may use funds under IDEA to pay for the services of an employee of a private school to provide services to private school children if the employee performs the services outside of his or her regular hours of duty and under public supervision and control; and
- (f) DCPS may not use funds under IDEA for repairs, minor remodeling, or construction of private school facilities.

3040.17 On an annual basis, DCPS shall:

- (a) Determine the number of parentally-placed private school children with disabilities attending private schools located in the District of Columbia;
- (b) Ensure that the count is conducted annually on October 5 or the date set by the SEA for the annual pupil count required by D.C. Official Code § 38-2906;
- (c) Use the count to determine the amount that DCPS shall spend on providing equitable services to parentally-placed private school children with disabilities in the next fiscal year; and
- (d) Report the following count data to the SEA:
 - (1) The list of private schools contacted;
 - (2) The number of referrals received from private schools and the number of referrals from parents of parentally-placed private school children;
 - (3) The number of children evaluated;
 - (4) The number of children determined to be eligible for services under IDEA; and
 - (5) The number of children served.

3040.18 A private school official has the right to submit a complaint to the SEA alleging that DCPS did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. If the private school official wishes to submit a complaint, the following shall apply:

- (a) The official shall provide to the SEA the basis of the alleged noncompliance by DCPS with the applicable private school provisions of IDEA and shall forward the appropriate documentation to the SEA; and
- (b) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of Education by providing the information described in this subsection and forwarding the appropriate documentation to the Secretary.

3041 PARENT OBSERVATION

3041.1 Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special educational program:

- (a) The parent of a child with a disability;
- (b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation, and:
 - (1) Who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child; or
 - (2) Who is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent.

3041.2 The LEA shall develop and issue a written policy regarding child observation as follows:

- (a) The LEA shall not impose any conditions or restrictions on such observations except those necessary to ensure that:
 - (1) The safety of the children in a program is maintained;
 - (2) The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and
 - (3) Any potential disruption to the learning environment arising from multiple observations occurring in a classroom simultaneously is avoided;
- (b) The LEA policy may require advance notice of parent observation;
- (c) The LEA policy may require the designation of a parent's observer to be in writing; and
- (d) The LEA shall make its written policy regarding child observation publicly available.

3041.3 The time allowed for observation by the parent or the parent’s designee shall be of sufficient duration to enable the parent or designee to evaluate a child’s performance in a current program or the ability of a proposed program to support the child.

3041.4 The parent, or the parent’s designee, shall be allowed to view the child’s instruction in the setting where it ordinarily occurs or the setting where the child’s instruction will occur if the child were to attend the proposed program.

3042 CHILD COUNT

3042.1 DCPS and all public charter schools shall count the number of children with disabilities receiving special education and related services in the manner specified by the SEA annually on October 5 or the date set for the annual pupil count required by D.C. Official Code § 38-2906.

3042.2 Except as provided by Section 3042.1, each LEA shall report the count to the SEA each year and provide the information required by Section 618 of IDEA and its implementing regulations (34 C.F.R. §§ 300.640 through 300.644), in accordance with the timeline specified by the SEA, and shall certify to the SEA that an unduplicated and accurate count has been made.

3042.3 If a public charter school has been granted a waiver from the requirement to serve as its own LEA for purposes of IDEA, pursuant to D.C. Official Code § 38-1802.10(c), and for which DCPS serves as its LEA for special education purposes, the public charter school shall report the count and certification to DCPS.

3043 DISCIPLINARY REMOVAL

3043.1 A child with a disability may be held to and disciplined under the same code of student conduct as a child without a disability, subject to the requirements of this section and District law.

3043.2 An LEA may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, provided that:

- (a) A child with a disability shall only be removed from their current placement to the extent those removals are applied to children without disabilities; and
- (b) The removal does not constitute a change in placement.

3043.3 A change of placement occurs if the removal is for more than ten (10) consecutive school days or the child has been subjected to a series of removals that constitute a pattern. A pattern of removals occurs if:

- (a) The series of removals total more than ten (10) school days in a school year;
- (b) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- (c) There are additional factors, including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another, that indicate a pattern.

3043.4 The LEA shall determine on a case-by-case basis whether a pattern of removal constitutes a change in placement and shall document each such determination.

3043.5 An LEA shall only remove a child from their current placement to an interim alternative educational setting as a result of a disciplinary action in accordance with this chapter.

3043.6 For disciplinary changes in placement that exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability in accordance with this chapter, the LEA may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

3043.7 After a child with a disability has been removed from his or her current placement for ten (10) cumulative school days in the same school year, regardless of whether the behavior was a manifestation of the child's disability, the LEA shall provide services during any subsequent days of removal. The child shall receive:

- (a) Educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (b) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

3043.8 During periods of removal, the LEA shall provide services to a child with a disability if the child has been removed from his or her current placement for ten (10) school days or fewer in that school year, if it provides services to a child without disabilities who is similarly removed.

