

**SCHOOL DISTRICT OF
NEWBERRY COUNTY**



OFFICE OF SPECIAL SERVICES

**SPECIAL EDUCATION
POLICIES AND
PROCEDURES**

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Wendy E. Stoudemire, Director of Special Services

INTRODUCTION

The purpose of this document is to provide the policies and procedures regarding services for students with disabilities as defined by the Individuals with Disabilities Education Act (IDEA). This document provides the School District of Newberry County's interpretation of various statutory provisions and does not impose any requirements beyond those included in federal and state laws and regulations. In addition it does not create or confer any rights for or on any person.

This is a living document and will be updated on a regular basis as the District receives further guidance from the South Carolina State Department of Education, the United States Department of Education Office of Special Education Programs, results of court decisions, and changes in state statute. To ensure that you are referencing the most recent version of the policies and procedures, please check the date of the document.

For the South Carolina special education regulations, please consult State Board of Education regulation 43-243 and 43-243-1 at <http://ed.sc.gov/districts-schools/special-education-services/state-regulations>

For the United States special education regulations, please consult the Office of Special Education Programs at <http://idea.ed.gov/explore/home>

The School District of Newberry County does not discriminate on the basis of race, color, national origin, sex, or disability in admission to, treatment in, or employment in its programs and activities. Inquiries regarding nondiscrimination policies should be made to the Executive Director of the Office of Human Resources, PO Box 718, Newberry, SC 29108, 803-321-2600.

Table of Contents

Chapter 1: Parent Rights in Special Education (Procedural Safeguards).....	1
Chapter 2: Child Find.....	8
Chapter 3: Initial Evaluation and Eligibility.....	12
Chapter 4: The Individualized Education Program.....	22
Chapter 5: Special Education and Related Services.....	36
Chapter 6: Educational Placement and Least Restrictive Environment.....	42
Chapter 7: Reevaluation.....	47
Chapter 8: Suspension and Expulsion of Children with Disabilities.....	55
Chapter 9: Children in Private and Parochial Schools including Home Schools.....	63
Chapter 10: Discontinuing Special Education Services.....	71
Chapter 11: Confidentiality.....	74
Chapter 12: Dispute Resolution.....	81
Chapter 13: Surrogate Parents.....	93

CHAPTER 1: PARENT RIGHTS IN SPECIAL EDUCATION (PROCEDURAL SAFEGUARDS)

Parents of a child with a disability are entitled to specific procedural safeguards under IDEA and the South Carolina Board of Education Regulations. The School District of Newberry County (hereafter referred to as the District) provides parents with a copy of the procedural safeguards at least once a year during the annual review. In addition, the District provides parents with a printed copy of this procedural safeguards notice in each of the following circumstances:

- a) Upon the initial referral or parent request for evaluation;
- b) Upon receipt of the first State complaint or due process hearing request in a school year;
- c) Upon a change in placement for disciplinary action; and
- d) When requested by the parents or the student who has reached the age of majority.

The District will use the current District Procedural Safeguards Notice for notification of procedural safeguards and parent rights. The Procedural Safeguards Notice includes a full explanation of all of the procedural safeguards available as identified in 34 CFR § 300.504(c).

PARENT PARTICIPATION

The School District of Newberry County will ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child. Additionally, parents have a responsibility to participate and provide their input into their child's education (34 CFR § 300.501(b) and (c)).

Every child with a disability aged 3 to 21 is entitled to receive a Free Appropriate Public Education (FAPE). Parent rights are intended to ensure that children receive a FAPE. A FAPE is defined as special education and related services that meet the following criteria:

- Are provided at public expense, under public supervision and direction, and without charge;
- Meet the standards of the state, including the requirements of this part;
- Include an appropriate preschool, elementary school, or secondary school education in the state; and
- Are provided in conformity with an IEP that meets the requirements of 34 CFR §§ 300.320 through 300.324. (34.CFR § 300.117)

The District will ensure that parents are provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a FAPE for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings. The notice requirements are the same as for notice of an IEP meeting (34 CFR § 300.501(b)(2); 34 CFR § 300.322(a)(b)(1)).

The District will make reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is other than English. The parent and the District may agree to use alternative means of meeting participation, such as video conferences

or conference calls (34 CFR § 300.322(e)). These meeting requirements do not apply to informal or unscheduled conversation of District personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting (34 CFR § 300.501(b)(3)).

DEFINITION OF PARENT

The District will determine the appropriate person(s) to make educational decisions on behalf of the child. Those individuals have a right to receive notice, give or revoke consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc. According to the IDEA, a “parent” is defined as:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibits a foster parent from acting as a parent;
- (3) 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 a ward of the State);
- (4) 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
- (5) A surrogate parent who has been appointed in accordance with 34 CFR § 300.519 of the IDEA.

SURROGATE PARENTS

The District will assign an individual to act as a surrogate parent when

- No parent (as defined above) can be identified;
- The District, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of that state; or
- 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)).

The district staff will determine if a student needs a surrogate parent and notify the Director of Special Services regarding any student who needs a surrogate parent. Any questions as to who should serve as parent will be referred to the Director. The Director of Special Services will maintain a list of people eligible to serve as surrogate parents and will ensure that the surrogate parents are appropriately trained. The Director of Special Services will select and assign a surrogate parent using the district surrogate parent forms.

A surrogate parent may be removed when a parent appears to represent the child or revokes consent or when the child is no longer eligible for special education services. A person serving as a surrogate parent may resign at any time by submitting his or her resignation in writing to the District.

The District will ensure that a person selected as a surrogate parent:

- Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- Has knowledge and skills that ensure adequate representation of the child.

The surrogate parent will document that he or she meets these qualifications and has been trained on the surrogate parent form.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a FAPE. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the requirements, until a surrogate parent can be appointed that meets all of the requirements. The District will make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after determining that the child needs a surrogate parent.

In cases where a parent is unresponsive, lives a great distance from the District, or is incarcerated, the District may obtain written authorization from the parent to appoint a surrogate parent to represent the child after the initial consent for placement has been obtained. Parent permission for the appointment of a surrogate parent must be voluntary and explicitly authorized in writing and is revocable at any time. The surrogate parent, once appointed, will then represent the child until such time as the parent revokes authorization.

PRIOR WRITTEN NOTICE

One of the procedural safeguards afforded to parents is the required Prior Written Notice (PWN) of certain proposed special education actions. This notice must be provided to parents within a reasonable amount of time before the date the LEA proposes or refuses to initiate or change the

- identification,
- evaluation,
- educational placement of their child, or
- provision of a FAPE to their child. (34 CFR § 300.503(a))

The PWN provided to parents for each proposed special education action will contain specific information:

- a description of the action proposed or refused;
- an explanation of why the LEA proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the LEA used as basis for proposed or refused action;
- a description of the other options the IEP team considered and reasons why they were rejected;
- a description of any other factors relevant to the proposal or refusal;
- a statement that the parents have parental rights under the law; and
- sources for parents to contact to assist in understanding their rights.

Additionally, if the PWN is to propose to conduct an initial evaluation or a reevaluation, the notice will describe any evaluation procedures that the LEA proposes to conduct (34 CFR § 300.304(a)(1)). The psychologist or case manager is responsible for completing and sending PWN using the form in the IEP software and filling the form out completely. In general, no changes will be implemented until five school days after PWN has been sent to give the parents time to read the PWN and disagree if they wish to do so. If the parent is physically in attendance at the meeting, the parent may waive the five day timeline, but this must be documented in the minutes and in the PWN and be reflected in the initiation date for the IEP.

The PWN will be provided in language understandable to the general public, and in the native language of the parent unless it is clearly not feasible to do so. Additionally, if the native language or other mode of communication of the parent is not a written language, the District will take steps to ensure that (a) the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication (such as sign language); (b) the parent understands the content of the notice; and (c) there is written documentation that these requirements are met. (34 CFR § 300.503(b) and (c))

In the School District of Newberry County Prior Written Notice will be provided after all meetings prior to implementing any changes recommended by the team (usually sent 5 days prior to the implementation of the changes). In amending a child's IEP, the parent of a child with a disability and the District representative may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Even when using the IEP amendment process, the District will provide PWN of any changes agreed upon in the IEP.

PARENT CONSENT

Federal and state laws and regulations have specific requirements for requesting parent consent. Consent must always be "informed consent." The parent must agree in writing to the action for which his or her consent is sought (34 CFR § 300.300). In determining that informed consent is obtained, the following must be ensured:

- The parent is fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (34 CFR § 300.9)

Parent consent with PWN is required by the District for the following actions:

- Consent to conduct an initial evaluation

- Consent to conduct a reevaluation. Informed parental consent is not required to conduct a reevaluation if the District can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond (34 CFR § 300.300(c)). In the School District of Newberry County this requires at least two documented varied attempts to secure informed parent consent.
- Consent for the initial provision of services on the IEP.

The School District of Newberry County does not obtain written parent consent when reviewing existing data as part of an evaluation or reevaluation plan or when administering a test or evaluation that is given to all students unless consent is required of all parents. Furthermore, the District does not obtain written parent consent but does provide PWN for a change in placement or increase/decrease in amount of special education services once parent has given consent for initial provision of special education services.

The following requests for parent consent do not require that the parent be provided the PWN as described above, however; parents will be fully informed about what they are being asked to provide consent.

- Consent to excuse an IEP team member from IEP team meeting: A required member of the IEP team, may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if, (a) the parent, in writing, and the District consent to the excusal; and (b) the IEP team member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting (34 CFR § 300.321(e)).
- Consent to invite outside agency: When the IEP team is considering a child's postsecondary goals and transition services needed to assist the child in reaching those goals, the District is required to invite a representative of any agency that is likely to provide or pay for transition services. The District will obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting. (34 CFR § 300.321(b)(3))
- Consent for use of private insurance and Medicaid: The district will obtain a one-time written consent from the parent, after providing written notification of the intent to bill, but before accessing the child's or the parent's public benefits or insurance for the first time. In addition to the requirement to provide written notification prior to accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent, the district will continue to provide written notification annually to the child's parents before accessing the public benefits or insurance. The written notification will explain all of the protections available to parents under Part B of the IDEA, as described in 34 C.F.R. § 300.154(d)(2)(v) to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice will be written in language understandable to the general public and 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.
- Consent to allow an individualized family services plan (IFSP) to be used as an IEP: 34 CFR § 300.323(b). In general, the District will develop an IEP rather than continue to use the IFSP.

REVOCATION OF PARENT CONSENT

Under the December 2008 amendment to regulation 34 CFR § 300.300(b)(4), a parent or student who has reached the age of majority may revoke consent for the continued provision of special education and related services. This revocation must be provided to the District in writing so that both the parent and the District have documentation that the child will no longer receive special education and related services.

Once the District receives a parental revocation of consent, in writing, for all special education and related services (the parent may not revoke consent for a particular service), for a student the District will promptly provide the parent or student who is 18 or older with PWN regarding the change in educational placement and services that will result from the revocation. The PWN will be provided a reasonable time before the District discontinues services and will give the parent information and time to fully consider the change and its implications. This PWN will ensure that parents are fully informed of the educational services and supports that they are declining. The PWN will inform the parent, as plainly as possible, that the student will no longer receive any special education or related services; nor will the student be entitled to the protections under the IDEA disciplinary procedures if he or she violates the District's disciplinary code of conduct. The District will not discontinue services until the PWN has been provided to the parent. If the student who has reached age 18 revokes consent for services, the District will provide any notice (including PWN) to the student and parents under 34 CFR § 300.520(a)(1)(i). Once the District has provided PWN, the District will, within a reasonable time, discontinue all special education and related services to the child. The District may consider the appropriateness of a 504 evaluation under Section 504 of the Rehabilitation Act of 1973 (Section 504) for the student.

Revocation of consent releases the District from responsibility and liability for providing a FAPE from the time the parent revokes consent in writing until the time, if any, that the child is again evaluated and deemed eligible for special education services and related services. Once a parent has revoked consent and PWN has been provided, the child is considered to be a general education student. The revocation is for all special education services.

The parent's revocation of consent is not retroactive; therefore, the District will not amend the child's educational records to remove any references to the child's receipt of special education and related services. After withdrawing their child from special education services, the parent maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education.

NOTICE OF IEP TEAM MEETING

The District will take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting will be scheduled at a mutually agreed upon time and place. The District will provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The written notice will indicate:

- the purpose;
- the date;

- the time;
- the location of the meeting;
- the titles or positions of the persons who will attend on behalf of the District; and
- information about the parents' right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child;
- information about the parents' right to have the local Part C coordinator or other representative invited if their child was previously served in Part C; this would help ensure a smooth transition.

In addition, beginning not later than the first IEP to be in effect when the child turns 13, or younger if determined appropriate by the IEP team, the notice will:

- indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
- indicate that the District will invite the student; and
- identify any other agency that will be invited, with parent consent (or student consent if age 18), to send a representative. (34 CFR § 300.322(b))

The District staff will make and document at least two varied attempts to secure parent participation at the meeting. The District will only hold an IEP meeting without a parent if it cannot convince a parent to respond and/or attend the meeting.

STUDENT RIGHTS AT AGE 18

When a student reaches the age of majority (age 18), District personnel will provide all required special education notices to both the student and to the parents and obtain informed consent for specified special education actions from the student (same requirements as for parents). Parents are not entitled to attend the IEP meeting; however, either the District or the student may, but are not required to, invite the parents to attend IEP meetings as persons who are knowledgeable about the student. At age 17, the District will include a statement on the IEP that statement that the student has been informed that at age 18, he or she has attained the age of majority in South Carolina and all parent rights transfer to him/her. The case manager is responsible for notifying the student and having both the parent and student sign the Notice of Transfer of Rights at 18 Form as well as being responsible for providing the student and parent with a copy of the Procedural Safeguards Notice.

The only situation in which all rights do not automatically transfer to the student at age 18 is when a court has judged the student to be unable to fulfill his or her responsibilities (determined the student to be "incompetent"). When this has occurred, the District must provide PWN and obtain informed consent from the person whom the court has appointed as the legal guardian.

CHAPTER 2: CHILD FIND

In accordance with federal law, the School District of Newberry County assumes responsibility for the location, identification, and evaluation of all children ages 3 – 21 who reside in Newberry County, as well as private school students who attend school within Newberry County, **who the District has reason to suspect is a child with a disability and is in need of special education or related aids and services.** This includes children who attend public or private schools; those who are homeschooled; those who are highly mobile, including migrant and homeless; Adult Education Students; students in residential treatment facilities; and those who are wards of the state. This also includes children who are suspected of having a disability even though they are advancing from grade to grade (34 C.F.R. §300.111(a)(c)). Students who turn 21 on or before September of the school year are no longer eligible for services in the District.

METHODS FOR CHILD FIND

The first step in the child find process is to provide information to the public concerning the availability of special education services for children with disabilities, including procedures for accessing these services. Copies of the information from child find activities are kept on file in the District Office of Special Services as documentation that this has been done. Information on the child find process may be provided through a variety of methods that may include information on the District website, information in school handbooks, information distributed to private schools, and information distributed to other agencies and professionals that would likely encounter children with a possible need for special education.

