

## 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) (2012 Repl. & 2017 Supp.)); Section 102(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)(3) & (b) (2012 Repl. & 2017 Supp.)) (“Enhanced Special Education Services Act”); Sections 102(a) and 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 (2012 Repl. & 2017 Supp.)); Mayor’s Order 2007-149, dated June 28, 2007; Section 504 of the Early Intervention Program Establishment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 7-863.04 (2012 Repl. & 2017 Supp.)); Mayor’s Order 2009-167, dated September 28, 2009; Part B and Part C of the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2738; 20 USC §§ 1400 *et seq.*) (“IDEA”) and regulations promulgated thereunder at 34 CFR parts 300 and 303; hereby: (i) amends Section 3108 (Child Eligibility for Services) in Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) in the District of Columbia Municipal Regulations (“DCMR”); and (ii) amends Sections 3001, 3002, 3004, 3005, 3017, 3024, and 3025 of Chapter 30 (Special Education) of Subtitle E (Original Title 5) of Title 5 DCMR (Education) .

This final rulemaking amends the definition of developmental delay in Section 3108 (Child Eligibility for Services) in Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) of Title 5-A to comply with Section 102(b) of Title I of the Enhanced Special Education Services Act (D.C. Official Code § 38-2614(a)(3) & (b)), which requires OSSE to expand eligibility for early intervention services to those experiencing a twenty-five percent (25%) delay in one developmental area.

Further, this final rulemaking amends sections in Chapter 30 (Special Education) of Title 5-E to address critical gaps and clarify existing responsibilities related to: child find obligations (or the obligation to identify, locate, and evaluate all children suspected of having a disability), referrals for initial evaluation, local education agency (LEA) responsibility to conduct reasonable efforts to obtain parent consent prior to an initial evaluation, considerations for reviewing data during the initial evaluation of a child under the age of six (6), LEA responsibilities related to extended school year services, and requirements related to the provision and documentation of prior written notice.

A Notice of Proposed Rulemaking was published in the *D.C. Register* for a forty-five (45) day public comment period on April 6, 2018, at 65 DCR 3653. The comment period officially closed on May 21, 2018, with the State Superintendent having received fifteen (15) comments from various local education agencies, community advocates, and stakeholders that focused on the proposed amendments to 5-E DCMR Chapter 30.

OSSE did not receive any substantive comments for Section 3108 (Child Eligibility for Services) in 5-A DCMR Chapter 31. OSSE made two minor technical amendments to this section. First, in § 3108.3, and throughout the rulemaking, OSSE replaced all gender specific pronouns, such as “she or he,” “her or him,” or “hers or his,” with gender neutral pronoun such as “they,” “their,” or “theirs,” or replaced by gender neutral language such as “the child” to demonstrate inclusion of students with nonbinary gender identities. Second, OSSE amended the opening language in § 3108.4 to ensure clarity around when the provision became effective in accordance with the Enhanced Special Education Services Act.

Based on the comments received regarding the provisions set forth in 5-E DCMR Chapter 30, OSSE made the following changes to correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules. The changes do not substantially alter the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the Notice of Proposed Rulemaking.

Subsection 3002.1 describes child find obligations (or the obligation to identify, locate, and evaluate all children suspected of having a disability). OSSE received a number of comments that requested amendment of § 3002.1(c). OSSE did not make any changes to this subsection because the provisions are consistent with the established definition of enrollment in 5-A DCMR § 2199. Additionally, OSSE amended § 3002.1(d) in response to a comment requesting the Superintendent clarify the provision to explain that a child remains eligible until the LEA is obligated to reassess eligibility, and clarify the general entitlement to a free appropriate public education for consistency with 34 CFR § 300.101.

Subsection 3002.6 continues to describe child find obligations. One commenter noted that the way the subsection was written lead to an inconsistency with the federal regulations governing IDEA, 34 CFR § 300.111(c)(1). To ensure that there is no inconsistency, OSSE struck the phrase “may be” and inserted the phrase “suspected of being a child with a disability even though they are” in its place. This was a drafting error and this amendment was necessary to ensure consistency with the federal requirements. Further, OSSE amended § 3002.8 to add the phrase “and the methods available to request those services and programs” to the end of the provision for clarity and consistency with federal requirements.