3043.9 The LEA may remove a child to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- (a) Carries a weapon, as defined by 34 C.F.R. § 300.530(i)(4), to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the SEA or an LEA;
- (b) Knowingly possesses or uses illegal drugs, as defined by 34 C.F.R. § 300.530(i)(2), or sells or solicits the sale of a controlled substance, as defined by 34 C.F.R. § 300.530(i)(3), while at school, on school premises, or at a school function under the jurisdiction of the SEA or an LEA; or
- (c) Has inflicted serious bodily injury, as defined by 34 C.F.R. § 300.530(i)(3), upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or an LEA.

3043.10 The LEA shall notify the parent of the decision to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, as follows:

- (a) Written notification to the parent shall be provided within one (1) day of the decision; and
- (b) The notification shall include a copy of the procedural safeguards notice.

3043.11 Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team shall hold a manifestation determination meeting to review all relevant information in the child's file, including the child's IEP, teacher observations, and relevant information provided by the parents, to determine if the conduct in question was a manifestation of the child's disability in accordance with either of the following:

- (a) The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (b) The conduct in question was the direct result of the LEA's failure to implement the IEP.

3043.12 If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall:

- (a) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred;

- (b) Implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it as necessary to address the behavior; and
- (c) Return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

3044 RESTRAINT

3044.1 The LEA shall not use any form of mechanical restraints, as defined in this chapter.

3044.2 The LEA shall not use any form of prone restraints, as defined in this chapter.

3044.3 The LEA shall not use any form of chemical restraints. A drug ordered by a licensed physician as part of an ongoing medical treatment plan or determined by a licensed physician to be medically necessary is not considered a chemical restraint.

3044.4 The LEA shall not use any form of physical restraints, as defined in this chapter, except when the intervention is necessary in emergency circumstances, as defined in this chapter, to protect the child or other person from imminent, serious physical harm and other less intrusive, nonphysical interventions have failed or been determined inappropriate.

3044.5 Physical restraints shall be applied only by LEA personnel who are trained and certified in the appropriate use of specific, evidence-based techniques. The LEA shall maintain copies of training certifications.

3044.6 The use of physical restraints in cases of an emergency shall be limited to the use of the least amount of force necessary and to the shortest time period necessary to protect the child or other person from imminent, serious physical harm, as follows:

- (a) The restraint shall end as soon as the child or other person is no longer in imminent danger;
- (b) LEA personnel shall provide the child with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint; and
- (c) An LEA staff member shall personally observe the child during the entire duration of the use of the restraint in order to assess the need for continued restraint.

3044.7 The LEA shall not use restraints as a means of coercion, discipline, convenience, or retaliation by staff.

3044.8 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a child's refusal to comply with a directive, or language that does not constitute a threat of imminent, serious physical harm.

3044.9 The use of restraints is limited or prohibited as follows:

- (a) No physical restraint shall be administered in such a way that the child's breathing or speaking is restricted. During the restraint, an LEA staff member shall continuously monitor the physical status of the child, including skin color and respiration. The restraint shall be released immediately upon a determination by the LEA staff member that the child or other person is no longer at risk of causing imminent, serious physical harm. A staff member shall continuously assess the child to determine if medical attention is required;
- (b) If the child uses sign language or an augmentative mode of primary communication, the child shall be permitted to have the child's hands free of restraint for brief periods, unless the LEA staff member determines that such freedom appears likely to result in harm to self or others. The restraint shall end as soon as the child is no longer at risk of causing imminent, serious physical harm; and
- (c) No physical restraint shall be administered if the child has a medical or psychological condition contraindicative to restraint.

3045 SECLUSION

3045.1 The LEA shall not use any form of seclusion except in emergency circumstances, as defined in this chapter.

3045.2 A space used for seclusion shall:

- (a) Be free of objects and fixtures with which a child could self-inflict bodily harm;
- (b) Provide LEA personnel an adequate view of the child from an adjacent area in accordance with this section; and
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.

3045.3 In the event of seclusion, LEA personnel shall view a child placed in seclusion at all times by remaining within sight of the child, consistent with Section 3045.5, and shall provide the child with an explanation of the behavior that resulted in the

seclusion and instructions on the behavior required to be released from the seclusion.

3045.4 Seclusion shall only be applied by LEA personnel who are trained in the proper use of appropriate techniques supported by written policies and procedures established by the LEA and consistent with regulations and guidance issued by the SEA.

3045.5 LEA personnel shall continuously monitor a child placed in seclusion and speak with the child every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education, or other senior LEA personnel shall personally observe the child to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.

3045.6 If the space used for seclusion has a locking mechanism, it shall only be engaged when it is held in position by a person, or if electronically engaged, shall automatically release if the building's fire alarm system is activated.

3046 RESTRAINT AND SECLUSION: REPORTING

3046.1 If any form of restraint or seclusion is used, the LEA shall prepare a written report consistent with the requirements of this section.

3046.2 A written incident report shall include the following information:

- (a) The child's name;
- (b) The date of the incident;
- (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;
- (d) A description of relevant events leading up to the restraint or seclusion;
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;
- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to children, personnel, or others), property damage, or both;

- (i) A list and signatures of the LEA personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the short-term planned approach to addressing the child's behavior in the future.