The District operates a comprehensive system of child find in order to identify, locate, and evaluate children with disabilities who reside within Newberry County. Child find activities may involve a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Intervention is another method. Screenings usually focus on medical, communication, cognition, motor, adaptive behavior, and/or social and emotional development. Child find activities, including these screenings, are free of charge to parents. If the screening finds a problem in one or more of these areas, then a full and individual evaluation is necessary. This is also free to the parents. The District does not do mass screening of all children, but a process is available for any child for whom there is a concern about an area of development including communication, cognitive development, social-emotional development, self-help/adaptive behavior, and/or physical development; and hearing and vision. The District coordinates with the local Part C BabyNet providers to refer children birth through age 2 for Part C child find activities to ensure that all children have access to interventions and services in a timely manner.

Children who are transitioning from the Part C Infant and Toddler program are not required to participate in a Part B screening process at age 3. Upon receipt of a referral from a Part C Infant-Toddler Program, the District will coordinate with the Part C Provider and the parent to schedule a transition meeting and review the records to determine the need for any additional assessments. If additional assessments are needed, an evaluation planning meeting will be held to secure parent permission and plan for the evaluation. The district maintains

documentation on results of child find activities and collaboration with Part C throughout the transition process. The District safeguards the confidentiality rights of the parents to ensure that the collection and use of data under the child find requirements are in compliance with the confidentiality requirements under the Family Educational Rights and Privacy Act (FERPA).

GENERAL EDUCATION INTERVENTIONS

Each school in the District has a Student Intervention Planning Team (SIP Team) that coordinates general education interventions for students who are presenting academic, functional, and/or behavioral difficulties. The purpose of general education intervention is to intervene early when there are concerns about a student. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during general education intervention assists District personnel in determining which children may be children with disabilities who need to move into initial evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process.

The general education intervention process should continue until a successful intervention is determined, until it is evident that the successful intervention requires resources beyond those available in general education, and/or until the team suspects that the child is a child with a disability. At any time during the general education intervention, the team responsible for planning and implementing the interventions has three decisions that may be made:

1. Continue the intervention and monitor the child's progress; or
2. Change or modify the intervention and monitor the child's progress; or
3. Change or modify the intervention, monitor the child's progress, and refer the child for an initial evaluation to determine eligibility for special education and related services.

The child might be referred for evaluation if

- District personnel have data-based documentation which indicates that general education interventions and strategies would be inadequate to address the areas of concern for the child.
- District personnel have data-based documentation that indicates that prior to, or as a part of the referral, the following were met:
 - the child was provided appropriate instruction in regular education settings that was delivered by qualified personnel;
 - the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction;
 - the assessment results were provided to the child's parents; and
 - the assessment results indicate an evaluation is appropriate.

Because the provisions related to child find in section 612(a)(3) of the IDEA, require that a state have in effect policies and procedures to ensure that the state identifies, locates and evaluates all children with disabilities, it is critical that this identification occur in a timely

manner and that no procedures or practices result in delaying or denying this identification. The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of Response to Intervention (RTI) strategies cannot and will not be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8. If a parent requests an evaluation, **even if the child is currently receiving interventions through the RTI process**, the principal or designee is responsible for notifying the school psychologist who will coordinate scheduling a multidisciplinary team meeting to review the data and determine if there is reason to suspect a disability. If the District agrees with a parent who refers his/her child for evaluation that the child **may be a child with a disability and in need of specialized instruction**, the District will evaluate the child. The District will provide the parent with notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. The District will conduct the initial evaluation within 60 calendar days of receiving parental consent for the evaluation. 34 CFR §300.301(c). If the District does not agree with the parent that there is reason to suspect that the child is a child with a disability, the District will provide the parent with Prior Written Notice to that effect that includes among the other required components a description of the action refused by the District, a description of why the District refused the action, and sources for parents to contact to obtain assistance in understanding their procedural safeguards.

REFERRAL FOR INITIAL EVALUATION

Screening and general education interventions are child find activities, and either process may result in the determination that an initial evaluation for special education is needed. Most decisions to move forward into initial evaluation will come as a result of these processes. However, there are instances when requests for evaluation may be made by parents or by adult students. The following describes the procedures to be used when such requests occur.

Referrals from parents: Parents have the right to request an evaluation. The request should be made in writing (unless the parent is clearly unable to do so) and given to an Administrator at the child's school, the District Director of Special Services, or to the child's Teacher. If the parent makes a request for a referral or a request for referral information orally, it will be clearly communicated to the parent that the request should be submitted in writing to the School Principal or to the District Director of Special Services (although requests made in writing to the child's teacher or to other school administrators at the child's school will be accepted). **The School Principal and Director of Special Services will have a form that the parent can complete to request an evaluation and will assist the parent in completing the form if necessary (or designate another staff member to so).** Parental submission of medical information from a licensed health practitioner, including independent evaluations, may be sufficient to constitute a parental referral or request to evaluate a child for eligibility for special education or related aids and services.

The District will respond to the request within a reasonable period of time. The building principal or person designated to respond to parent requests for evaluations will explain to the parents the following:

- They have the right to request an evaluation;

- The District may refuse to conduct the evaluation. The Prior Written Notice will explain why the District refuses to conduct the evaluation;
- If the SIP team recommends participation in the intervention process, then the parent can request the initial evaluation be conducted without waiting for general education interventions to conclude. The general education intervention process may be conducted as part of the initial evaluation if the team agrees that the child should be evaluated. If the team disagrees that the child should be evaluated Prior Written Notice to that effect will be provided (see General Interventions section).

Referrals from an adult student: A referral from adult student will be handled as above except the student will act in the role of the parent.

Regardless of how the decision to move forward with an initial evaluation is made, the District will ensure that all data collected prior to the evaluation (i.e., data collected as part of screening or general education intervention) is provided to the evaluation team. This will ensure that the evaluation team has a basis for understanding what additional data may be need to be collected if the initial evaluation process goes forward.

CHAPTER 3: INITIAL EVALUATION AND ELIGIBILITY

An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education services. There is a two-pronged test for eligibility: (1) whether the child is a child with a disability and by reason thereof, (2) has a need for special education and related services. The initial evaluation process begins when a referral for initial evaluation is made and applies to all children beginning at age 3.

PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

When a referral for initial evaluation occurs, whether initiated from outside the District or within the District, the multidisciplinary team will meet to consider information provided in the referral or in the parent request for an evaluation and in the child's file including information collected during general education interventions. **This meeting should occur in a timely manner following receipt of the evaluation request. While longer times may be warranted based on the availability of school staff or parents, the District generally anticipates that the meeting will be scheduled and held within 10 school days of the referral.** Upon referral for an initial evaluation, regardless of the source, the District will provide the parents or the adult student with a copy of the Procedural Safeguards Notice (34 CFR § 300.503).

Based on this information the District will determine whether it will propose to conduct an evaluation and what procedures the evaluation will include (such as review of existing information or new assessment tools and strategies). The staff will then prepare the Prior Written Notice (PWN) of *proposed* its action/**determination** to provide to the parent. **The District will conduct an evaluation if the District suspects the child has a disability and is in need of special education or related aids and services.** In some cases, **however**, the District staff may determine that there is not enough evidence to support conducting an initial evaluation and would, therefore, refuse to conduct the initial evaluation. **PWN will be provided in either case.**

Following the reviews described more fully below, the District will also provide PWN to the parents that describes any evaluation procedures the District proposes to conduct (34 CFR § 300.304(a)). In addition, there are standard components the **evaluation** notice must also contain.

The PWN will include

- 1) A description of the action proposed by the agency;
- 2) An explanation of why the agency proposes the action;
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action;
- 4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained;
- 5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards;
- 6) A description of other options considered and the reasons why those options were rejected; and
- 7) A description of other factors that is relevant to the agency's proposal. (34 CFR § 300.503(b))

8) Additionally, since this notice is to propose to conduct an initial evaluation, the notice will describe any evaluation procedures that the District proposes to conduct (34 CFR § 300.304(a)(1)).

The notice will be written in language understandable to the general public and 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. If the native language or other mode of communication of the parent is not a written language, the District will take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice. The District will maintain written evidence that this has been done (34 CFR § 300.503(c)).

The Multidisciplinary Team Meeting to Plan the Evaluation

Upon determination an evaluation is warranted, the first activity for the multidisciplinary team is to conduct a review of existing data. The team will consider all data that are currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents (34 CFR § 300.305(b); 34 CFR § 300.300(d)(1)).

After the team has reviewed the existing data, there will be a determination of what data, if any, will be collected during the evaluation. The PWN will be completed to reflect the data that will be collected as part of the evaluation.

a. Requirements if No Additional Data are Needed

If the team has determined that no additional data are needed to determine whether the child is a child with a disability, and to determine the child's educational needs, the psychologist will notify the parents:

- of that determination and the reasons for it; and
- of the right of the parents to request an assessment to determine whether the child is a child with an disability, and to determine the educational needs of the child. The District is not required to conduct the assessment described above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the District may refuse to do so, but it will provide the parents with PWN of the refusal to conduct the assessment and the reasons for the refusal. The parents may then request mediation or due process if they want the assessment conducted.

b. Requirements if Additional Data are Needed

If the team has determined that additional data are needed, the team will plan who will collect it and plan to ensure all data will be collected within the evaluation timeline. The procedures to be used to collect the data will be described on the PWN for the initial evaluation and provided to the parents for their consent.

Parent Consent

The District will obtain informed consent from the parent of the child before conducting the evaluation (34 CFR § 300.300(a)). In determining that informed consent is obtained, the following will be ensured (34 CFR § 300.9):

- a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her 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 may be revoked at any time.
- d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation will not be construed as consent for the initial provision of special education and related services.

The District must provide PWN to the Parent of its intent to conduct the evaluation before it can obtain Parent's written consent for the evaluation. Generally, PWN and the request for consent is provided to Parent simultaneously. The District will endeavor to provide the PWN and consent forms to parents within 10 school days of the evaluation planning meeting.

Failure to Respond or to Provide Consent

The District will make reasonable attempts to obtain consent from the parents to conduct the initial evaluation. "Reasonable attempts" will include at least two contacts by two different methods (phone calls, letters, visits, email, etc.). Documentation of such attempts will be kept in the student's folder, including records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents home or place of employment, and the results, if any, from the parents (34 CFR § 300.322(d)).

If the parent does not provide (refuses) consent or fails to respond to a request to provide consent for an initial evaluation, the District may, but is not required to, pursue the initial evaluation by utilizing mediation or by requesting a due process hearing. The District does not violate its obligation to provide a FAPE if it declines to pursue the evaluation (34 CFR § 300.300(a)(3)). Additionally, under the disciplinary protections, the District would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services or the child has been evaluated and determined not to have a disability.

The District will also locate, identify, and evaluate children who are placed by a parent in a private school or home schooled. If the parent of a child who is home schooled or placed in a private school does not provide consent for the initial evaluation, or the parent fails to respond to a request to provide consent, the District cannot and will not use mediation or due process procedures to obtain consent. In this case the District is not required to consider the child as eligible for services and does not violate the a FAPE requirement (34 CFR § 300.300(b)(4)).

THE MULTIDISCIPLINARY EVALUATION TEAM

Once consent has been obtained from the parent, a team is formed that will have the responsibility of carrying out the evaluation process. The membership of the evaluation team is the child's IEP team (should the child be found eligible), including the parents. The team may include other qualified professionals, as appropriate.

This team includes:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child;
- A representative of the local education agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disability, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of District resources;
- An individual who can interpret the instructional implications of evaluation results;
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (34 CFR § 300.321; 34 CFR § 300.308)

TIMELINE FOR CONDUCTING THE INITIAL EVALUATION

The District complies with the 60 day timeline consistent with federal regulations (34 CFR § 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation and ends with the verification that all of the required information has been gathered in order to make an eligibility determination. The District begins this timeline the day the first person in the District receives the signed parental consent for evaluation and maintains documentation to show that there was no delay in the initiation of the evaluation process. When there is a delay in receiving the consent, the District maintains a record of attempts to obtain the consent.

For children who transfer from one public agency to another in the same school year, assessments are coordinated with the child's prior district, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior district (34 CFR § 300).

Exceptions to the Timeline

There are only two specific instances when an extension of the 60-day timeline may be justified:

- a. If the parent of the child repeatedly fails or refuses to produce the child for the

- evaluation;
- b. If a child enrolls in the District after the evaluation has begun and before the determination of eligibility; however, in this case, the School District of Newberry County will ensure that sufficient progress is made to ensure a prompt completion of the evaluation, and the parent and the district will agree to a specific timeline for completion and agree in writing to a specific time when the evaluation will be completed. (34 CFR § 300.301(d))

A third instance when an extension may be justified occurs for specific learning disabilities only 34 CFR § 300.309(b). This occurs when prior to a referral a child has not made adequate progress after an appropriate period of time when provided instruction, as described in §§ 300.306(b)(1) and (b)(2); and whenever a child is referred for an evaluation. The instruction referred to in the above sections are (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel; *and* (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided by the child's parents. The agreement to extend the timeframe will be in a written agreement of the child's parents and a group of qualified professionals as described in § 300.306(a)(1). The eligibility team must consider data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, to document that the suspected SLD is not due to lack of appropriate instruction in reading or math. Another caveat to this third exclusion is if a child suspected of having a SLD has participated in a process that assesses the child's response to scientific, research-based intervention, under 34 CFR §300.311(a)(7), the documentation of the determination of eligibility, as required in 34 CFR §300.306(a)(2), must contain a statement of the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided, the strategies for increasing the child's rate of learning and the parents' right to request an evaluation.

CONDUCTING THE EVALUATION

The initial evaluation will include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining

- if the child is a child with a disability;
- whether the child needs special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (34 CFR § 300.305(a)(2))

During the evaluation process, the child will be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304(c)(4)). All assessment tools and strategies will provide relevant information that directly assists in determining the educational needs of the child (34 CFR § 300.304(c)(7)). When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. When selecting assessment tools to assist in gathering the evaluation data across any of the six typical sources of data (general education curriculum progress, general education interventions, records review, interviews, observations, and tests), those conducting the evaluation also ensure the following requirements are met (34 CFR § 300.304(b) and (c)):

- Use a variety of assessment tools and strategies.
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Materials and procedures used to assess a child with limited English proficiency shall be 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.
- Assessments and other evaluation materials are:
 - selected and administered so as not to be discriminatory on a racial or cultural basis;
 - 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;
 - used for the purposes for which the assessments or measures are valid and reliable;
 - administered by trained and knowledgeable personnel;
 - administered in accordance with instructions provided by the producer of the assessments (Note: 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) must be included in the evaluation report.)
 - tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient;
 - selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

The evaluation will be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category being considered for the child.

ELIGIBILITY DETERMINATION AND DOCUMENTATION

When the evaluation is completed and the information has been compiled, the team will schedule a time to convene in order to make the determination of eligibility. Eligibility determination is made no later than fifteen business days after the completion of the evaluation. Parents are provided an opportunity to participate in the eligibility meeting, which can and usually will be conducted at the same time as the IEP team meeting. The team will ensure that information obtained from all sources used in the evaluation is documented and carefully considered (34 CFR § 300.306(c)(1)(ii)). At this meeting, the parents and other qualified professionals review the results of the initial evaluation to determine whether the child is a child with a disability as defined in federal and state laws and regulations and the educational needs of the child (34 CFR § 300.306(a)).

When interpreting evaluation data for the purpose of making these determinations, the team will draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered (34 CFR § 300.306(c)(1)(i) and (ii)).