Additionally, OSSE received comments requesting amendments to § 3002.9(a), which describes the Part C to Part B transition. OSSE has elected not to incorporate the commenters’ suggested changes because this provision is consistent with 34 CFR § 300.124, which ensures the smooth and effective transition of children transitioning from Part C early intervention services to Part B special education services, as clarified in *DL v. D.C.*, 194 F. Supp. 3d 30, 100 (D.D.C. 2016), *aff’d*, 860 F.3d 713 (D.C. Cir. 2017). The provisions in the final regulation do not change the requirements or expectations of LEA, but rather restates existing requirements under IDEA and 5-A DCMR § 2199.

OSSE also received comments regarding an LEA’s responsibilities related to extended school year (ESY) services in § 3002.9(b). Although OSSE did not receive comments that suggested ESY responsibilities did not belong to the prior LEA, a number of comments sought clarity on

when the new LEA's responsibility began. Therefore, OSSE amended the language in § 3002.9(b) to clearly state when a prior LEA's obligation to provide FAPE, regardless of ESY end dates, actually ends and the when a new LEA's obligation to provide FAPE commences. While OSSE acknowledges there are technological challenges associated with these processes, it is committed to providing technical assistance and facilitation to ensure LEAs are supported in meeting their obligations.

Section 3004 (Identification and Referral for Initial Evaluation) addresses critical gaps and clarifies existing responsibilities related to the referrals for initial evaluation. OSSE made two minor technical amendments in this section. First, in § 3004.1, OSSE inserted "(d) An employee of a public agency, as defined by 34 CFR § 300.33, who has knowledge of the child." This amendment did not change the intent of § 3004.1 but rather corrected a drafting error as this phrase was omitted by mistake. The federal law states that a public agency may refer a child for evaluation, consistent with 34 CFR § 300.301(b). Second, § 3004.4 is amended by striking the word "unreasonably" to ensure consistency with federal requirements and guidance. The inclusion of the word "unreasonably" was a drafting error.

In § 3004.2, a number of commenters requested that OSSE add various entities to the list of referral sources. OSSE considered these comments; however, OSSE has elected not to incorporate the commenters' suggested changes because the groups identified by commenters in (b) and (d) are inclusive of many suggested entities. *DL v. D.C.*, 194 F. Supp. 3d at 101, specifically provides a list of required referral sources, although LEAs may consider information provided by any source. Further, OSSE moved § 3004.3 to § 3002.11 to resolve a drafting error.

Section 3005 (Evaluation and Reevaluation) describes the LEA responsibility to conduct reasonable efforts to obtain parent consent prior to an initial evaluation. Commenters requested that OSSE amend § 3005.1(a) to align with the "Enhanced Special Education Services Amendment Act of 2014", as amended by the Fiscal Year 2019 Budget Support Act of 2018. To ensure that no such misunderstanding occurs as to the effective date of this change, OSSE amended the opening language in § 3005.2(a). Additionally, OSSE amended § 3005.2(c) by striking the phrase "and be completed no later than five (5) days prior to the deadline for the initial evaluation" to ensure consistency with existing law. This amended language is consistent with the original intent in the proposed rulemaking but clarifies the requirement.