3046.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion and placed in the child's record within one (1) business day of the incident.

3046.4 A copy of the written incident report shall be sent within one (1) business day of the incident to the child's parent.

3046.5 If the restraint or seclusion incident involved physical injury to, or caused by, a child, the LEA shall report the incident in writing within one (1) business day to the parent and other District of Columbia agency involved in the child's placement, by facsimile or other electronic transmission.

3046.6 The IEP team shall meet within ten (10) school days of the incident to consider the need for a functional behavioral assessment and behavior intervention plan and to discuss non-physical and non-restrictive de-escalation strategies. If the child has a BIP in place, the IEP team shall review and revise as appropriate. If the child is unable or unwilling to attend the IEP team meeting, the LEA shall meet with the child individually to discuss the incident as appropriate.

3046.7 If additional incidents of restraint or seclusion occur within ten (10) school days of the original incident, the LEA and parent may agree to consolidate meetings and discuss all incidents at a meeting to be scheduled no later than fifteen (15) school days after the original incident.

3047 MEDIATION

3047.1 The parent of a child with a disability or the public agency may request mediation by a qualified and impartial mediator when there is a dispute about any matter related to the identification, evaluation, eligibility, educational placement, or provision of FAPE to the child.

3047.2 The request for mediation shall be voluntary on the part of the parties.

3047.3 The request for mediation shall be made in writing to the SEA.

3047.4 The request for mediation may not be used to deny or delay the parent's right to due process in accordance with 20 U.S.C § 1415(f) and this chapter.

- 3047.5 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.
- 3047.6 Mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and special education law.
- 3047.7 Discussions that occur during mediation shall be confidential and may not be used as evidence in any concurrent or subsequent due process hearing or civil proceeding.
- 3047.8 The parties may be required to sign a confidentiality pledge before the commencement of the mediation.
- 3047.9 An agreement reached by the parties through mediation shall be documented in a written mediation agreement, which shall include the following:
- (a) A statement that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (b) Signatures of both the parent and a representative of the public agency who has the authority to bind such agency.

3048 STATE COMPLAINTS

- 3048.1 The SEA, through the State Complaint Office (SCO), shall maintain written procedures for the investigation and resolution of any complaint alleging that a public agency has violated a requirement of IDEA or the District's laws and regulations regarding special education and shall, absent exceptional circumstances with respect to a particular complaint, issue a final written decision within sixty (60) days.
- 3048.2 Any individual or organization may submit to the SCO a signed, written complaint that alleges that any District of Columbia public agency has violated a requirement of Part B of IDEA or the District's laws and regulations regarding special education. The complaint must allege a violation that occurred not more than one (1) year prior to the date the complaint is received by the SCO.
- 3048.3 The SCO shall investigate and resolve complaints that allege the following:
- (a) A violation of Part B of IDEA or the District of Columbia's laws and regulations regarding special education;
 - (b) A public agency has failed to implement a special education due process hearing officer decision resolving a due process hearing request; or

- (c) A failure to implement a settlement agreement (SA) resolving a due process hearing request, however no such review shall delay or deny a party the right to seek enforcement of the settlement agreement in a court of competent jurisdiction.

3048.4 If the SCO receives a written complaint that is also the subject of a due process hearing under Section 3053, or contains multiple issues of which one (1) or more are part of that hearing, the SCO shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing, except that:

- (a) Any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described in the SEA's written state complaint procedures; and
- (b) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties:
 - (1) The due process hearing decision is binding on that issue; and
 - (2) The SEA shall inform the complainant to that effect.

3048.5 The complainant and public agency may agree to extend the sixty (60) day investigation timeline to engage in mediation.

3048.6 The letter of decision issued by the SCO after completing an investigation is final and unappealable to the SEA. However, if an issue is still in dispute, the parent or public agency may, to the extent permitted under IDEA, request mediation under Section 3047 or file a due process complaint under Section 3053.

3049 IMPARTIAL DUE PROCESS

3049.1 A parent of a child with a disability or a public agency, including an LEA, has the right to initiate a due process hearing when there is a dispute about any matter related to the identification, evaluation, eligibility, educational placement, or provision of FAPE to the child.

3049.2 A request by a parent to initiate a due process hearing shall be made in writing and include:

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the parent initiating the hearing;

- (d) The address of the parent initiating the hearing;
- (e) The name of the LEA in which the child is enrolled and the name of the LEA or public agency against which the complaint is being filed, if different;
- (f) The name of the school the child is attending;
- (g) The name of the school against which the complaint is being filed;
- (h) A description of the nature of the dispute, including facts relating to the dispute; and
- (i) A proposed resolution to the dispute to the extent known and available to the parent at the time.