The team will ensure that the child meets the definition of one of the categories of disability and, as a result of that disability, needs special education and related services (i.e., the two-pronged test) (34 CFR § 300.8). If a child meets the definition of a disability category but does not need special education and related services, she or he cannot and will not be determined eligible under the IDEA. If the child has a need for special education and related services but does not meet the definition of a disability category, she or he cannot and will not be determined eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a 504 evaluation may be considered.

Eligibility Determinations for Learning Disabilities

The group evaluating a child for a specific learning disability collects data to determine that the child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- oral expression;
- listening comprehension;
- written expression;
- basic reading skill;
- reading fluency skills;
- reading comprehension;
- mathematics calculation; or
- mathematics problem solving.

Additionally, in order for a child to be eligible as a child with a specific learning disability, the evaluation and eligibility report must document that the child meets the following conditions:

- The child does not achieve adequately for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards, **AND**
The child does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;
- OR**
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.
- The determinate factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or state-approved grade-level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
 - a visual, hearing, or motor disability;
 - intellectual disability;
 - emotional disturbance;
 - cultural factors;
 - environmental or economic disadvantage; or
 - limited English proficiency (34 CFR § 300.309(a)(3)).

Eligibility Report

The evaluation team is responsible for ensuring that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team will document the decision made regarding the child's eligibility for special education and related services. Once the evaluation report and documentation of eligibility has been completed, each team member will certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member will submit a separate statement presenting the member's conclusions (34 CFR § 300.311(b)).

The eligibility determination serves as the documentation of the child's eligibility. The evaluation report and the documentation of eligibility will be provided, at no cost, to the parent (34 CFR § 300.306(a)(2)). The eligibility documentation documents that the determinant factor for the determination of eligibility is not due to a lack of appropriate instruction in reading or math, or a limited English proficiency. The District also documents that information was drawn from a variety of sources, including tests that are required by the South Carolina Eligibility Requirements, parent input, teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The report also identifies the proposed category of disability.

There are specific requirements for reporting the eligibility determination for a child with a specific learning disability (34 CFR § 300.311). The evaluation report includes the following statements:

- a. 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 applicable laws and regulations;
- c. the relevant behavior noted during the observation of the child; and for LD the relationship of that behavior to the child's academic functioning;
- d. the educationally relevant medical findings, if any;
- e. whether
 - (i) the child does not achieve adequately for the child's age or to meet State approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards;

AND

 the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;

OR

 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.
 - (ii) the team determines the reason the child does not achieve adequately for the child's age, does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of visual, hearing or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.
- f. if the child has participated in a process that assesses the child's response to scientific, research-based intervention, the report must also document the instructional strategies used; and the student-centered data collected.
- g. Documentation that the child's parents were notified about the process, including the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parent's right to request an evaluation (34 CFR § 300.309(a)(3); 34 CFR § 300.311(a)); and
- h. Signatures of each team member indicating whether the report reflects their conclusion. If it does not reflect the team member's conclusion, the team member will submit a separate statement presenting his or her conclusion and attach it to the IEP.

PRIOR WRITTEN NOTICE FOR IDENTIFICATION

After the eligibility determination is made, the District will provide PWN to the parents that the District proposes to initially identify the child as a child with a disability (including the category proposed) and that the child requires special education and related services. Likewise,

the District will give PWN to the parents if they determine that a child is not eligible for special education services or related services.

INDEPENDENT EDUCATIONAL EVALUATION

After an initial evaluation is completed, if the parents disagree with the District's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation will be considered by the District. While the District will always consider the results of an independent evaluation, the District may decide not to accept or agree with all or part of the independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the School District of Newberry County. Public expense means that the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. If the parent requests an independent educational evaluation the District will either

- Provide information to the parent about where an independent educational evaluation can be obtained, the agency criteria (which may include qualifications of examiners and location to obtain the evaluation); AND
- Ensure that the evaluation is provided at public expense, unless the special education due process hearing officer determines that the independent educational evaluation did not meet agency criteria; OR
- Initiate a due process hearing to show that the District's evaluation was appropriate.

If a parent requests an independent educational evaluation, the District may ask the reason for the objection to the public evaluation. However, the explanation by the parent will not be required, and the District will not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

If the District requests a due process hearing, a due process hearing officer would determine whether the District must pay for the independent educational evaluation. If the District's evaluation is found to be appropriate and the parents still want an independent educational evaluation, the expense will be the responsibility of the parents.

If an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the District uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the examiner. The credentials of the independent evaluator or evaluators must be comparable to the District's evaluators. The District will set reasonable limitations on the costs for which it will be responsible but the District may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

If a special education due process hearing officer requests an independent educational evaluation, the evaluation is provided at public expense. The District will either pay the full cost of the evaluation or ensure that the evaluation is otherwise provided at no cost to the parents. A parent is entitled to only one independent education evaluation at public expense each time the District conducts an evaluation with which the parent disagrees (34 CFR § 300.502(b)(5)).

CHAPTER 4: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

The Individualized Education Program (IEP) is defined as a written statement for each student with a disability which describes that child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations. The IEP describes and guides services for each child on an individual basis.

IEP TEAM

The IEP team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child's IEP.

IEP Team Membership

The positions of members of the IEP team are specifically identified and described in state and federal laws and regulations. In addition to the following list of required members of the IEP team, if parents need a sign language or foreign language interpreter, the School District of Newberry County will provide that service (34 CFR § 300.322(e); 34 CFR § 300.321). If for some reason the required members of the team are not present, and proper excusal procedures have not been completed, the meeting will be rescheduled.

The **student** will be invited to attend his or her own IEP meeting beginning at age 13, or younger, if a purpose of the meeting is consideration of the student's postsecondary goals and the transition services needed to assist the student in reaching those goals. If the student elects not to participate, the IEP team will take other steps to ensure that the student's preferences and interests are considered in developing the IEP (34 CFR § 300.321(b)(2)) which may include interviewing the student or having the student complete an IEP input form. The District may invite the student to attend his or her own IEP team meeting at any age, when appropriate. Beginning at age 18, unless the student has been determined incompetent by a court, the rights have transferred to the student, and both the student and parents will receive written notice of the IEP team meeting.

The **parents** must be included as members of the IEP team and are involved in the decision-making process throughout the development of the IEP.

The team will include not less than one **special education teacher of the child**, or where appropriate, not less than one special education provider of the child. The District will determine the particular individual(s) to be members of the IEP team.

The team will also include not less than one **general education teacher of the child**, if the child is, or may be, participating in the general education environment. This will be a teacher who is or may be working with the child to ensure success in the general curriculum and implement portions of the IEP. The general education teacher is knowledgeable about the curriculum, appropriate activities of typically developing peers, and how the child's disability affects the child's participation (involvement and progress) in the curriculum or those appropriate activities. If the child has several general education teachers, at least one will attend

the IEP meeting; however, it may be appropriate for more to attend. The District will designate which teacher or teachers will serve as IEP team member(s); however, the parent may also request specific teachers to be invited to the meeting. Regardless of which teacher or teachers participate as members of the IEP team, all general education teachers of the child will be informed by the IEP team of their specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. The child's IEP will be accessible in the special education teacher's classroom to each general education teacher who is responsible for its implementation. District preschool teachers have the same requirements to attend the IEP meeting that the general education teacher of school-age children have. If the child is enrolled in a preschool program for children without disabilities that is not operated by the District, the District will invite the preschool teacher, but has no authority to require his or her attendance. If the preschool teacher of the child does not attend, the District will designate a teacher who, under state standards, is qualified to serve children without disabilities of the same age. For a child 3 through 5 years of age, the representative may be a preschool teacher (e.g., regular preschool, Title I preschool, Head Start, Migrant, 4-year-old at-risk, etc.). For four or five year old child, the general education teacher may be the kindergarten teacher, if the child is or will be attending kindergarten within the term of the IEP. Early childhood providers working in various community settings must meet the credentialing requirements of their hiring agencies. For a child 3 through 5 years of age in a setting that does not provide a preschool educational component (e.g., home setting or child care), the child is not considered to have a regular education teacher and is not considered to participate in a general education environment; therefore, a general education teacher is not required to be part of the IEP team. However, a parent may invite a child care provider to attend the IEP team meeting as a person with knowledge or expertise about the child.

It is expected that the circumstances will be rare in which a general education teacher would not be required to be a member of the child's IEP team. However, there may be situations where a child is placed in a separate school and participates only in meals, recess periods, transportation, and extracurricular activities with children without disabilities and is not otherwise participating in the general education environment, and no change in that degree of participation is anticipated during the next twelve months. In these instances, since there would be no current or anticipated general education teacher for a child during the period of the IEP, it is not necessary for a general education teacher to be a member of the child's IEP team.

The **Representative of the LEA** or designee will be a member of the IEP team. There are three requirements of the LEA representative or designee. The LEA representative or designee:

- o is qualified to provide or supervise provision of special education services;
- o has knowledge of the general education curriculum; and
- o is knowledgeable about the availability of the LEA's resources.

The primary responsibility of the LEA representative must be to commit District resources and ensure that services written in the IEP will be provided. The LEA representative will have the authority to commit District resources and be able to ensure that whatever services

are described in an IEP will actually be provided. The District will be bound by the IEP that is developed at an IEP meeting. (Federal Register, August 14, 2006, p. 46670).

A person **who can interpret instructional implications of any new evaluation or assessment results** will also be a member of the IEP team. This may include individuals who participated on the evaluation team. A school psychologist, a special education teacher, general education teacher, speech/language pathologist, or other related service provider might have evaluation results that need to be interpreted and may discuss the instructional implications.

Others individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, and those who are invited by the parents or the District may attend the IEP meeting. The determination of who has knowledge or special expertise regarding the child is made by the party (parents or District) who invited the individual to be a member of the IEP team. Therefore, the other party may not bring into question the expertise of an individual invited to be a member of the IEP team and may not exclude another team member's expert based on the amount or quality of their expertise. (34 CFR § 300.321(c)). Although parents are not required to do so, the District will ask the parents to inform them of the individuals they are bringing. The person who contacts the parents may ask them if they intend to bring other people to be sure that the room is adequate for the number of participants.

Other team members may also be added, based on the child's individual needs. In some circumstances, for example, the school nurse or another health professional will attend. Any child with a need for a health care plan will have a health professional participate at the annual review meeting for the IEP, and other meetings as appropriate. Other team members might include an occupational or physical therapist or a counselor depending on the individual needs of the child.

Representatives of any other agency may be invited to attend the IEP meeting. For a child with a disability age 13 or older the IEP team will consider the transition services of the child, and the IEP team will determine, to the extent appropriate, any other public agency representatives that must be invited to the IEP meeting because they are likely to be responsible for providing or paying for transition services. To protect confidentiality, the parents, or a student who is 18 years of age, must provide consent prior to each IEP Team meeting if a public agency proposes to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. (34 CFR § 300.321(b)(3)). While the District has the responsibility to invite (after receiving parent or adult student consent) individuals from other agencies, the District does not have the authority to require the other agency representative to attend the IEP meeting (Federal Register, August 14, 2006, p. 46672).

When conducting an initial IEP team meeting for a child who was previously served under Part C of the federal law, the District, at the request of the parent, will send an invitation to attend the IEP meeting to the local Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.

The law allows for individuals to represent more than one of the membership roles on the IEP team. If a person is representing more than one role, he or she will meet the individual

qualifications for each role at the IEP team meeting. Additionally, all of the requirements for one representative do not have to be filled by one person; other members of the school team may meet one or any of these requirements. Individuals assuming more than one role at an IEP team meeting will document their roles on the signature page of the IEP. Although there is no legal minimum number of participants at IEP team meetings, the number of participants will be reasonable and appropriate to address the needs of the child and to carry out the intent of the law.

IEP Team Attendance and Excusals

The IDEA provides the possibility that certain IEP team members might be excused from attending either a part or an entire IEP meeting. While the District will generally have all team members present for the entire meeting, allowing IEP team members to be excused from IEP meetings is intended to provide additional flexibility to parents in scheduling IEP team meetings and to avoid delays in holding meetings when a team member cannot attend due to a scheduling conflict. This provision applies specifically to the following IEP members:

- o The child's regular education teacher, if the child is or may be participating in the regular education environment;
- o The child's special education teacher, or where appropriate, the child's special education provider;
- o The representative of the LEA who is qualified to provide or supervise the provision of specially-designed instruction and an individual who can interpret the instructional implications of the evaluation results.

Written agreement or consent is needed to excuse **required** members of the IEP team. Neither written agreement nor consent is needed to excuse an IEP team member who has knowledge or special expertise and attends at the invitation of the parent or District since such individuals are not required members of the IEP team.

The requirements to excuse a member of the team depend upon whether or not the member's area of expertise will be discussed at the meeting. The requirements in one situation call for an "agreement" between parents and the District; in the other situation, parental "consent" is required. An agreement is not the same as consent, but instead refers to an understanding between the parent and the LEA. "Consent" refers to informed written consent which is defined in 34 CFR § 300.9. This level of consent is not required for "agreement." Agreement is less formal and does not trigger the IDEA's procedural safeguard and the other requirements that must be met when requesting informed parental consent. When a member of the IEP team's area of expertise is **not** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions: the parents and District **agree** that the member's attendance is not necessary and the parents' and District's agreement is **in writing**. If a member is excused by written agreement and it later becomes evident during the IEP meeting that the absence of the excused member inhibits the development of the IEP, the team will reconvene after the needed information is obtained either by having the member attend or having the member submit the information in writing as long as the IEP is developed in a timely manner.

When a member of the IEP team's area of expertise **is** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions:

the parents and District **consent** to excuse the member and the member submits in writing to the parent and team input into the development of the IEP *before* the meeting. The IDEA does not specify how far in advance of the meeting a parent must be notified of the District's request to excuse a member, but ideally the District will provide the parents with as much notice as possible and have the agreement or consent signed at a reasonable time period prior to the meeting. (34 CFR § 300.321(e)). This will generally be done by sending home the written input and written consent for excusal form with the invitation to the meeting. If in an unusual situation the District requests the excusal of a team member at the last minute or the parent needs additional time or information to consider the request, the parent always has the right not to agree or consent to the excusal. The case manager or the LEA representative has the authority to make the agreement or consent with the parent to excuse a team member. When any member is excused from an IEP meeting, information will be shared with this team member. In fact, the IDEA requires that the child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for the implementation regardless of whether that team member was present at the IEP meeting.

NOTICE OF IEP MEETING

The District will take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The school psychologist or the case manager will be responsible for arranging the meeting and sending the appropriate notices. The meeting will be scheduled at a mutually agreed upon time and place. The District will provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. If the child is at least 13 years old, the notice will also inform the parents that their child is invited to attend the meeting.

Beginning at age 13, or younger, if a purpose of the meeting is consideration of the student's postsecondary goals or transition services, the student will be invited to attend and participate in the IEP team meetings. The District is not required to give children who are younger than age 18 the same notice that is required for parents, but will document that the student was invited to the meeting. The District is required to invite the student to the IEP meeting even if the student's parents do not want their child to attend the meeting. However, because parents have authority to make educational decisions for their child (under 18 years of age), the parents make the final determination of whether their child will attend the meeting (Federal Register, August 14, 2006, p. 46671). Beginning at age 18, however, if rights have transferred to the student, all notices will go to both the adult student and the parent, including the notice of the IEP meeting. When a student reaches 18 years of age, the parents no longer have a right to attend or participate in an IEP meeting for their child. The District or the student may invite the parents to attend the meeting as persons with knowledge or expertise about the student. The notice of the IEP meeting may be used as an invitation for all team members who are invited to attend the IEP meeting.