The amendments in this final rulemaking to 5-E DCMR Chapter 30 also considered comments received on these topic areas in OSSE's June 26, 2017 Advanced Notice of Proposed Rulemaking ("ANPR"), which was published on OSSE's website to provide stakeholders an opportunity to provide advanced comment on proposed amendments to a new Chapter 30. While OSSE has decided to move forward with this shorter final rulemaking now to address and clarify the critical gaps discussed above, OSSE does plan to issue another Notice of Proposed Rulemaking that provides a comprehensive update to the regulatory framework governing the education of children with disabilities that also considers the comments received from the ANPR and the proposed rulemaking in Fall 2018. OSSE believes that this timeline will allow for greater time to provide training and align data systems to ensure stakeholders are appropriately positioned to implement the comprehensive overhaul of the foundational regulations governing the provision of special education and related services to children with disabilities in the District

of Columbia. Furthermore, OSSE believes this timeline will allow for deeper engagement, and plans to also include a public hearing session for only parents and families to provide comments on the future rulemaking. OSSE will also conduct additional public engagement to ensure clarity with the LEA community regarding the intents and impacts of these regulations.

The final rules are being adopted in substantially the same form as proposed with clarifications and deletions taking into account suggestions received in public comments. These changes do not substantially alter or change the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the notice of proposed rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register*.

**Chapter 31, EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:**

**Amend Section 3108, CHILD ELIGIBILITY FOR SERVICES, to add language in § 3108.3 and add a new § 3108.4 to read as follows:**

3108.3        Until § 3108.4 takes effect, pursuant to Part C IDEA regulations at 34 CFR §§ 303.21 and 303.111, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and their third (3rd) birthday and any of the following apply:

- (a)        The child demonstrates a delay of fifty (50%) percent, using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:
  - (1)        Physical development, including vision or hearing;
  - (2)        Cognitive development;
  - (3)        Communication development;
  - (4)        Social or emotional development; or
  - (5)        Adaptive development.
- (b)        The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

- (c) In addition to the above criteria, effective July 1, 2013, the child demonstrates a delay of twenty-five percent (25%), using appropriate diagnostic instruments and procedures, in two (2) or more of the following developmental areas:
  - (1) Physical development, including vision or hearing;
  - (2) Cognitive development;
  - (3) Communication development;
  - (4) Social or emotional development;
  - (5) Adaptive development

3108.4 Beginning July 1, 2018, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and their third (3rd) birthday and any of the following apply:

- (a) The child demonstrates a delay of twenty-five percent (25%), using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:
  - (1) Physical development, including vision or hearing;
  - (2) Cognitive development;
  - (3) Communication development;
  - (4) Social or emotional development; or
  - (5) Adaptive development; or
- (b) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

**Chapter 30, SPECIAL EDUCATION, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:**

**Amend Section 3001, DEFINITIONS, in by adding the following definitions to Subsection 3001.1:**

3001.1 . . .

**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.

. . .

**Enrollment** –A process through which a student obtains admission to a public or public charter school. .

. . .

**Section 3002, LEA RESPONSIBILITY, is amended as follows:**

**Subsection 3002.1 is amended to read as follows:**

3002.1 Provision of FAPE

- (a) The LEA shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the District 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.
- (b) For 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, and children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA.
- (c) Unless otherwise provided in § 3002.9, a public charter school 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 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 subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199.

- (d) A child with a disability shall remain eligible for special education and related services through the end of the semester the child turns twenty-two (22).
- (e) If a child with a disability turns twenty-two (22) during the summer, the child shall be ineligible for further special education and related services under this chapter.
- (f) The services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability.
- (g) When a child with a disability can receive FAPE in the child's local school without transportation, the LEA is not required to provide transportation to an alternative placement unilaterally selected by the child, parent or guardian.
- (h) 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 §3002.9.

...

**Subsection 3002.3 is repealed:**

3002.3 ...

- (a) [REPEALED]

...

**New Subsections 3002.6 through 3002.10 are added to read as follows:**

3002.6 Each LEA and public agency shall 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 of age enrolled in the LEA, including children with disabilities who are homeless, children who are in the custody of the District of Columbia Child and Family Services Agency or committed to the District of Columbia Youth Rehabilitation Services Agency, children who are suspected of being a child with a disability even though they are making progress from 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.