3049.3 A request by a public agency or LEA to initiate a due process hearing shall be made in writing and include:

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the school the child is attending;
- (d) The name of the LEA or public agency initiating the hearing;
- (e) The name of the LEA or public agency official filing the request on behalf of the LEA or public agency;
- (f) The name of the parent against which the complaint is being filed;
- (g) The address of the residence of the parent, if different from (b);
- (h) A description of the nature of the dispute, including facts relating to the dispute; and
- (i) A proposed resolution to the dispute to the extent known and available to the LEA or public agency at the time.

3049.4 When an impartial due process hearing is requested, the SEA shall inform the parent in writing of the availability of mediation and any free or low cost legal services and other relevant services available. As a part of the five (5) day disclosure submitted before a due process hearing, the submitting attorney shall disclose any financial interest, of which he or she is aware, of any participant in the

proceeding in a nonpublic provider or service that may be at issue in that due process hearing.

3049.5 For the purpose of this section, financial interest includes, but is not limited to, any financial arrangement with a nonpublic school or program or private provider including an ownership interest, provision of services at a discount, or contingent payment agreements based on referrals or the outcome of the due process hearing. Financial interest does not include reasonable expert witness fees under District of Columbia law and this chapter.

3050 CHILD'S STATUS DURING PROCEEDINGS

3050.1 The child with a disability shall remain in the child's current educational placement during the pendency of a due process hearing or judicial proceeding unless the parent and the LEA agree on an alternative placement.

3050.2 If the matter involves an application for initial admission to public school, the child, with the consent of the parent, shall be placed in the public school program until the completion of all proceedings, unless the parent and the LEA agree otherwise.

3050.3 If the impartial hearing officer decision in a due process hearing or in an administrative appeal agrees with the child's parent that a change of placement is appropriate, that placement shall be treated as an agreement between the parent and the LEA for purposes of Section 3050.1.

3051 HEARING RIGHTS

3051.1 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 no later than five (5) business days before the hearing;
- (d) Obtain a written or, at the option of the parent, electronic verbatim record of the hearing, at no cost to the parent; and
- (e) Obtain written or, at the option of the parent, electronic findings of fact and decisions at no cost to the parent.

- 3051.2 At least five (5) business days prior to a hearing, each party must 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.
- 3051.3 An impartial hearing officer may bar any party that fails to meet the requirements of Section 3051.2 from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- 3051.4 A parent has the right to have the child who is the subject of the hearing present at the hearing, and may elect to open the hearing to the public.
- 3051.5 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(i)(2).

3052 RESOLUTION MEETINGS

- 3052.1 No later than fifteen (15) calendar days after receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA shall convene a resolution meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. The resolution meeting shall meet all of the following standards:
- (a) The parent and the LEA shall determine the relevant members of the IEP Team to attend the resolution meeting;
 - (b) The meeting shall include a LEA representative who has decision-making authority on behalf of the LEA;
 - (c) The meeting may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
 - (d) 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 due process complaint.
- 3052.2 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 3047.
- 3052.3 If the LEA fails to hold the resolution meeting specified in this section within fifteen (15) calendar days after receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of an impartial hearing officer to begin the due process hearing timeline.

- 3052.4 Except where the LEA and the parent have jointly agreed to waive the resolution process or to use mediation, when the parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that an impartial hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held, as follows:
- (a) Any such request shall include evidence of the LEA's reasonable efforts, as defined in this chapter, to convene a resolution meeting with the parent;
 - (b) The LEA's reasonable efforts shall be documented using the procedures in this chapter; and
 - (c) The parent shall have an opportunity to respond to the request and related evidence prior to the impartial hearing officer rules on the request.
- 3052.5 If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts, as defined in this chapter, have been made and documented, the LEA may, at the conclusion of the thirty (30) calendar-day resolution period, request that an impartial hearing officer dismiss the parent's due process complaint, as follows:
- (a) Any such request shall include evidence of the LEA's reasonable efforts to convene a resolution meeting with the parent;
 - (b) The LEA's reasonable efforts shall be documented using the procedures in this chapter; and
 - (c) The parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer rules on the request.
- 3052.6 If a resolution to the dispute is reached at the meeting described in this section, the parent and the LEA shall execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA, and 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.
- 3052.7 If the LEA and the parent execute an agreement pursuant to this section, either party may void such agreement as follows:
- (a) The agreement may be voided within three (3) business days after the agreement's execution; and
 - (b) The party who voids the agreement shall provide written notice to all other parties to the agreement.

3053 DUE PROCESS HEARINGS AND HEARING OFFICER DETERMINATIONS

3053.1 Except as provided in Section 3052, a forty-five (45) calendar-day hearing period shall begin after the expiration of the thirty (30) calendar-day resolution process period.

3053.2 The forty-five (45) calendar-day timeline for the due process hearing in this section shall start on the calendar day after any 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 thirty (30) calendar days, the LEA and the 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) calendar day resolution period, but the parent or LEA later withdraws from the mediation process.