Content of Notice of IEP Meeting

The written notice will indicate (34 CFR § 300.322(b)):

- the purpose;
- date;

- time;
- location of the meeting;
- the titles or positions of the persons who will attend on behalf of the District (the District is to notify the parents about who will be in attendance at an IEP team meeting, however, individuals may be indicated by position only. The District may elect to identify participants by name, but has no obligation to do so.);
- inform the parents of their right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child; and inform the parents that if their child was previously served in Part C they may request that the local Part C coordinator or other representative be invited to participate in the initial IEP meeting to ensure a smooth transition of services.

In addition, beginning not later than the first IEP to be in effect when the child turns 13, or younger if determined appropriate by the IEP team the notice will also:

- indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
- indicate that the District will invite the student; and
- identify any other agency that will be invited, with parent consent (or adult student consent), to send a representative.

Prior Written Notice is not required before a meeting (even for possible changes in placement), but is required after all meetings prior to implementing any changes recommended by the team.

There are typically four types of meetings that would be held:

- Initial services provision
- Annual review
- Reevaluation review
- Special review to discuss lack of progress, problems, or other issues

Each meeting type requires a notice of meeting early enough to ensure that the parents have an opportunity to attend. In addition to indicating the date, time, and location of the meeting, the notice of the IEP meeting will include information concerning the reason for the meeting. If the meeting is a special review, then the purpose of the meeting is to discuss the child's lack of progress in certain areas or problems that are occurring (for example, difficulty mastering math concepts, discipline referrals, lack of progress in reading) or other issues. The result of the meeting will be proposed changes (for example, addition of goals, change of placement, and addition of related services) to the IEP that will address these issues. However, if it is known that a change of placement will be discussed, that information will be included as the District is informing them of what will be *considered* at the meeting.

If the meeting is for a child age 13 and above where transition services must be discussed, the Notice will also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child; that the child will be invited; and will identify any other agency that will be invited to send a representative. The Notice will provide enough information about the reason for the meeting so that the parent can be properly

prepared to participate in the discussion meaningfully. Following the meeting, the parent is given a Prior Written Notice (PWN) that describes the proposed changes and reasons for the proposed changes or the refusal of changes and reasons.

Methods to Ensure Parent Participation

IEP meetings will be scheduled at a mutually agreed upon time and place. The District will work with the parent to reach an agreement about scheduling. The District will take whatever action is necessary to ensure the parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English (34 CFR § 300.322(e)).

If the parent is not able to physically attend the IEP meeting, the parent and the District may agree to use alternative means of participation, such as video conferences and individual or conference telephone calls (34 CFR § 300.322(c); 34 CFR § 300.328). Each parent will be provided a final copy of the IEP at no cost (34 CFR § 300.322(f)). The case manager will be responsible for ensuring that the parent receives a copy of the final IEP.

Conducting the IEP Team Meeting without a Parent

The District may conduct an IEP meeting without the parent(s) in attendance if the District, despite repeated documented attempts, has been unable to contact the parents to arrange for a mutually agreed upon time or to convince the parents that they should participate (34 CFR § 300.322(d)). The District will keep a record of its attempts to arrange a mutually agreed on time and place to secure the parents' participation. The record may include detailed records of telephone calls including the date, time, person making the call, and the results; detailed records of visits made to the parents including the date, time, person making the visit, and the results; copies of correspondence sent to the parents and any responses received; etc. At least two attempts using at least two different methods of contacting the parents will be documented before the meeting is held without the parents in attendance. In general, the case manager or psychologist is responsible for inviting the participants to the meeting and for documenting the attempts to involve the parents.

USING AN INDIVIDUAL FAMILY SERVICES PLAN (IFSP) INSTEAD OF AN IEP

While the IDEA allows the IEP team to consider the use of an IFSP in place of an IEP for children with a disability ages 3 through 5, the School District of Newberry County will use the IEP for all students ages 3-21.

WHEN THE IEP/IFSP MUST BE IN EFFECT

For Children Ages 3 through 21

An IEP will be developed within 30 calendar days of a determination that the child needs special education and related services and will be implemented as soon as possible after written parent consent is granted for the services in the IEP (generally within 5 school days). In addition the District will have an IEP in effect at the beginning of each school year for each child with a disability. (34 CFR § 300.323(a) and (c)).

For Children Ages 3 through 5

The District will make a FAPE available to all eligible children by their third birthday. If a child's birthday occurs during the summer, the child's IEP team will determine the date when services under the IEP will begin, including the consideration of extended school year (ESY) services. For a child who is transitioning into the Part B early childhood special education services from the Part C early intervention services, the District will ensure that:

- the child is determined eligible under Part B requirements;
- an IEP is in effect by the child's 3rd birthday;
- if a child's 3rd birthday occurs during the summer, the child's IEP team will determine the date when services will begin, but not later than the beginning of the school year following the 3rd birthday; and
- a representative of the District participates in transition planning conferences arranged by the Part C program (generally the preschool school psychologist, a speech therapist, or a preschool special education teacher).

CONTENTS OF THE IEP

In developing each child's IEP, the IEP team will consider:

- The strengths of the child;
- The concerns of the parents for enhancing the education of their child;
- The results of the initial or most recent evaluation of the child;
- The results of the child's performance on any state or district-wide assessments as appropriate; and
- The academic, developmental, and functional needs of the child.

Further, the IEP team considers the following special factors:

- In the case of a child whose behavior impedes the child's learning or that of others, the issue of positive behavioral interventions and supports and other strategies to address the problem;
- In the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
- In the case of a child who is blind or visually impaired, the team considers instruction in Braille as part of the instruction of that child in accordance with South Carolina Board of Education Regulations;
- The communication needs of the child including those who are deaf or hard of hearing; and
- Whether the child needs assistive technology devices and services; and
- Whether or not the child needs extended school year services.

The evaluation information for a child with a disability will identify each of the child's specific needs that result from the disability, provide baseline information, and describe how the disability affects the child's participation and progress in the general education curriculum (or for preschool children, participation in appropriate activities). Utilizing baseline data established in the present levels of academic achievement and functional performance, the IEP team will develop measurable annual goals, including academic and functional goals that meet the child's needs and enable the child to be involved in and make progress in the general education curriculum. The special education, related services, supplementary aids and services, program

modifications, and supports for District personnel described in the IEP reflect the child's needs in order to ensure he or she receives educational benefit. While the team will generally come to an IEP meeting with a draft IEP, changes will be made at the meeting with input from all parties and the IEP will be finalized at the meeting. The basic components of each IEP are as follows:

Present Levels of Academic Achievement and Functional Performance

The IEP will include a statement of the child's present levels of academic achievement and functional performance (PLAAFP), including how the child's disability affects the child's involvement and progress in the general education curriculum or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. The PLAAFP summarizes the child's current performance and provides the foundation upon which all other decisions in the child's IEP will be made. The present levels identify and prioritize the specific needs of a child and establish a baseline from which to develop meaningful and measurable goals. The PLAAFP includes information about

- current academic achievement and functional performance
- the impact of the disability upon ability to access and progress in the general curriculum. The present levels statement will also include more specific information that clearly describes how the child's disability impacts (or manifests itself) within the general education curriculum that prevents the child from appropriately accessing or progressing.
- baseline data that provides the starting point for each measurable annual goal. There will be one baseline data point that is specific, observable and measurable, and able to be collected frequently for every measurable annual goal on the child's IEP.
- For children ages 13 and older (or younger if appropriate), the present levels also describe the child's transition needs in the areas of education/training, employment and where appropriate independent living skills.

Measurable Annual Goals (and short term objectives where needed)

Measurable annual goals are descriptions of what a child can reasonably be expected to accomplish within a 12-month period with the provision of special education (specially designed instruction) and related services. Measurable annual goals will be related to meeting the child's needs that result from the child's disability to enable the child to be involved and progress in the general or advanced curriculum. In addition, they will be designed to meet each of the child's other educational needs that result from the child's disability. There is a direct relationship between the measurable annual goal, baseline data, and the needs identified in the present levels of performance. Because the present levels are baseline data for the development of measurable annual goals, the same criteria used in establishing the present levels will also be used in setting the annual goal. Each annual goal will have the behavior, the condition, the criteria, and the method of evaluation explicitly stated. Short-term objectives are only required on the IEP of a child with a disability who takes or has taken an alternate assessment aligned to alternate achievement standards (34 CFR 320(a)(2)(ii)). For those students, each annual goal will be broken down into short-term objectives or benchmarks.

Measuring and Reporting Progress on Annual Goals

Once the IEP team has developed measurable annual goals for a child, the team will include a description of how the child's progress toward meeting the annual goals will be measured and when and how progress toward meeting the annual goals will be reported to

parents. There is no requirement for the frequency of these reports as this is an IEP team decision.

Participation in State- and District-Wide Assessments

The IEP team will make a decision about how the child with a disability will participate in state assessments and district-wide assessments including PASS, HSAP, SC-ALT, End-of-Course tests, ELDA, and various other state and district assessments. The IEP team will also determine any accommodations that are needed to enable a student to participate in the various assessments consistent with Section 612(a)(16) of the IDEA. If the IEP team determines that the child must take an alternate assessment instead of a particular state or district-wide assessment a statement of why the child cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the child.

Secondary Transition

Beginning at age 13, and updated annually, the IEP will also contain (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training/education, employment and where appropriate, independent living skills; and (2) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsecondary goals; and (3) a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages. Appropriate transition assessments will be used annually to establish interests and needs. For all students of transition age, the IEP will include measurable postsecondary goals, a description of the course of study, the child's strengths and interests, the certificate or diploma option for the child, transition services to be provided, and appropriate transition annual goals. Beginning at age 17, the IEP team will inform the student and the parents that at the age of majority under state law (age 18 in South Carolina), the rights under the IDEA will transfer to the student. The District will provide documentation in the IEP, at least one year before the student is 18, that the student has been informed of rights provided in the federal and state law that will transfer to the student (unless the student has been declared incompetent by the court)

Statement of Special Education and Related Services

Each IEP for a child with a disability will include a statement of the special education services; related services; supplementary aids and services (including accommodations), based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child; a statement of the program modifications; and supports for LEA personnel that will be provided for the child to advance appropriately toward attaining the annual goals, be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities in these activities.

Least Restrictive Environment

Least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled. The IEP will contain an explanation of the extent, if any, to which the child will **not** participate with children without disabilities in the general education class, and in extracurricular and nonacademic activities with

program modifications or supports for District personnel. In determining the location for special education and related services, the IEP team will consider the continuum of educational placements necessary to implement the IEP. The placement decision will be made in conformity with the requirement of providing services in the least restrictive environment (LRE). The educational placement will be determined at least annually; based upon the child's IEP; and located as close as possible to the child's home, consistent with the requirements of the IEP.

Projected Dates

The projected date for the beginning of the services and modifications described in the IEP and the anticipated frequency, location and duration of those services and modifications will also be included in the IEP.

Upon completion of the IEP meeting, the case manager is responsible for submitting the required form to the Office of Special Services. The compliance packet includes

- The IEP checklist
- The PowerSchool/Excent form
- Medicaid Consent Form
- Receipt of Parents Rights Handbook form
- Outside Agency Form (if applicable)
- The signed IEP
- FBA and BIP (if applicable)
- ESY Review Form
- Parent Contact Log
- First Contact Notice (Invitation Letter)
- Second Contact Notice
- Follow up Letter (if applicable)
- Prior Written Notice
- Meeting Minutes

MEETING TO REVIEW, REVISE, OR AMEND THE IEP

Annual Review of the IEP

The IEP will be reviewed at least once every 12 months to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP will address: (a) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (b) the results of any reevaluation conducted; (c) information about the child provided by the parents; (d) the child's anticipated needs; or (e) other matters. The IEP will then be developed for the next period of time (usually 12 months). The case manager is responsible for preparing drafts of the required documents and for arranging the meeting.

Amend the IEP

At an annual IEP team meeting, changes to the IEP must be made by the entire IEP team. However, between annual IEP reviews, if the parent and District representative agree, changes can be made without an IEP team meeting, by amending the IEP rather than by rewriting the entire IEP. In amending a child's IEP, the parent of a child with a disability and the District

representative may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In these instances, the case manager will act as the District representative to amend the IEP. There are no restrictions on the types of changes that may be made, so long as the parent and the District representative agree to make the changes without an IEP team meeting, however, District policy is that a change of placement will require the entire IEP team. If changes are made to the child's IEP without a meeting, the case manager will ensure that the child's IEP team is informed of those changes (34 CFR § 300.324(a)(4)) and that the child's IEP is updated in the Excent software. The case manager will also provide the parent with a revised copy of the IEP with the amendments incorporated and with Prior Written Notice (PWN).

Request by Parent or District Staff for IEP Meeting

Although the District is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. The child's teacher or other District staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered.

IMPLEMENTING THE IEP

Once the IEP team has completed developing the **initial** IEP, PWN, describing the proposed action will be provided to the parents and a request made for consent to initiate special education and related services. Services will be initiated as soon as possible (generally within 5 school days). In all cases, the District will obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The District will make reasonable efforts to obtain informed consent from the parent. Once an IEP has been completed and consent for services has been obtained from the parents, the case manager is responsible for ensuring that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The implementation date of the IEP may change if there is a special review. The implementation date reflects the implementation of services in the most recent IEP, which may be a special review. The annual review date remains the same until the District holds another annual review.

TRANSFERS WITHIN THE STATE AND FROM OUT-OF-STATE

When a student moves into the School District of Newberry County, the District will take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous District in which the child was enrolled. (34 CFR § 300.323(e), (f), and (g)). Since this is a transfer of educational records from the child's old District to the new District no consent for release of documents is required. The individuals who enroll students in the District schools will be responsible for ascertaining whether or not each transfer student is a student with an IEP. If they have reason to suspect that the child has an IEP or if the parent reports that the child has an IEP, the individual enrolling the child will immediately inform the Office of Special Services so they can obtain the necessary records.

If the parent indicates that the student received special education services in the previous LEA, but the parent does not want services to be continued in the School District of Newberry County, school personnel must explain to the parent that he or she has the option of revoking consent for special education services. Otherwise, the District is required to provide a FAPE as described below.

Transfer within State

When a child with a disability transfers into the School District of Newberry County with an IEP that is current in the previous LEA in South Carolina, the District, in consultation with the parents, will provide a FAPE to the child, including services comparable to those described in the child's IEP from the previous LEA. The District will not delay the provision of the comparable services – these services will be provided within 5 school days. Once the District receives the current IEP, the District may adopt the child's IEP from the previous LEA or develop and implement a new IEP. When a student moves within the state, eligibility has already been established and a reevaluation is not required. The IEP team will determine what information in addition to the current IEP is needed from the previous LEA. The Office of Special Services will then request the additional information needed. The assigned case manager will be responsible for arranging for an IEP meeting within 30 days of enrollment to adopt the IEP from the previous LEA, amend the IEP from the previous LEA, or develop and implement a new IEP.

If a child with a disability who received special education and related services in a previous LEA, but whose previous LEA failed to conduct a timely annual review, transfers within the state to the School District of Newberry County, the District will provide FAPE to the child (including services comparable to those described in the child's IEP from the previous LEA), until the District either adopts the child's IEP from the previous LEA; or develops, adopts, and implements a new IEP that meets the applicable requirements in the regulations.