3002.7

The District of Columbia Public Schools 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 LEA, and 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.
- (c) For children under the age of six (6) years old, DCPS shall:
  - (1) Maintain, and update 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. In addition:
    - (A) Contact primary referral sources at least once a month until a referral relationship is established and then every three (3) months thereafter;
    - (B) Develop a system to track frequency and type (in person, email, phone, etc.) of contacts with the primary referral sources described in paragraph (c)(1) to ensure that outreach occurs on a regular basis; and
    - (C) Develop, publish, and distribute 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) Develop and publish printed materials for parents 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), 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) Ensure 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).

3002.8 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.

3002.9 The LEA's obligation to make FAPE available to a child with a disability commences upon completion of the child's registration, in accordance with subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199, except that:

- (a) 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 CFR § 300.124, including ensuring that:
  - (1) The LEA participates in transition planning conferences, as appropriate;
  - (2) The LEA has developed an IEP by the child's third birthday, including:

- (A) 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
  - (B) For DCPS, the LEA has developed an IEP by the third birthday of any child who is a resident of the District of Columbia who is not enrolled in a public charter school LEA; and
- (3) 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.
- (b) For all other children not covered by paragraph (a) transferring 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.
  - (c) 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.

3002.10 DCPS is responsible for conducting child find activities for children who are homeschooled and resident and nonresident parentally-placed private school child 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 the LEA prior to evaluation or development of an IEP.

3002.11 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.

**Section 3004, IDENTIFICATION & REFERRAL FOR INITIAL EVALUATION, is amended to read as follows:**

**3004 IDENTIFICATION AND REFERRAL 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 CFR § 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 CFR § 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 individuals, as a request for initial evaluation in accordance with 34 CFR § 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 or implement pre-referral interventions.
- 3004.4 The LEA shall notify the parent of receipt of any referral received under § 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.

**Section 3005, EVALUATION AND REEVALUATION, is amended as follows:**

**By adding paragraphs (b)-(d) to Subsection 3005.2 and adding paragraphs (b)-(c) to Subsection 3005.4 to read as follows:**

3005.2 . . .

- (a) Beginning July 1, 2018, an LEA shall assess or evaluate 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 or assessment. The LEA shall make reasonable efforts to obtain parental consent within thirty (30) days from the date the student is referred for an assessment or evaluation.
- (b) The LEA shall document reasonable efforts to obtain parental consent. Reasonable efforts include at least three (3) documented attempts using at least two (2) of the following modalities on at least three (3) different dates:
  - (1) Telephone calls made or attempted and the results of those calls;
  - (2) Correspondence sent to the parents and any responses received; or
  - (3) Visits made to the parents' home or place of employment and the results of those visits.
- (c) Reasonable efforts for the purposes of obtaining parental consent for initial evaluation shall begin no later than ten (10) business days from the referral date.
- (d) The initial evaluation timeline in this Section does not apply to the LEA if:
  - (1) 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

- (2) 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.

...

3005.4

...

- (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.
- (c) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
  - (1) Whether the child has a particular category of disability under this chapter or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
  - (2) The present levels of performance and educational needs of the child;
  - (3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
  - (4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

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**Section 3017, EXTENDED SCHOOL YEAR SERVICES, is amended as follows:**

**Subsections 3017.1 and 3017.2 are amended to read as follows:**

- 3017.1 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.
- 3017.2 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 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.

**Section 3024, PROCEDURAL SAFEGUARDS – PRIOR WRITTEN NOTICE, is amended to read as follows:**

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

- 3024.1 Consistent with 20 USC § 1415(b)(3), 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.
- 3024.2 Prior written notice shall be:
- (a) Written in language understandable to the general public;
  - (b) Documented in the system of record each time it is provided to the parent, including the mode of delivery;

- (c) 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
- (d) 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 paragraph have been met.

**Section 3025, PRIOR WRITTEN NOTICE CONTENT, is amended to read as follows:**

**3025 PRIOR WRITTEN NOTICE CONTENT**

3025.1 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 the 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 the IDEA and this chapter, including:
  - (1) Parent Training and Information Center established pursuant to Section 671 of IDEA (20 USC § 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.