3053.3 No later than forty-five (45) calendar days after the expiration of the thirty (30) calendar-day resolution period or any adjusted time period described in this section, a final determination shall be reached in the hearing, and a copy of the decision shall be mailed, or transmitted electronically or by facsimile to each party, if all parties to the due process complaint consent to such electronic or facsimile transmission.

3053.4 An impartial hearing officer may, for good cause shown, grant specific extensions of time beyond the periods set forth in this section at the request of either party.

3053.5 The Hearing Officer Determination (HOD) shall be in writing and include all of the following:

- (a) The identity of the parties;
- (b) The identity of the child, which shall include the child's name, State-issued unique child identifier, date of birth, and attending LEA and school;
- (c) The case number;
- (d) Findings of fact and conclusions of law, separately stated;
- (e) The final determination;

- (f) What shall be done by each party, where applicable, to carry out the determination including the establishment of timelines for each step or action;
- (g) Any appeal rights; and
- (h) The hearing officer's signature, which shall be dated, which may be designated by electronic signature.

3053.6 In special education due process hearings occurring pursuant to this chapter, the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion, except that:

- (a) Where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the LEA, the LEA shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement, provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the LEA. The burden of persuasion shall be met by a preponderance of the evidence; and
- (b) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that:
 - (1) The impartial hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; and
 - (2) If the impartial hearing officer determines that the program offered by the LEA is appropriate, then the inquiry into the appropriateness of the unilateral placement is not necessary.

3053.7 An HOD resulting from the filing of a due process complaint shall be final upon the parties to the due process complaint, settlement agreement (SA), or both.

3053.8 After deleting personally identifiable information from hearing decisions, the SEA shall transmit the findings and decisions to the State Education Agency Advisory Panel and make the findings and decisions available to the public.

3053.9 If a child with a disability who is the subject of a HOD or SA transfers to a new LEA during the term of the HOD or SA, the new LEA 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's ability to make FAPE available to the child.

3054 EXPERT WITNESS FEES

3054.1 In any administrative proceeding brought under IDEA and this chapter, a court may award reasonable expert witness fees as part of the costs to a prevailing party:

- (a) Who is the parent of a child with a disability;
- (b) That is an LEA or SEA, when the attorney of a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (c) That is an LEA or SEA, against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

3054.2 Expert witness fees awarded under this section shall be based on rates prevailing in the community in which the administrative proceeding arose for the kind and quality of services furnished, provided that the maximum award shall be six thousand dollars (\$6,000) per action or proceeding. No bonus or multiplier may be used in calculating the fees awarded under this section.

3054.3 Expert witness fees, otherwise available under this section, shall:

- (a) Not be awarded if reimbursement of attorney's fees and related costs would be prohibited in the proceeding under 20 U.S.C. § 1415(i)(3)(D);
- (b) Be subject to reduction if the court makes a finding listed under 20 U.S.C. § 1415(i)(3)(F); and
- (c) Not be awarded to compensate the moving party for an independent educational evaluation unless that party would be entitled to compensation for the evaluation under IDEA.

3055 ATTORNEY'S FEES

3055.1 In an action or proceeding under this chapter, courts may award reasonable attorney's fees as part of the costs to the following:

- (a) The parent of a child with a disability who is the prevailing party;

- (b) A prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (c) A prevailing state educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

3055.2 Attorney's fees shall be considered reasonable if they are at rates consistent with applicable local and federal laws.

3099 DEFINITIONS

3099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Assessment – The process of collecting data in accordance with Section 3006 of this chapter, to be used by the 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. The term does not include a medical device that is surgically implanted or the replacement of such device.

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, without limitation, each of the following:

- (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 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 – A specially-designed instruction, as defined by 34 C.F.R. § 300.39(b)(3) provided without charge, but does not preclude incidental fees that are normally charged to children without disabilities or their parents as a part of the general education program.

Autism – A disability as defined in Section 3011.

Behavior intervention plan– A written plan that describes:

- (a) How an educational setting will be changed to improve the behavioral success of a child;
- (b) The teaching that will occur to give the child alternative ways of behaving;
- (c) The consequences that will be provided to:
 - (1) Encourage positive behavior;
 - (2) Limit inadvertent reward of problem behavior; and
 - (3) Where appropriate, discourage problem behavior; and
- (d) The procedures for ongoing assessment to determine if the BIP is being implemented correctly and if implementation is resulting in benefits for the child.

Business day – Monday through Friday except for federal and District of Columbia holidays.

Child – An individual between three (3) and twenty-two (22) years of age.

Child find – A set of policies, procedures, and public awareness activities designed to locate, identify, and evaluate children who may require special education and related services and the practical method developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Child with a disability – In general, a child with autism, deaf-blindness, deafness, developmental delay, emotional disability, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment, in accordance with Section

3011; and who, by reason thereof, needs special education and related services.

Consent – Includes:

- (a) The parent 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) The parent 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;
- (c) The parent understands that the granting of consent is voluntary on the part of the parent and that it may be revoked at any time;
- (d) If a parent revokes consent, that revocation does not negate an action that has occurred after the consent was given and before the consent was revoked; and
- (e) If the parent revokes consent in writing for their child’s receipt of special education and related services after the child is initially provided services, the LEA is not required to amend the child’s education records to remove any references to the child’s receipt of services because of the revocation of consent.