Transfer from Out-of-State

When a child with a disability, who has an IEP that is current in another state, transfers to the School District of Newberry County, the District, in consultation with the parents, will provide the child with a FAPE, including services comparable to those described in the child's IEP from the previous LEA. If there is a dispute between the parent and the District regarding what constitutes comparable services, the dispute could be resolved through mediation procedures or, as appropriate, the due process hearing procedures. If the parent disagrees with the District about the comparability of services, stay-put would not apply (Federal Register, August 14, 2006, p. 46682).

The District may adopt the current IEP or conduct an initial evaluation to determine eligibility, and develop and implement a new IEP. If, after reviewing appropriate information, including the current IEP, the IEP team has reason to suspect the child is not eligible under South Carolina eligibility criteria, the team will conduct an evaluation to determine eligibility. The evaluation conducted by the District would be to determine if the child is a child with a disability under South Carolina's eligibility criteria and to determine the educational needs of the child. Therefore, the evaluation would be an initial evaluation, which would require parental consent.

If, however, the IEP team does not question the child's eligibility under South Carolina's criteria, the team will adopt the IEP from the previous state.

If the out-of-state transfer student cannot provide a copy of his/her IEP, but the parent describes the services the student was receiving, the District will take reasonable steps to obtain the student's records from the out-of-state LEA. If the District is unable to obtain the IEP from the previous LEA or from the parent, the District is not required to provide special education and related services to the child. Even if the parent is unable to provide the child's IEP from the previous LEA, if the District decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in the *IDEA* or its implementing regulations would prevent the District from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the District. However, if the child receives special education services while the evaluation is pending, the District still will ensure that the child's evaluation, which would be considered an initial evaluation, is conducted within 60 days of receiving parental consent for the evaluation. If the District conducts an eligibility determination and concludes that the child has a disability under 34 CFR §300.8 and needs special education and related services, the District will develop and implement an IEP for the child in accordance with applicable requirements in 34 CFR §§300.320 through 300.324 even though the child is already receiving special education services from the District.

If the parent refuses to provide consent for the evaluation under these circumstances, the District may, but is not required to pursue the initial evaluation by utilizing the procedural safeguards including mediation or due process procedures. If the District chooses to pursue a due process hearing to override the parent's refusal, the stay-put provision does not apply. The District will treat the child as a general education student and is not be required to provide the child with comparable services while the due process complaint is being resolved. In this situation (parent refuses consent for the initial evaluation), the District does not violate its obligation under Child Find if it declines to pursue the evaluation.

CHAPTER 5: SPECIAL EDUCATION AND RELATED SERVICES

The IEP team will consider what special education and related services are required to meet the individual needs of children with disabilities. Regardless of the method used for service delivery, providers will meet the standards and criteria set by the SBE. Under Part B regulations, personnel providing ESY, medical homebound, home-based, interim alternative educational, or compensatory services will also be highly qualified per state requirements.

SPECIAL EDUCATION SERVICES

Provision of Special Education Services

Children with disabilities are entitled to receive special education and related services. This term means specially-designed instruction to meet the unique needs of a child with a disability, and includes physical education, travel training, and vocational education. Special education and related services will be provided at no cost to the parents. The IEP team will identify the child's present levels of academic achievement and functional performance and determine the annual goals and, if appropriate, benchmarks/short-term objectives. Once the present level of performance and goals are established, the IEP team decides what services must be provided. After the IEP team determines which services and the amount of services that are necessary, the team next decides where those services will be provided and the amount of time the child will spend in general education settings, special educational settings, or in a combination of settings. All special education and related services are individually determined in light of each child's unique abilities and needs to meet the annual goals in the IEP and make progress in the general education curriculum.

All special education services, related services, and supplementary aids and services will be based on peer-reviewed research, to the extent practicable. Peer-reviewed research is research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. Each IEP team makes decisions about the special education instruction and related services, as well as supplementary aids and services to be provided to the child, or on behalf of the child, so that the child will advance toward meeting his or her annual goals, advance in the general curriculum, and be educated with his or her peers to the maximum extent appropriate. The IEP will also include any services needed to support District personnel.

RELATED SERVICES

Related services are developmental, corrective, and supportive services required to assist a child who has been identified as a child with a disability to benefit from special education services. Generally, related services are provided in addition to special education instruction. The IEP team is responsible for determining what additional services are necessary for the child to benefit from the special education services. In doing so, the IEP team will consider each child's goals and the services or supports needed to assist the child to achieve them.

Surgically Implanted Devices

Related services do not include a medical device that is surgically implanted, including cochlear implants. They also do not include the optimization of that device's functioning (e.g., mapping), maintenance, or the replacement of that device. The District will monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from the District or is at the District. The District will also routinely check external components of a surgically implanted device to make sure it is functioning properly. (34 CFR § 300.34(b); 34 CFR § 300.113(b) and (c))

Medical Services and School Health Services

There is an important distinction between "medical services" and "school health services." According to regulation 34 CFR § 300.34(c)(5), medical services are defined as "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." Districts are required to provide medical services only for diagnostic or evaluation purposes (34 CFR § 300.34(a)). On the other hand, school health services will be specified on the IEP of a child with a disability and are provided by a school nurse or other qualified person. School nurse services are services provided by a qualified school nurse. School health services and school nurse services are related services, which must be provided whenever needed to assist a child with a disability to benefit from special education services (34 CFR § 300.34(a)).

Transportation

Transportation is a related service when it is needed in order for the child to benefit from special education services. Each situation is considered individually, and if for a particular child, transportation is required, the District will provide it or make other arrangements for the child to be transported. In addition to travel to and from school, transportation, as a related service, also includes travel between schools as well as travel in and around school buildings. Thus, the IEP team may need to also assess a child's ability to access school facilities. Like all related services, when an IEP team determines it is needed, transportation services will be included on the child's IEP.

Interpreting Services

If a child is deaf or hard of hearing and the IEP team determines that she or he needs a sign language interpreter to receive a FAPE, then that service is required and must be written in the IEP as a special education service or a related service. The IEP team should also address the need for a sign language interpreter in nonacademic and extracurricular activities.

Occupational and Physical Therapy

The IEP team may determine that a student requires occupational or physical therapy in order to make progress toward his or her annual goals. The need for occupation or physical therapy must be based on a current (within the last six months) evaluation or reevaluation by a licensed occupational or physical therapist and requires a prescription from a physician or physician's assistant licensed to practice in South Carolina. When occupational or physical therapy services may be considered as a related service for a student, the appropriate therapist will be invited to the meeting.

Other Related Services

The IEP team may decide that the student needs another related service such as counseling or orientation and mobility training. Again, the decision to include these services should be based on a current evaluation of the child and should include the service provider in the decision-making.

SUPPLEMENTARY AIDS AND SERVICES

Supplementary aids and services means aids, services and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. The IEP team determines what supplementary aids and services and other supports, are to be provided to the child with a disability or on behalf of the child in general education classes or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate (the least restrictive environment). Examples of supplementary aids and services include paraeducator services, assistive technology devices and services, and other accommodations as appropriate.

Assistive Technology Devices and Services

An example of a supplementary aid or service is assistive technology, which may also be considered as a related service. An IEP team may determine an evaluation is needed to assess the need for assistive technology devices and services. In that case, the IEP team will refer the child to the District SAIL team for an assistive technology evaluation. The SAIL team will evaluate the need for assistive technology and make recommendations to the IEP team. If a child needs assistive technology to remain in the general education class or other education-related setting to enable him/her to be educated with children without disability to the maximum extent appropriate, then assistive technology will be listed as a supplementary aid or service on the IEP including the frequency, location, and duration. If the child needs access to the device at home or in other settings in order to receive a FAPE, then this will be allowed and the IEP will state that the device is necessary in the non-school setting(s).

Nonacademic and Extracurricular Services

The IEP team will determine whether the child requires supplementary aids and services, that are appropriate and necessary, to afford the child an equal opportunity for participation in nonacademic and extracurricular services and activities. These are nonacademic and extracurricular activities that are District sponsored during the regular school year. Nonacademic and extracurricular services may include counseling services, athletics, transportation, health services, recreational activities, referrals to agencies that provide assistance to individuals with disability, and employment of students (34 CFR § 300.107). Nonacademic and extracurricular activities may also include meals, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies that provide assistance to individuals with disabilities, both employment by the District and assistance in making outside employment available. In providing or arranging for the provision of nonacademic and extracurricular services and activities,

including meals, recess periods, field trips and the services specified above, the District will ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate and based on the needs of the child (34 CFR § 300.117).

Access to Instructional Materials

South Carolina has adopted the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons, or other persons with print disabilities that meet the NIMAS eligibility requirements, in a timely manner. The District will provide children with disabilities who need instructional materials in accessible formats with the necessary materials. The District will take reasonable steps to provide instructional materials at the same time as other children receive instructional materials (34 CFR § 300.172(a) and (b); 34 CFR § 300.210). The case manager will inform the Director of Special Services of any needed instructional materials in accessible formats so that they can be ordered in a timely manner.

PROGRAM MODIFICATIONS AND SUPPORTS FOR LEA PERSONNEL

Each IEP for a child with disability includes a statement of the program modifications or supports for District personnel that will be provided to the child, or on behalf of the child, to enable the child to participate with nondisabled peers to the maximum extent appropriate and to enable the child to advance appropriately toward the annual goals. Necessary modifications for children with disabilities will be documented on the child's IEP. (34 CFR § 300.320(a)(4)(i)) The IEP will also include a statement of the supports for District personnel that need to be provided for each child to enable him/her to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum. These supports may include specialized staff development (e.g., learn sign language, learn a software program the child will use), consultation by a special teacher, or materials or modifications to the environment.

EXTENDED SCHOOL YEAR/DAY SERVICES (ESY)

When the IEP is developed initially or reviewed annually, the IEP team will also consider the need for ESY services for children with disabilities. ESY services are different than general education summer school and ESY may or may not be provided in conjunction with the general education summer school. The reason for ESY services is to ensure the provision of a FAPE so that the child can make progress toward the goals specified on the child's IEP and to prevent significant regression, which would impede such progress. The need for ESY is decided individually. Personnel providing ESY services will meet the same requirements that apply to personnel providing the same types of services as a part of a regular school program.

The IEP team may use the following methods to decide if a student with a disability needs ESY services. Note that each is not mutually exclusive and consideration of all of these factors may be warranted. These reasons are not all-inclusive.

- Is a significant regression anticipated if ESY services are not provided? The District is not required to provide ESY services merely because the student will benefit from them.

Instead, the IEP team will determine if the regression experienced by the student would significantly affect his or her maintenance of skills and behaviors.

- What is the nature and severity of the disability? Each student's needs must be considered individually.
- Are instructional areas or related services needed that are crucial in moving toward self-sufficiency and independence?
- The IEP team could use the following information and data in determining the need for ESY services:
 - o Teacher assessment of the student's success with various instructional interventions;
 - o Criterion-referenced and standardized test data;
 - o Health and health-related factors, including physical and social/emotional functioning;
 - o Past educational history, as appropriate, including any ESY services;
 - o Direct observation of the student's classroom performance;
 - o IEP goals and objectives;
 - o Student performance (pretest and posttest data);
 - o Behavior checklists; and
 - o Parent interviews and student interviews where appropriate.

If the student requires ESY services, the IEP team will address the educational needs of the student and how they might be addressed, such as:

- o The scope of the special education instructional services including the duration and content of the program;
- o Which current goals and objectives will be addressed to maintain present skills and behaviors;
- o Implementer(s) of the ESY services;
- o What related services will be made available; and
- o If contracting with other schools or private agencies is needed; the provider must meet the standards of the state, including HQT.

ESY services will often not be the same as those services provided during the regular school year. If a dispute arises that involves ESY, parents will be informed of their rights to include an expedited resolution. The dispute will be settled in a manner such that the time ESY should be provided will not lapse.

For all students the ESY form will be completed by the IEP team to document that the team considered ESY. The decision of the team will be documented on the IEP. If the student needs ESY services, the team will develop an ESY addendum that specifically describes the services to be provided including the location, frequency, and the duration.

SERVICES IN LOCAL DETENTION FACILITIES, DEPARTMENT OF JUVENILE JUSTICE, AND DEPARTMENT OF CORRECTIONS FACILITIES

The District will provide a FAPE according to an IEP that meets the requirements of federal and state laws and regulations to each student with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction. The Department of Juvenile Justice has the responsibility for providing FAPE to students in a juvenile correctional

facility and if a student is in a state adult correctional facility, the provision of FAPE is the responsibility of the Department of Corrections. A student age 18 or over, who is incarcerated in an adult correctional institution or facility and was not identified as a student with a disability and did not have an IEP in their educational placement prior to incarceration, is not entitled to a FAPE.

QUALIFIED SPECIAL EDUCATION PERSONNEL

The District's Executive Director of Human Resources will ensure that all personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with disabilities. This includes special education teachers, related services personnel and paraeducators. Related services personnel will meet the qualifications of the licensing agency that apply to the professional discipline in which those personnel are providing special education or related services. Each teacher employed as a special education teacher will meet the requirements as highly qualified (34 CFR § 300.156(c)).

CHAPTER 6: EDUCATIONAL PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT (LRE)

Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school. The IEP team makes the decision about the child's educational placement. For children with disabilities, the special education and related services will be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The team's decision is based on the child's needs, goals to be achieved, and the least restrictive environment for services to be provided. "Least restrictive environment" (LRE) means the child is provided special education and related services with peers who are not disabled, to the maximum extent appropriate. The IEP team must consider how the child with a disability can be educated with peers without disabilities to the maximum extent appropriate, and how he or she will participate with children without disabilities in other activities such as extracurricular and nonacademic activities.

Placement decisions for all children with disabilities, including preschool children with disabilities, are determined annually, based on the child's IEP, and are as close as possible to the child's home. Additionally, each child with a disability will be educated in the school the child would attend if the child did not have a disability, unless the child's IEP requires some other arrangement. The School District of Newberry County makes available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. The continuum of alternative educational placements include instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions (34 CFR § 300.115(b)(1)).

PARENT PARTICIPATION

Parents have the right to be part of the decision-making team for determining their child's educational placement and have input into that decision. Placement decisions are made by the IEP team. The parent will be provided notice of the IEP team meeting early enough that the parents have an opportunity to participate. When conducting IEP meetings addressing placement, if neither parent can participate, the parents and the District may agree to use alternative means of participation in the meeting, such as conference calls. The District ensures that parents understand and are able to participate in any discussions concerning the educational placement of their child. The District will provide an interpreter if parents have a hearing impairment, or if their native language is other than English (34 CFR § 300.501(b) and (c)(1) through (3)).

The team may hold the IEP meeting to determine placement without the parents if the District has made multiple attempts to contact them and the parents did not respond, or if the District is unable to convince them to participate. The District maintains documentation of the attempts made to contact the parents to provide them notice of the meeting and to secure their participation. The record will have at least two of the following methods: telephone calls, visits to parents' home, copies of correspondence sent to the parents via their child, copies of correspondence sent via US mail, and detailed records of other methods. (34 CFR § 300.501(c)(4)). In general the case manager or the school psychologist will be responsible for

inviting the parents and will maintain this documentation in the computer software and/or in the student file.

Once the IEP team has made the decision on the initial placement of a child with a disability, the parents will be provided with Prior Written Notice (PWN) about the placement decision and will be requested to provide consent before initial provision of special education and related services in the proposed placement. Within the notice requirements, parents will be informed about the placement options that were considered and the reasons why those options were rejected.