Course of study – A description of the coursework necessary to prepare the child for post-school activities developed in accordance with Section 3026 of this chapter.

Day – A calendar day, unless otherwise specified as a school day or business day.

Deaf-blindness – A disability as defined in Section 3011.

Deafness – A disability as defined in Section 3011.

Developmental delay – A disability as defined in Section 3011.

District – The District of Columbia.

DCPS – The District of Columbia Public Schools, established by Section 102 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171).

Educational Representative – An adult appointed by the SEA to represent the educational interests of a child with a disability who upon reaching eighteen (18) years of age is determined under this chapter to be unable to provide informed consent for educational purposes.

Educational surrogate parent – An individual who is appointed by the SEA or by judicial order to advocate and make decisions for a child with a disability, or a child suspected of having a disability, in all matters relating to rights under IDEA, during evaluation through possible placement and provision of FAPE, when no parent can be identified or the whereabouts of the parent cannot be determined or if the child is in the custody of the District of Columbia Child and Family Services Agency, as needed.

Emergency circumstances – A temporary and unusual circumstance in which intervention is reasonably believed to be necessary to protect a student or other person from imminent, serious physical harm. Property destruction, disruption of school order, or failure of a student to follow the directive of a school official shall not alone constitute imminent, serious physical harm.

Emotional disability– A disability as defined in Section 3011.

English learner – A student as defined in Section 8101(20) of the Elementary and Secondary Education Act (20 U.S.C. 7801(20)).

Enrollment – A process through which a child obtains admission to an LEA that includes, at a minimum, all of the following stages:

- (a) Application by child to attend the school;
- (b) Acceptance and notification of an available slot to the child by the school;
- (c) Acceptance of the offered slot by the child (signified by completion of enrollment forms and parent signature on a “letter of enrollment agreement form);
- (d) Registration of the child in the Student Information System (SIS) by school upon receipt of required enrollment forms and letter of enrollment agreement;
- (e) Receipt of educational services, which are deemed to begin on the first official school day; and
- (f) The LEA’s obligation to determine eligibility for special education services or to provide special education services on an existing IEP is triggered upon completion of registration.

Evaluation – Includes the following:

- (a) Procedures used in accordance with this chapter 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 the parent;
 - (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; and
- (c) A review of all of the above at a meeting of the IEP team.

Extended school year services – The 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 parent of the child; and
- (b) Meet the standards of the LEA.

Free appropriate public education or FAPE – The special education and related services that adhere to all of the following:

- (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 an appropriate preschool, elementary, and secondary education; and
- (d) Are provided in conformity with an IEP that meets the requirements of this chapter.

Functional behavioral assessment – A process for identifying:

- (a) Observable problem behaviors;
- (b) The contexts or routines where the problem behaviors are most likely;
- (c) The specific antecedent events within a context or routine that reliably predict occurrence of problem behaviors; and
- (d) The consequences that appear to maintain the problem behavior.

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

Hearing impairment – A disability as defined in Section 3011.

IDEA - The Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. §§ 1400 *et seq.*), as amended by Pub. L. 108-446, approved December 3, 2004 (118 Stat. 2647), and its implementing regulations.

Impartial hearing officer – A individual selected to conduct a due process hearing in accordance with 20 U.S.C. § 1415(f) and D.C. Official Code § 38-2572.02-.03 who meets the following requirements:

- (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.

Incapacitated individual – shall have the same meaning as the term is defined in D.C. Official Code § 21-2011(11).

Intellectual disability – A disability as defined in Section 3011.

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

Independent educational evaluation or IEE – The assessment procedures conducted by a qualified individual who is not an employee of the LEA.

Individualized education program or IEP – A written statement that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under Section 614(d) of IDEA (20 U.S.C. § 1414(d)) and this chapter.

Individualized Education Program Team or IEP Team – A group of individuals, comprised of the persons listed in Section 3008, responsible for:

- (a) Identifying and evaluating children with disabilities in a meeting in accordance with 20 U.S.C. § 1414 and 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 in accordance with 20 U.S.C. § 1414 and this chapter.

Individualized Family Service Plan or IFSP – A written plan for providing early intervention services to an infant or toddler with a disability and the infant’s or toddler’s family that:

- (a) Is based on an evaluation and assessment of the child and family, consistent with the requirements of 34 C.F.R. § 303.321;
- (b) Consistent with the requirements of 34 C.F.R. § 303.344, which includes information about the child’s present levels of development, information about the family, results or outcomes to be achieved, the early intervention services necessary to meet the

needs of the child and family and, to the extent appropriate, the identification of other services that the child or family needs or is receiving through other sources;

- (c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained, consistent with 34 C.F.R. § 303.420; and
- (d) Is developed in accordance with the IFSP procedures in 34 C.F.R. §§ 303.342, 303.343, and 303.345.