DETERMINING EDUCATIONAL PLACEMENT

In determining the educational placement of a child with a disability (including preschool children with disabilities), the District ensures that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. IEP teams, including the parents, make each child's educational placement decisions on an individual basis. Placement decisions are based on the child's IEP and are determined at least annually. For children with disabilities, the placement will be as close to the child's home as possible, and be in the school the student would normally attend, unless other factors are determined to make this not possible.

The team will consider each child's unique educational needs and circumstances rather than the child's category of disability, and all placement decisions will allow the child with a disability to be educated with nondisabled children to the maximum extent appropriate. Before a child with a disability can be placed outside of the general education environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the general education classroom setting is considered. Following that consideration, if a determination is made that the child with a disability cannot be educated satisfactorily in the general educational environment, even with the provision of appropriate supplementary aids and services, that child may be placed in a setting other than the general education classroom. A child's removal from the general education environment cannot be based solely on the category of disability, configuration of the delivery system, availability of special education and related services, availability of space, or administrative convenience.

Continuum of Placement Options

Districts are required to ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). Although each school is not required to establish or maintain all options on the continuum, an option will be available if the individual needs of a child require a specific placement option. The continuum includes various educational settings, such as general education class, special classes, special schools, home instruction, instruction in hospitals, and instruction in institutions (34 CFR § 300.115(b)(1)). This continuum of various types of classrooms and settings in which special education is provided is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully with other children without disabilities to the maximum extent appropriate.

Harmful Effects

The IEP team will also consider possible harmful effects in determining the educational placement, both in terms of the general education setting and a more restrictive setting. The language in 34 CFR § 300.116(d) mentions "possible harmful effects on the child or on the quality of services that he or she needs." For example, the team must consider the distance that the child would need to be transported to another school, if not in the home school (e.g., length of bus ride, importance of neighborhood friendships, and other such considerations). In addition, potential disadvantages of being removed from the general education setting will be assessed (such as, what curriculum content will the child miss when out of the classroom, etc.). Parents and other team members will discuss what is needed for the child to be able to participate and progress in the general education curriculum.

The IEP team will also consider other harmful effects such as those that may exist when it may be inappropriate to place a child in a general education classroom. For example, the IEP team may consider the well-being of the other children in the general classroom (e.g., would being in the classroom impede the child's or the ability of other children to learn). Courts have generally concluded that, if a child with a disability has behavioral problems that are so disruptive in a general education classroom that the education of other children is significantly impaired, the needs of the child with a disability generally cannot be met in that environment. However, before making such a determination, the District will ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the child in the general education educational environment to accommodate the unique needs of the child with a disability. If the group making the placement decision determines, that even with the provision of supplementary aids and services, the child's IEP could not be implemented satisfactorily in the general education environment, that placement would not be the LRE placement for that child at that particular time, because his or her unique educational needs could not be met in that setting.

LEAST RESTRICTIVE ENVIRONMENT

The process for determining the LRE is individualized for each child with a disability, including preschool age children, children in public schools, private schools, or other care facilities. The IEP team ensures that children with disabilities are educated with children who do not have disabilities to the maximum extent appropriate. The IEP includes an explanation of the extent, if any, that the child will NOT participate with children without disabilities in general education classes AND in extracurricular and other nonacademic activities. The general education environment encompasses general education classrooms and other settings in schools such as lunchrooms and playgrounds in which children without disabilities participate.

When determining LRE, IEP teams consider:

- Whether the child's IEP can be implemented in the regular educational environment with the use of supplementary aids and services (34 CFR § 300.114(a)(2)(ii)).
- Whether placement in the regular classroom will result in any potential harmful effect on the child or on the quality of services that he needs (34 CFR § 300.116(d)).
- Whether placement in the regular classroom, even with appropriate behavioral interventions, will significantly impair the learning of classmates (34 CFR § 300.324(a)(2)(i)).

The IEP team will also discuss what program modifications or supports for teachers and staff may need to be provided to enable the child to (1) advance appropriately in attaining the annual goals listed on the IEP, (2) be involved in and make progress in the general curriculum and participate in extracurricular and nonacademic activities, and (3) be educated and participate with other children with and without disabilities in these activities, as appropriate.

Supplementary Aids and Services

IEP teams consider the supplementary aids and services, and other supports, that may be needed for the child to be in the general education class, other education-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate (34 CFR § 300.42). Examples of supplementary aids and services may include but are not limited to interpreter services, assistive technology devices and services, resource room and itinerant services to be provided in conjunction with regular class placement, and so on.

Nonacademic and Extracurricular Services and Activities

In order to receive a FAPE, children must be included in more than just classroom activities. The District ensures that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in District sponsored nonacademic and extracurricular settings. Children with disabilities participate with children without disabilities in nonacademic settings and extracurricular activities, to the maximum extent appropriate. (34 CFR § 300.107; 34 CFR § 300.117). The IEP team is responsible for considering how the child with a disability can participate with children who do not have a disability in a wide range of possible nonacademic and extracurricular services and activities to the maximum extent appropriate.

Children in Other Educational Placements

Districts are responsible for ensuring that LRE requirements are applied to children placed by the public school in private institutions or other care facilities. As IEP teams make educational placement decisions about children for whom they do not have an appropriate program at the public school, they will consider all LRE requirements carefully. The LRE requirement may be modified for students who are incarcerated in local detention facilities, a state juvenile correctional facility or an adult correctional institution, however.

Support for Staff

The District ensures that all teachers and administrators know their responsibilities in ensuring LRE, and that the staff is provided with the needed technical assistance and training. This is done through the provision of written information to staff, ongoing in-service training, and individual technical assistance. (34 CFR § 300.119 and § 300.320(a)(4))

EARLY CHILDHOOD LEAST RESTRICTIVE ENVIRONMENT

For preschool children ages 3 through 5 with disabilities, placement and LRE requirements are the same as for school-aged children. This means that preschool children with disabilities will have a continuum of placement options available and have the right to be educated with their peers without disabilities to the maximum extent appropriate. As with

school-aged children, the needs of preschoolers are to be considered individually, and the individual needs of the child would determine the most appropriate setting for services to be provided.

Districts that do not operate programs for preschool children without disabilities are not required to initiate general education programs solely to satisfy the LRE requirements. In addition to the existing general education preschool programs, the District may seek alternative means to provide inclusive options for young children through collaborative relationships with private preschool programs or other community-based settings.

SCDE VIRTUAL SCHOOL PROGRAM

The SCDE offers a virtual school program accessed by Districts that allows student participation in high school classes in a virtual manner. These courses are accessed as part of the student's regular high school program. The District retains all responsibility for access to the program just as if the class were in the physical building. For students earning a regular state high school diploma, the IEP team will meet either before or after approval for class to review and revise, as necessary, the IEP to ensure that appropriate accommodations, supports and services are in place. The case manager will be responsible for arranging this meeting. For students not earning a regular state high school diploma, the IEP team will meet prior to class approval to determine if the class can be modified to the extent that participation of the student in class is appropriate. (Modifications are not always necessary. It is possible that accommodations, supports and services are sufficient.)

The full range of accommodations is available to participants in virtual classes as appropriate. The IEP will be shared with the virtual school teacher. The virtual school teacher, then, is responsible for implementing the accommodations and modifications on the IEP for his or her class. The school district will be responsible for any hardware or software necessary for the student to access the course.

CHAPTER 7: REEVALUATION

An evaluation that is conducted at any time after an initial evaluation and initial determination of eligibility as a child with a disability is considered a reevaluation. Districts must ensure that a reevaluation of each child with a disability is conducted if conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation, but at least once every 3 years. Reevaluations may not occur more than once a year, unless the parent and the District agree otherwise. The requirements also allow the parent and the District to agree that a 3 year reevaluation is not necessary (34 CFR § 300.303(b)(2)). Most components of the reevaluation process are identical to those required for initial evaluation (see Chapter 3, Initial Evaluation and Eligibility, for a complete explanation of the evaluation process).

PURPOSE OF THE REEVALUATION

The reevaluation process is required every 3 years, or more often, if needed, to determine:

- if the child continues to be a child with a disability,
- whether the child continues to need special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- 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.

The information gathered as a result of the reevaluation provides valuable information about the child's progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education services and related services, this information is used to review the IEP, revising it if necessary, in accordance with 34 CFR §§ 300.301 through 300.311.

NEED FOR THE REEVALUATION

A reevaluation will be conducted if the District determines that the education or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or, if the child's parent or teacher requests a reevaluation. A reevaluation will be conducted before the District determines a child is no longer a child with a disability. However, a reevaluation shall not occur more than once a year, unless the parent and the District agree otherwise (34 CFR § 300.303(b)(1)).

If a parent requests a reevaluation, or more than one reevaluation per year, and the District disagrees that a reevaluation is needed, the District will provide Prior Written Notice (PWN) to the parent that explains, among other things, why the District refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or a due process hearing.

A reevaluation will occur at least once every 3 years, unless the parent and the District agree that a reevaluation is unnecessary (34 CFR § 300.303(b)(2)). Prior to conducting a reevaluation, the parent and the District will determine whether a reevaluation is needed. They will consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the District will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program (Federal Register, August 14, 2006, p. 46640, 46641).

There are circumstances when a reevaluation is not required:

- before the termination of a child's eligibility due to graduation with a regular diploma; however, PWN is required for the change of placement; or
- due to exceeding the age of eligibility for a FAPE, which would be the end of the school year in which the student becomes 21 years of age. (34 CFR § 300-305(e)(2))
- when the District and parent agree that a reevaluation is not needed.

PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever the District proposes to conduct a reevaluation, the District will provide PWN to the parents of the child that describes any evaluation procedures the District proposes to conduct (34 CFR § 300.304(a)). In addition, there are standard components of content the notice also contains. The purpose of providing notice to the parents is so they understand what action the District is proposing (in this case, to conduct a reevaluation) and the basis used for determining the action is necessary. The PWN is generally completed by the school psychologist and includes:

- A description of the action proposed by the agency.
- An explanation of why the agency proposes the action.
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis to determine the need for the proposed action.
- A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
- A description of other options considered and the reasons why those options were rejected.
- A description of other factors that are relevant to the agency's proposal. (34 CFR § 300.503(b))
- Additionally, for a reevaluation, the notice must describe any evaluation procedures that the District proposes to conduct (34 CFR § 300.304(a)).

The notice will be written in language understandable to the general public and 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. If the native language or other mode of communication of the parent is not a written language, the District will take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice and that there is written

evidence that this has been done in the documentation of parent contacts or in the meeting minutes (34 CFR § 300.503(c)).

Preparing the Prior Written Notice

The team will plan to administer the assessments and other evaluation measures needed to produce the required data, if any, for determining continued eligibility and educational needs (34 CFR § 300.305(c)). Every reevaluation will be approached and designed individually based on the specific concerns of the child to be evaluated. Thoughtful planning is required to ensure that the team will use appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time consuming for no clear purpose.

The first activity the reevaluation team undertakes is a review of existing data. The reevaluation team considers all data that are currently available including evaluations and information provided by the parents; current classroom-based, local, or state assessments; classroom-based observations and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the reevaluation, may be conducted without a meeting and without consent from the parents (34 CFR § 300.305(b); 34 CFR § 300.300(d)(1)).

The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

- if the child continues to be a child with a disability and continues to need special education;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (34 CFR § 300.305(a)(2))

After the team has reviewed the existing data, there will be a determination of what data, if any, will be collected during the reevaluation, with the PWN completed to reflect that determination.

Requirements if No Additional Data are Needed

If the team has determined that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the District will notify the parents:

- of that determination and the reasons for it; and
- the right of the parents to request an assessment to determine whether the child continues to be a child with an disability, and to determine the educational needs of the child (34 CFR § 300.305(d)).

The District is not required to conduct the assessment described above unless requested to do so by the child's parents.

Requirements if Additional Data Are Needed

If the team has determined that additional data are needed, the team will plan who will collect it and plan to ensure all data will be collected within the evaluation timeline. The procedures to be used to collect the data will be described on the PWN for the reevaluation and provided to the parents for their consent.

Request for Consent

The District will obtain informed consent from the parent of the child before conducting any reevaluation (34 CFR § 300.300(c)). In determining that informed consent is obtained, the team will ensure the following:

- The parent has been fully informed of all information relevant to the activity for which consent is being sought in his or her native language or other mode of communication.
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Failure to Respond or Refusal to Consent

The case manager and/or school psychologist will make reasonable attempts to obtain consent from the parents to conduct the reevaluation. Reasonable attempts include at least two contacts by two different methods (phone calls, letters, visits, email, etc.) and such attempts will be documented in the software and/or in the student's file, including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents home or place of employment, and the response, if any, from the parents (34 CFR § 300.322(d)(1)). If the District can demonstrate that it has made reasonable attempts and parents have failed to respond, informed parental consent need NOT be obtained for the reevaluation.

If the parent refuses consent for the reevaluation the District may, but is not required to, pursue the reevaluation of the child by utilizing the procedural safeguards, including mediation. The District does not violate its obligation for child find or to conduct a reevaluation of the child if it declines to pursue the reevaluation (34 CFR § 300.300(c)(1)). If a parent refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2), but requests that the District continue the provision of special education and related services to their child, the LEA has the following options:

1. The District and the parent may, as provided in 34 CFR §300.303(b)(2), agree that the reevaluation is unnecessary. If such an agreement is reached, the three-year reevaluation need not be conducted. However, the District must continue to provide FAPE to the child.
2. If the District believes that the reevaluation **is** necessary, and the parent refuses to consent to the reevaluation, the District may, but is not required to, pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3) including mediation and due process procedures.

3. If the LEA chooses **not** to pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3), and the District believes, based on a review of existing evaluation data on the child, that the child does not continue to have a disability or does not continue to need special education and related services, the District may determine that it will not continue the provision of special education and related services to the child. If the District determines that it will not continue the provision of special education and related services to the child, the District will provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with 34 CFR §300.503(a)(2), including the right of the parent to use the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516 if the parent disagrees with the decision to discontinue the provision of FAPE to the child.

If a parent of a child who is home schooled or voluntarily placed in a private school by the parents does not provide consent for the reevaluation, or the parent fails to respond, the District may not use mediation or request a due process hearing (34 CFR § 300.300(d)(4)).

During reevaluation, like initial evaluation, the District will inform parents of their right to an independent educational evaluation, according to 34 CFR § 300.502. Chapter 3 includes a full discussion of independent educational evaluations.

MEMBERS OF THE REEVALUATION TEAM

The membership of the team that conducts the reevaluation and determines continued eligibility is the same as the IEP team with the addition of other qualified professionals if a child is suspected of having a specific learning disability, as appropriate. The additional professionals that would participate are based on the identified concerns to be addressed in the reevaluation process. The actual team members on each reevaluation team may differ; however, there are specific members and skills that must be represented on the team. This team includes:

- The parents of the child.
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).
 - If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child.
- A representative of the local education agency who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of child with disabilities,
 - Is knowledgeable about the general education curriculum, and
 - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of reevaluation results.
- At least one person qualified to conduct individual diagnostic examinations of children, if these are determined necessary.

- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (34 CFR § 300.321; 34 CFR § 300.308)

CONDUCTING THE REEVALUATION

The reevaluation includes a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child continues to be a child with a disability, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities. In addition, the procedures will also lead to the determination of the present levels of academic achievement and functional performance of the child. The District administers such assessments and other evaluation measures as may be needed to produce the data to determine:

- if the child continues to be a child with a disability;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child;
- whether the child continues to need special education and related services; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (34 CFR § 300.305(a)(2))

Procedures for Conducting the Reevaluation

A reevaluation meets all of the same requirements for an initial evaluation as described in Chapter 3. The reevaluation team members utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information from the parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities). The tools and strategies will be selected to yield relevant information that directly assists in determining the educational needs of the child. Every evaluation is approached and designed individually based on the specific concerns for the child and the selection of assessment tools based on the information needed to answer the eligibility questions.

During the reevaluation, the team examines the child's progress in the general education curriculum. The team will also conduct a records review that may include but not be limited to current classroom-based assessments, state assessment data, previous evaluations, reports from other agencies, discipline records, cumulative file, parent reports, and so on. Interviews may be conducted with the parent, the student, the student's teachers, or other individuals who can provide relevant information. If needed, the District will ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (34 CFR § 300.310). In the case of a child of less than school age or out of school, a team member must observe the child in

an environment appropriate for a child of that age. And the team will arrange for any assessments to be given that are needed. The instruments utilized in the reevaluation will meet all of the requirements as described in Chapter 3. Federal and state laws and regulations specify requirements for evaluation and reevaluation (34 CFR § 300.304)

DETERMINING CONTINUED ELIGIBILITY

Upon completion of the reevaluation, the team will compile all data (that which previously existed and/or was collected as part of the reevaluation) onto the District form so that all the information is in an understandable format that allows the team, including the parent, to understand the child's strengths and weaknesses and how the child is progressing in the general curriculum in addition to information about the child's disability and needs for special education.

At the time the reevaluation is completed, the psychologist will schedule a time to convene in order to make the determination of continued eligibility. Parents will be provided an opportunity to participate in this meeting, which can be conducted at the same time as the IEP team meeting. When the meeting is convened, the reevaluation team, including the parents, reviews the results of the reevaluation to determine:

- if the child continues to be a child with a disability;
- the educational needs of the child;
- the present levels of academic achievement and the functional performance (related developmental needs) of the child;
- whether the child continues to need special education and related services; and
- whether any additions of 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.

As is the case in all reevaluations, when making the determination of whether the child continues to be a child with a disability and whether the child continues to need special education and related services, teams must take into account that the child has made progress since the time he or she was initially evaluated and determined to be eligible for services. The fact that the child's performance gap may be less than at the time of the initial evaluation would not necessarily mean that the child is no longer a child with a disability and no longer in need of special education and related services. If at the time of reevaluation, a student needs only general accommodations, then the student is no longer eligible for special education services, but could be referred for consideration of eligibility for a 504 plan.

Documenting Continued Eligibility

After completion of appropriate reevaluation procedures, the team of qualified professionals and the parent of the child prepare a written reevaluation report. A copy of the reevaluation report and documentation of whether or not the child continues to be a child with a disability is placed in the students' folder and also given to the parents.

REEVALUATION FOR A CHILD IDENTIFIED AS DEVELOPMENTALLY DELAYED

Special considerations impacting reevaluation are needed for children who have been determined eligible for special education services under the category of developmental delay (DD). These considerations will be made in accordance with regulations regarding a child's continuing eligibility for services. If a child ages 3 through 9 was determined eligible as a child with DD, a reevaluation will be conducted before the child turns age 10 to determine whether the child continues to be a child with a disability as defined by any of the categorical areas under the law and whether the child continues to need special education and related services. The reevaluation to determine continued eligibility as a child with a disability may take place anytime prior to the child's 10th birthday.

CHAPTER 8: SUSPENSION AND EXPULSION OF CHILDREN WITH DISABILITIES

This chapter examines issues related to disciplinary actions for code of conduct violations including the option for violations related to weapons, drugs, serious bodily injury, and behavior substantially likely to result in injury to the child or others.

The District may use customary disciplinary techniques for all children, including those with disabilities. For children with disabilities, traditional forms of discipline such as in-school suspension, detention, time-out, study carrels, or the restriction of privileges can also be used so long as these forms of discipline are also used with nondisabled children and do not violate the provisions of a child's IEP or the child's right to a FAPE.

CODE OF CONDUCT VIOLATIONS

When a child with a disability violates the District's code of conduct, that behavior could result in suspension or expulsion. Such removals from school are subject to the disciplinary provisions of special education law. Therefore, District officials must consider suspension and expulsion for children with disabilities very carefully. Several terms used throughout this chapter are defined as follows:

Change in Placement for Disciplinary Reasons

Change in Placement for Disciplinary Reasons (long-term removal) means that school officials or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability:

- The child is suspended or expelled from school for more than 10 consecutive school days.
- The child is subjected to a series of short-term suspensions that constitute a pattern because **all** of the following have occurred:
 - they cumulate to more than 10 school days in a school year,
 - each incident of misconduct involves substantially the same behavior, **and**
 - because of other factors such as the length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another.
- The child is placed in an IAES.

School Day

School day means any day, including a partial day (50% of the day), that all children, including children with disabilities, are in attendance at school for instructional purposes (34 CFR § 300.11(c)). Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required during the period of suspension.

School Official

School official means (1) A regular education administrator; (2) the director of special education or the director's designee or designees; and (3) a special education teacher of the child with a disability.

Short-Term Suspension

Short-term suspension means removal for a short term not exceeding 10 school days (or a series of removals not constituting a change in placement).

Controlled Substance

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (34 CFR § 300.520(d)(1)).

Illegal Drug

Illegal drug means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law (34 CFR § 300.520(d)(2)). **NOTE: Alcohol and tobacco are not included in this definition.**

Weapon

Weapon means any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Serious Bodily Injury

Serious bodily injury means a bodily injury that involves one or more of the following: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Additionally, in this chapter, the term “dangerous behavior” may be used interchangeably with the phrase “substantially likely to result in injury to the child or others”.

SHORT TERM REMOVALS (NOT A CHANGE OF PLACEMENT)

School officials 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 (IAES), another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement or total more than 30 days as reflected in state law (S.C. Code Ann. §59-63-220 (2004)). The school need not provide educational services during the first 10 days of removal in a school year unless it provides educational services to a child without disabilities who is similarly removed (which the District does not do).

Subsequent Short-Term Removals (Not a Change in Placement)

When a child with a disability has more than a single suspension in a school year, school officials will carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. If school officials order two or more short-term suspensions of a child with a disability during a school year, these suspensions are not a change in placement for disciplinary reasons if the suspensions do not constitute a pattern of removals. To determine if a change of placement has occurred, school officials will consider whether the series of suspensions constitutes a pattern of removals. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements, is appropriate for a child with a disability who violates a code of student conduct. (34 CFR § 300.530(a))

Under 34 CFR § 300.536, when a series of suspensions/removals total more than 10 school days in a school year, school officials should determine whether a pattern of removals has developed by considering:

- Whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
- Other factors such as:
 - The length of each removal;
 - The total amount of time the child has been removed; and
 - The proximity of the removals to one another.

School officials have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitute a change in placement for disciplinary reasons. This determination is subject to review through due process proceedings.

School officials should be addressing the issues of the suspensions prior to reaching the 11th day. By addressing accumulated days of suspension early, the school may be able to avoid the need for a suspension that would result in a disciplinary change in placement. Suspensions will be carefully monitored so that school personnel will be aware of whether another removal will constitute a change of placement. Out-of-school suspensions for students with disabilities are to be reported to the Director of Special Services.

Schools must provide a FAPE to all children with disabilities, including those who are suspended or expelled from school after the 10th day of suspension. Nevertheless, children with disabilities, like students without disabilities, may be given short-term suspensions. As stated previously, the school is not required to provide educational services to children with disabilities during the first 10 cumulative days of suspension in a school year. However, when the total number of school days of suspension in a school year reaches 11, and the current removal is for not more than 10 consecutive school days and is not a change of placement, the District will begin providing educational services. School officials must determine the extent to which special education and related services must be provided to the child beginning on the 11th school day of suspension. In this situation, "school officials" means a general education administrator, special education director or designee(s), and the child's special education teacher, as specified. Beginning on the 11th school day of suspension in a school year, and each school day of

suspension thereafter, special education and related services needed for the child will be provided to enable the child to:

- participate in the general education curriculum, although in another setting; and
- progress toward meeting the goals set out in the child's IEP.

If the short-term suspension includes the 11th cumulative school day of suspension in a school year, necessary services identified by the school officials will be provided. The 11th day rule applies, whether or not the 11th school day of suspension results in a pattern of removal that constitutes a change of placement.

Additionally, if the child has not had a functional behavioral assessment (FBA) and the District has not implemented a BIP for the child, school officials may (but are not required to) determine that the child needs a FBA to address the behavior that resulted in the suspension and to develop a BIP if the assessment suggests such a plan is necessary for the child. In that case, the case manager will schedule a meeting to consider and plan the FBA.

LONG-TERM REMOVALS (A Change of Placement)

To determine if a change of placement has occurred, school officials consider whether the series of short-term removals (less than 10 consecutive school days) constitutes a pattern of removals. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements, is appropriate for a child with a disability who violates a code of student conduct. (34 CFR § 300.530(a))

A removal of a child with a disability is a change of placement when:

- The removal is for more than 10 consecutive school days; or
- The removal is one of a series of short-term removals that constitutes a pattern of removals.

There are specific steps to follow when school officials consider either a long-term suspension for more than 10 consecutive school days, an expulsion, or another short-term suspension that cumulates to more than 10 school days and shows a pattern constituting a change of placement (34 CFR § 300.530(d)(5) and (e)).

- On the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school will notify the parents of that decision, and provide the parents with a copy of the Parent Rights notice.
- On the 11th school day of removal, the school will begin providing appropriate special education and related services. The determination of services needed as a result of a disciplinary change of placement is not made by the school officials as in the previous situations. Instead, the IEP team decides on these services and where they will be provided.
- The school, the parent, and relevant members of the child's IEP team (as determined by the parent and the school) determine if the child's violation of the school's code of student conduct was a manifestation of his or her disability.
- The school will convene meetings regarding the manifestation determination and services as expeditiously as possible, but no later than 10 school days after the decision to change placement due to disciplinary reasons is made.

When a disciplinary change of placement occurs, the IEP team, including the parent, determines the special education and related services to be provided during the removal. However, parental consent for the disciplinary change in placement is not required.

Manifestation Determination

As soon as practical, but not later than 10 school days after the date on which the decision is made to change the placement of a child with a disability because of a violation of a student code of conduct, the representative of the school, the parent and other relevant members of the child's IEP team, as determined by the parent and the school, will meet to review:

- all of the relevant information in the child's file,
- the child's IEP,
- any teacher observations, and
- any relevant information provided by the parent.

This meeting will generally be scheduled by the case manager.

Based on its review of all the relevant information, the group will determine if the conduct in question was:

- a. caused by, or had a direct and substantial relationship to the child's disability; or
- b. the direct result of the school's failure to implement the child's IEP (34 CFR § 300.530(e)(1)).

If it is determined by the group that the conduct of a child was a result of either "a" or "b" above, then the conduct must be determined to be a manifestation of the child's disability.

Determination Behavior WAS a Manifestation of the Disability

If the school, the parent and other relevant members of the child's IEP team (as determined by the parent and school) determine that the student's behavior was the direct result of the school's failure to implement the IEP, the District will take immediate action to remedy those deficiencies. If the school, the parent and other relevant members of the IEP team (as determined by the parent and school) determine that the child's behavior was a manifestation of the disability, the IEP team will:

- Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the behavioral intervention plan; and
- Either:
 - Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and 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.

If it is determined that the child's behavior is a manifestation of the child's disability the child will not be subject to a long-term removal for the behavior. However, the school and the parents may agree to another setting. Also, even when the behavior is a manifestation of the

child's disability the District could request a special education due process hearing officer to order placement in an IAES for up to 45 school days if the District may show that maintaining the current placement is substantially likely to result in injury to the child or others. Requirements for the manifestation determination review are found in Federal regulations (34 CFR § 300.530(e)).

Determination Behavior WAS NOT a Manifestation of the Disability

If the IEP team determines the behavior was NOT a manifestation of the child's disability, the District may proceed with suspension and expulsion proceedings. Using these proceedings, school officials may remove a child with a disability if it is determined that:

- the conduct of the child violated the code of student conduct;
- the behavior was not a manifestation of the child's disability; and
- if the relevant disciplinary procedures applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities.

A child with a disability will continue to receive educational services during the period of a long-term disciplinary removal. These services will be determined by the IEP team and will be designed 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. If the IEP team determines it is appropriate, the child will receive a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation (34 CFR § 300.530(d)(1))

If the violation of the code of student conduct is not a manifestation of the child's disability, the District may transmit the special education and disciplinary records of the child to the school's disciplinary hearing officer for consideration in making the final determination in the disciplinary action. Even if the school's disciplinary hearing officer determines that the child should be suspended or expelled, the District will continue to provide a FAPE for the child.

The IEP team is required to hold a manifestation determination each time a student is removed for more than 10 consecutive days or each time the District determines that a series of removals constitutes a change of placement. The latter would occur any time the series of removals total more than 10 days in a school year; the child's behavior is substantially similar to the behavior that resulted in the previous removals; AND because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. All three criteria must be met in order for the behavior to be determined to be a pattern that constitutes a change in placement.

45 SCHOOL DAY IAES (Option for Behavior Related to Weapons, Drugs, Serious Bodily Injury)

School officials may remove a child with a disability to an IAES up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LEA or the SBE;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LEA or the SBE (tobacco and alcohol are not illegal drugs under this definition); or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA or the State. (34 CFR § 300.530(g))

When a child has been removed to an IAES, the IEP team (NOT the district hearing officer) will determine what special education and related services are needed and where the services will be provided to enable the child to:

- participate in the general education curriculum, although in another setting; and
- progress toward meeting their goals set out in the child's IEP.

Although a manifestation determination review is necessary, this unilateral removal can be made without regard to whether the behavior is determined to be a manifestation of the child's disability. If the IEP team determines that a FBA would be appropriate, one will be conducted. If appropriate, the IEP team will review and revise any existing BIP or develop one with services and modifications that are designed to address the behavior violation so that it does not recur.

When a child commits a violation related to weapons, drugs, or serious bodily injury, the school officials may initially suspend the child for up to 10 school days without educational services (if the suspension includes the 11th cumulative day of suspension in the school year, educational services will begin on the 11th day). When the IEP team meets, it can determine the location of the IAES and the services to be provided to the child. The case manager will complete the necessary paperwork and forward that to the Office of Special Services and notify the Director of Special Services as to the decision of the team. On the date on which the decision is made 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 (including weapons, drugs or serious bodily injury) the school must notify the parents of that decision, and provide the parents with the Parent Rights Notice.

Once the child has been placed in an IAES or otherwise removed for disciplinary reasons, if the school believes that returning the child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others, the District may request an expedited due process hearing to request the hearing officer to order another up to 45 school days placement in the IAES. The burden of proof is on the District to justify an additional removal be ordered by the hearing officer.

APPEALS

If the child's parents disagree with any decision regarding the disciplinary placement or the results of the manifestation determination, the parents may appeal the decision by requesting an expedited due process hearing. Additionally, if the District believes that maintaining the

child's current placement is substantially likely to result in injury to the child or others, the school may request an expedited due process hearing. (34 CFR § 300.532(a)). A parental request for a due process hearing does not prevent the District from seeking judicial relief such as a temporary restraining order or an injunction, when necessary.