Infant or toddler with a disability – shall have the same meaning as provided in Section 632(5) of the IDEA (20 U.S.C. § 1432(5)).

Least restrictive environment – An educational environment which meets the needs of a child requiring special education and related services as set forth in the child’s IEP and which, to the maximum extent appropriate, ensures that the child will be educated with children without disabilities.

Limited English proficiency – An individual who does not speak English as his or her primary language and has a limited ability to read, speak, write, or understand English.

Local education agency or LEA – An educational institution at the local level that exists primarily to operate a publicly funded school or schools providing elementary or secondary education in the District of Columbia. The term includes the District of Columbia Public Schools and a District of Columbia public charter school that has elected, pursuant to D.C. Official Code § 38-1800.00(29), to serve as the LEA for purposes of IDEA, with such election subject to the provisions of D.C. Official Code § 38-1802.10(c), requiring an LEA to be its own LEA for purposes of IDEA and the Rehabilitation Act unless waived by the District of Columbia Public Charter School Board.

Mechanical restraint –A physical device used to restrict the movement of a child or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered a mechanical restraint.

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, telephonically, through video conference or through an online telecommunication application, 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.

Multiple disabilities – A disability as defined in Section 3011.

Native language –

- (a) When used with respect to an individual who is limited English proficient, means the following:
 - (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this definition;
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; and
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, 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 special education school or program – A privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to children with disabilities. The term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to children without disabilities, even though the school can serve children with disabilities in a general academic setting. If a nonpublic special education school or program has multiple locations, each location will be

considered and treated by the SEA as an individual program in regards to location of service and rate confirmation.

Office of the State Superintendent of Education (OSSE) – The State Education Agency (SEA) for the District of Columbia established by the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Official Code §§ 38-2601 *et seq.*), with all operational authority for State-level functions, except that delegated to the State Board of Education in D.C. Official Code § 38-2652.

Orthopedic impairment – A disability as defined in Section 3011.

Other health impairment – A disability as defined in Section 3011.

Paraprofessional - An aide or other individual who provides support services such as instructional, behavioral, or health services as described on a child’s IEP under the direct supervision of qualified personnel that is responsible for implementing special education or related services designated in a child’s IEP.

Parent –

- (a) A biological or adoptive parent of a child;
- (b) A foster parent, unless District of Columbia law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (c) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is in the custody of or committed to a state agency);
- (d) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (e) A surrogate parent who has been appointed in accordance with Section 3034 or Section 639(a)(5) of IDEA.

Except as provided, the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one (1) party is qualified under this chapter to act as a parent, shall be presumed to be the parent for purposes of this chapter unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this definition.

Personally identifiable information – Information that contains:

- (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; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Physical education – Includes

- (a) The development of:
 - (1) Physical and motor fitness;
 - (2) Fundamental motor skills and patterns; and
 - (3) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
- (b) Special physical education, adapted physical education, movement education, and motor development.

Physical restraint – A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term does not include a physical escort, or a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of assisting a student in moving to a safe location.

Placement – A child’s learning environment, classified by level of restrictiveness, as determined by the child’s IEP Team.

Prone restraint – The use of force, use of a physical device, or both, to hold a child face down or stomach down on the floor.

Public charter school – A publicly funded public school established pursuant to the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code §§ 38-1800 *et seq.*), that is not part of the District of Columbia public schools (DCPS).

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 qualified evaluator means 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 – The 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.

Reasonable efforts – At least three (3) documented attempts to contact the parent using at least two (2) of the following modalities on at least three (3) different dates no fewer than five (5) days prior to the proposed LEA action or the statutory deadline:

- (a) Telephone calls made or attempted and the results of those calls;
- (b) Correspondence sent to the parent and any responses received; or
- (c) Visits made to the parent's last known place of residence or place of employment and the results of those visits.

Reevaluation – An evaluation conducted after the initial evaluation in accordance with § 3007 of this chapter.

Rehabilitation Act – The Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 355; 29 U.S.C. §§ 701 *et seq.*) and its implementing regulations.

Related services – The 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) Interpreting services;
- (d) Psychological services;
- (e) Physical and occupational therapy;
- (f) Recreation, including therapeutic recreation;
- (g) Early identification and assessment of disabilities in children;
- (h) Counseling services, including rehabilitation counseling;
- (i) Orientation and mobility services;
- (j) Medical services for diagnostic or evaluation purposes;
- (k) School health and school nurse services;
- (l) Social work services in schools;
- (m) Parent counseling and training; and
- (n) Transportation.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning, maintenance of that device, or the replacement of that device.

Seclusion – The involuntary confinement of a child alone in a room or area from which he or she is physically prevented from leaving, or from which the child believes he or she may not leave, whether or not in a locked area, except that such term does not include a time out or other similar behavior management technique that may involve the separation of the student from the group, in an unlocked setting, for the purpose of calming.

Service location – The physical address at which instruction occurs or at which a student with disabilities receives special education and related services. The term “service location” does not refer to a specific classroom within a building or a specific building on a campus.

Services plan – A written statement that describes the special education and related services that DCPS will provide to a parentally-placed private school child with a disability who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 C.F.R. § 300.132, and is developed and implemented in accordance with 34 C.F.R. §§ 300.137 through 300.139.

Special education – The specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including:

- (a) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;
- (b) Instruction in physical education;
- (c) Speech-language pathology in accordance with Section 3010.5;
- (d) Travel training; and
- (e) Vocational education.

Specially designed instruction – Adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of a child that result from the child’s disability and to ensure access to the general education curriculum, so that the child can meet the educational standards that apply to each child within the District of Columbia.

Specific learning disability – A disability as defined in Section 3011.

Speech or language impairment – A disability as defined in Section 3011.

State – The District of Columbia.

State Education Agency or SEA – The Office of the State Superintendent of Education (OSSE) for the District of Columbia.

Student Information System or SIS – The LEA’s information system that includes, among other things, student demographic data and information such as attendance, scheduling, and enrollment. The SIS is not the District of Columbia special education data system.

Student – Shall have the same meaning as child and is used interchangeably. An individual between the ages of three (3) and twenty-two (22).

Supplementary aids and services – Aids, services, and other supports that are provided in general education classes or other education-related settings, and in extracurricular and nonacademic settings, to enable a child with a disability to be educated with children without disabilities to the maximum extent appropriate.

Supported decision-making – The supports, services, and accommodations that help a child with a disability make his or her own decisions, by using adult friends, family members, professionals, and other people he or she trusts to help understand the issues and choices, ask questions, receive explanations in language he or she understands, and communicate his or her own decisions to others.

Transition services – A coordinated set of activities for a child with a disability that:

- (a) Are designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities including the following:
 - (1) Post-secondary education;
 - (2) Vocational education;
 - (3) Integrated employment, including supported employment;
 - (4) Continuing and adult education;
 - (5) Adult services;
 - (6) Independent living; or
 - (7) Community participation; and
- (b) Are based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests including all of the following:
 - (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) Provision of a functional vocational evaluation.

Transition services for a child with a disability can 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.

Traumatic brain injury – A disability as defined in Section 3011.

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 develop an awareness of the environment in which they live, and learn the skills necessary to move effectively and safely from place to place within that environment.

Visual impairment – A disability as defined in Section 3011.

Vocational education – Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

Chapter 28, NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS SERVING STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT OF COLUMBIA AND SPECIAL EDUCATION RATES, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5, EDUCATION, of the DCMR is amended as follows:

Section 2816, PHYSICAL AND CHEMICAL RESTRAINTS, is amended follows:

Section 2816.1 is amended as follows:

2816.1 The use of physical restraints is prohibited in all nonpublic special education schools and programs except when the intervention is necessary in emergency circumstances, as defined in this chapter, to protect the child or other person from imminent, serious physical harm and other less intrusive, non physical interventions have failed or been determined inappropriate.

Section 2816.3 is amended as follows:

2816.3 The use of physical restraints shall be limited to the use of the least amount of force necessary and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student or other person is no longer in imminent danger. Nonpublic special education school or program personnel shall provide the student with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint. A member of the staff shall personally observe the student during the entire duration of the use of the restraint in order to assess the need for continued restraint.

Section 2816.7 is repealed and amended as follows:

2816.7 [REPEALED]

Section 2844, NONPUBLIC SPECIAL EDUCATION SCHOOL OR PROGRAM PLACEMENT AND LOCATION ASSIGNMENT PRINCIPLES, is repealed and amended as follows:

2844 [REPEALED]

2899, DEFINITIONS, is amended to add a definition of “Emergency Circumstances” and revises the definitions of “Evaluation,” “Physical Restraint,” “Prone,” and “Seclusion” as follows:

2899 DEFINITIONS

Emergency circumstances – A temporary and unusual circumstance in which intervention is reasonably believed to be necessary to protect a student or other person from imminent, serious physical harm. Property destruction, disruption of school order, or failure of a student to follow the directive of a school official shall not alone constitute imminent, serious physical harm.

Evaluation --

- (a) Procedures used in accordance with 5-A DCMR Chapter 30 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 the parent;
 - (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; and
- (c) A review of all of the above at a meeting of the IEP team.

Physical restraint - a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term does not include a physical escort, or a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of assisting a student in moving to a safe location.

Prone restraint – The use of force, use of a physical device, or both, to hold a child face down or stomach down on the floor.

Seclusion – The involuntary confinement of a child alone in a room or area from which he or she is physically prevented from leaving, or from which the child believes he or she may not leave, whether or not in a locked area, except that such term does not include a time out or other similar behavior management technique that may involve the separation of the student from the group, in an unlocked setting, for the purpose of calming.

Chapter 30, SPECIAL EDUCATION, of Subtitle 5-E, ORIGINAL TITLE 5, of Title 5, EDUCATION, is repealed in its entirety and amended to say:

Chapter 30 Special Education [REPEALED]