Resolution Meeting During Expedited Due Process Hearing

A resolution meeting must occur within 7 days of the District receiving notice of a parent's due process hearing request, unless the parents and District agree in writing to waive the resolution meeting or agree to use the mediation process. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the school's receipt of the due process complaint.

CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION SERVICES

The IDEA allows the parents of a child who has not been determined eligible for special education and related services to assert IDEA protections, including the use of due process, in circumstances when the District had knowledge that the child was a child with a disability before the occurrence of the behavior that caused the disciplinary action. (34 CFR § 300.534(a)) There are three circumstances under which the District is deemed to have knowledge that the student is a student with a disability:

- The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- The parent of the child requested an evaluation of the child; or
- The teacher of the child, or other personnel of the District, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the Director of Special Education of the agency or to other supervisory personnel of the agency.

A public agency would not be deemed to have knowledge if the parent of the child has not allowed an evaluation of the child, has refused special education services for the child, or the child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability .

If the parent requests an evaluation and challenges the proposed disciplinary action, and the District has had no knowledge of the student's disability, then it must conduct an expedited evaluation, but the child remains in the educational placement decided upon by school authorities, which may include suspension or expulsion without educational services.

CHAPTER 9: CHILDREN IN PRIVATE AND PAROCHIAL SCHOOLS INCLUDING HOMESCHOOLS

Federal and state laws and regulations recognize that children with disabilities may be receiving their education in private elementary and secondary school settings for different reasons. In different situations, Districts have different obligations. An LEA's obligation to provide special education services or pay for services provided to children in private schools depends on whether:

- The child with a disability is placed in the private school by the public school as a means of providing special education and related services;
- The child with an disability is enrolled in a private school by his or her parents because the provision of a FAPE is at issue; or
- The child with a disability is voluntarily enrolled in a private school by his or her parents to receive general education.

South Carolina defines a private school as “a school established by an agency other than the State or its subdivisions which is primarily supported by other than public funds, and the operation of whose program rests with other than publicly elected or appointed officials” (S.C. Code Ann. § 59-1-110 (2004)). The definition of private schools includes parochial schools and home-school programs.

Additionally, South Carolina defines elementary and secondary schools as follows: (1) “Elementary school” means any public school which contains grades no lower than kindergarten and no higher than the eighth. (2) “Secondary school” means either a junior high school or a high school. (3) “High school” means any public school which contains grades no lower than the seventh and no higher than the twelfth. (4) “junior high school” shall be considered synonymous with the term “high school” (S.C. Code Ann. § 59-1-150 (2004)).

South Carolina's statutory definition of “elementary school” does not include preschool programs. Charter schools in South Carolina are considered part of the LEAs and are not private schools.

CHILDREN PLACED IN PRIVATE SCHOOLS BY THE PUBLIC SCHOOL OR PUBLIC AGENCY

Both federal and state laws and regulations allow a District to place a child with a disability in a private school in order to meet its obligation to provide a FAPE to the child. In most situations, however, schools are able to offer services to meet children's needs within the District. Only when the IEP team determines that the District is not able to provide the services locally, would they arrange for services in a private school. If the District determines, through the IEP process, that a child with a disability should be placed in a private school or facility, the child's educational program, including special education and related services, must:

- be provided according to an appropriately developed IEP and at no cost to the parents;
- ensure the special education program is provided by staff who meet SCDE personnel standards, including HQT;

- ensure that the private school provides services consistent with the IDEA requirements and other pertinent Federal and State laws and regulations (e.g., in accordance with IEP requirements); and
- ensure that the child has all rights of a child with a disability who is served by the public school.

Before the District places a child with a disability in a private school or facility, the District must initiate and conduct a meeting to develop an IEP for the child. The District will ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the District will use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. After the child with a disability enters the private school or facility, the District may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility. If the private school or facility initiates and conducts the IEP meeting, the private school must notify the District and the District will ensure that the parents and an LEA representative participate in any decision about the child's IEP. In addition, the District and the parent must agree to any proposed changes in the IEP before those changes are implemented.

Any time a child with a disability is placed in a private facility with a private school component by his or her LEA or a state agency, the home district is obligated to ensure that the private facility can provide the child with a FAPE. The home district is the LEA where the child last resided with his or her biological or adoptive parents, legal guardian, or an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) who was legally responsible for the child's welfare at the time he or she was referred to or placed in the alternative residence by the LEA or state agency or taken into the custody of the state. The home LEA must adhere to all federal and state requirements for children with disabilities placed in the private facility with the private school component just as they would for children with disabilities enrolled in and attending a school program within the LEA. This includes the provision of services by HQT personnel.

When an LEA receives notification that a child with a disability was placed in a Residential Treatment Facility (RTF) by a state agency, the LEA in which the RTF is located is required to convene an IEP meeting to develop an appropriate educational program for the child. Proviso 1.66 (2011) of the General Appropriations Act requires the LEA in which a RTF is located ("the facility school district") to provide appropriate educational programs and services to students with and without disabilities who are referred or placed in the RTF by the State. The facility school district is responsible for ensuring that all students with disabilities receive special education and related services in the least restrictive environment by appropriately certified and highly qualified teachers. This includes children with disabilities who are served through a medical homebound model at the RTF. As with any other educational placement decision for a child with a disability, decisions about the appropriateness and amount of services (including those medical homebound in nature) must be made on an individualized basis by the child's IEP team. Additionally, Proviso 1.66 requires that all students enrolled in the facility school district shall have access to the facility school district's general education curriculum, which will be tied to the South Carolina academic standards in the core content areas, and be eligible to receive the educational credits (e.g., Carnegie Units) earned through their educational efforts.

S.C. Code Ann. § 59-33-90 (2004) states that no agency of the state may place or refer a child with a disability to a private school, RTF, institution, or other alternative residence without first ensuring that the child can receive a FAPE in that setting. In placing children with disabilities, state agencies must obtain advance approval that the educational program of the alternative setting meets the standards established by the SCDE, except in an emergency situation.

CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN a FAPE IS AT ISSUE

If the parents of a child with a disability, who previously was receiving special education and related services from the District, enroll their child, without the consent of or referral by the District, in a private preschool or a private elementary or secondary school because the parents believe the child was not receiving a FAPE from the District, a court or special education due process hearing officer may require the agency to reimburse the parents for the cost of that enrollment only if the hearing officer makes both of the following findings:

1. The LEA did not make a FAPE available to the child in a timely manner before the private school enrollment; and
2. The private school placement made by the parents is appropriate to meet the needs of the child.

A court or special education due process hearing officer may find that a private school placement by the parents is appropriate for a child although that placement does not meet state standards that apply to special education and related services which are required to be provided by the LEA.

A court or special education due process hearing officer may deny or reduce any reimbursement for private school placement by the parents, if the court or special education due process hearing officer makes any of the following findings:

- At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that they were rejecting the services or placements proposed by the District to provide a FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, before removal of the child from District, the parents did not give written notification to the District that they were rejecting the services or placements proposed by the District to provide a FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
- Before the parents' removal of the child from the District, the District provided PWN to the parents 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
- The actions of the parents in removing the child from the District were unreasonable.

A court or special education due process hearing officer must not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notification to

the District, if the court or special education due process hearing officer makes any of the following findings:

- Compliance with the notification requirement would likely have resulted in physical harm to the child.
- The District prevented the parents from providing the required notification.
- The District did not inform the parents of their requirement to notify the school of their intent to remove their child.

A court or special education due process hearing officer, at its discretion, may allow a parent full or partial reimbursement of the costs of a private school placement even though the parent failed to provide the notice required, if the court or hearing officer finds either of the following:

- the parent cannot read or write in English, or
- compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

The District must be given an opportunity to offer a Free Appropriate Public Education (FAPE) to the child before tuition reimbursement can become an issue.

CHILD FIND FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

When children are enrolled by their parents in private schools, the District has continuing responsibility for child find and must locate, evaluate, identify, and reevaluate children with disabilities in private schools just as they do in the District. The IDEA requires the District where the private school is located to conduct child find activities to locate children with disabilities attending private elementary and secondary schools that are located in the jurisdiction of the District. This includes children with disabilities who reside in another state but attend a private school that is located within the boundaries of the District.

In meeting the child find obligation with regard to children with disabilities attending private schools within the District boundaries, the District will consult with appropriate representatives of private schools and parents of private school children with disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for children in the District. Additionally, they will determine how parents, teachers, and private school officials will be informed of the process. This consultation will occur in a meeting between the Director of Special Services and representatives of the private school.

The activities undertaken to carry out the child find responsibility must meet the following criteria:

- Be similar to the activities undertaken for exceptional children enrolled in the District;
- Provide for the equitable participation of private school children;
- Provide for an accurate count of children with disabilities enrolled in the private schools; and
- Be completed in a time period comparable to the time for these activities in the District.

Parents may request that the District where the family resides conduct an evaluation under its responsibility for the provision of a FAPE at the same time that they request that the District where the private school is located evaluate the child. In this situation, the districts will work with the parents to ensure their understanding of the problems concerning trying to conduct two separate evaluations at the same time.

If the parent of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, neither the private school or the District may not use the consent override procedures of mediation or due process, and the District is not required to consider the child as eligible for special education services.

If a child is enrolled, or is going to enroll in a private school that is not located in the parent's LEA of residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence (34 CFR § 300.622(a)(3)).

FEDERAL REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS AND HOMESCHOOLED CHILDREN

The IDEA requires that children with disabilities in private schools (K–12) receive an opportunity for participation in special education services. The IDEA makes it clear that a child with a disability in a private school has no individual right to special education or related services. Rather, the public LEA where the private school is located must ensure that a proportionate share of federal funding is used to provide services to this population of children. Therefore, under federal law, in almost all cases, the public LEA where the private school is located would not be obligated to provide any or all special education and related services to every child with a disability enrolled in a private school located within its boundaries. All requirements for parentally placed private school children also apply to homeschooled children in South Carolina.

Consultation Requirements

The Director of Special Education will annually consult with private school representatives and representatives of parents of parentally-placed private school children and homeschooled children with disabilities attending private schools within the District during the design and development of special education and related services for parentally-placed children and before making decisions regarding the following:

- The child find process, including:
 - How parentally-placed private school children suspected of having a disability can participate equitably; and
 - How parents, teachers, and private school officials will be informed of the process.
- The determination of the proportionate share of federal funds available to serve parentally-placed private school children and homeschooled children with disabilities including the determination of how the proportionate share of those funds was calculated.

- The consultation process among District representative, the private school officials, and representatives of parents of parentally-placed private school children and homeschooled 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.
- How, where, and by whom special education and related services will be provided for parentally-placed private school and homeschooled children with disabilities, including a discussion of:
 - The types of services, including direct services and alternate service delivery mechanisms; and
 - How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school and homeschooled children; and
 - How and when those decisions will be made; and how, if the District disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the District will provide to the private school officials a through a contract.

Consultations with appropriate representatives of private schools and parents of private school and homeschooled children with disabilities will occur in a timely manner before decisions are made that affect the ability of children in a private school to participate in services. These representatives of private schools and parents of the private school children with disabilities will have the opportunity to express their views and have meaningful input into the special education process.

The process for allocating the proportionate share of funds and provision of special education parentally placed private school children required by the State under federal requirements is followed by the District. The Director of Special Services performs this calculation annually.

Services Provided with a Services Plan

After the District determines the amount of funds that must be allocated for providing services to children with disabilities in private schools and homeschooled located within the District, the District, in consultation with appropriate representatives of private schools and representatives of parents of children with disabilities voluntarily enrolled in private schools and homeschooled, determines how the funds will be allocated, how and where services will be provided and by whom. The District, however, must ultimately determine the types and levels of services to be provided.

If a child with a disability, who is voluntarily enrolled by his or her parents in a private school or homeschooled, receives services offered by the District where the private school is located, with its proportionate share of funds according to the agreement reached in the consultation, the school would develop a services plan for the child. The regulations refer to this plan as a services plan to avoid confusing it with an IEP. A "services plan" is used because it is clear under federal and state laws and regulations that these children in private schools and children who are homeschooled do not have an individual right to receive a FAPE. The parents

of children served with a services plan do not have any due process rights beyond issues related to child find which includes evaluation/reevaluation. Parents may file a complaint with the SCDE if they feel that the District has failed to meet its obligations under the federal and state law and regulations.

The services plan describes the specific special education and/or related services to be provided to the child as a result of the consultation with appropriate representatives of private schools and representatives of the parents of private school and homeschooled children. To the extent appropriate, the services plan includes all of the IEP components. The elements in each child's services plan may vary depending on the services to be provided. Like an IEP, the services plan must be reviewed and revised on an annual basis, and as necessary.

Location of Services for Children with a Services Plan

The location where services will be provided will be determined in consultation with appropriate representatives of private schools and with representatives of parents of children with disabilities enrolled in private schools and homeschooled. The location of services will impact the amount to be expended to provide services to children with disabilities in private schools and homeschooled. There are options available for the location of the delivery of services to children with disabilities in private schools and homeschooled. Some of the services may be provided in the District. The District may decide that only some or none of the services will be provided at the private school setting. An offer to provide services at the District site generally meets the District's obligations, even if parents refuse the services at that site.

Transportation

The IDEA requires transportation to be provided to a child with a disability in a private school if transportation is necessary for the child to benefit from or participate in the services provided. The District is not required to provide transportation outside of its boundaries. Transportation costs will be figured into the proportionate amount of funds expended for services.

Restrictions On Use of Federal and State Funds for Private Schools

Schools may not use funds to:

- create separate classes organized on the basis of school enrollment or religion of children if the classes are at the same site; and the classes include children enrolled in LEAs and children enrolled in private schools ;
- finance the existing level of instruction at a private school or otherwise benefit the private school; or
- meet the needs of the private school or the general needs of children enrolled in the private school

Additionally, federal and state regulations restrict the use of property, equipment, and supplies in serving children with disability in private schools. Property, equipment, or supplies used on private school premises for providing special education services must remain in the control of the District and be removed from the private school when they are no longer needed to provide the services. They must also be removed to avoid unauthorized use. Federal funds cannot be used for repair, remodeling, or construction at a private school site. Therefore, state

regulations require that Districts ensure that any equipment or supplies be placed in a private school in a manner that allows removal without the necessity of remodeling the private school.

PRESCHOOL CHILDREN ENROLLED IN PRIVATE SETTINGS

The requirement in the IDEA for each district to provide equitable participation in special education and related services to parentally-placed private school children attending private schools within the LEA's boundaries through a services plan only applies to elementary and secondary school children. South Carolina's statutory definition of "elementary school" does not include preschool programs; therefore, preschool children with disabilities attending private day care programs will not be treated as private school children and service plans should not be offered. These children are entitled to a FAPE. If the District convenes an IEP team and the team believes that it can provide the child a FAPE through its preschool program, but the child's parents opt instead to place the child in a private day care or preschool program, the District is not responsible for developing an IEP or a services plan. If the child attends a private preschool or day care program in another District, unlike elementary and secondary school-age children, the District where the private program is located is not responsible for the provision of any special education or related services

MEDIATION AND DUE PROCESS RIGHTS FOR PRIVATE SCHOOL CHILDREN

Parents of children voluntarily enrolled in private schools or homeschooled and receiving services under a services plan cannot seek due process or mediation regarding the District's alleged failure to meet the requirement of providing services to these children. Rather, the parents may request a meeting to review and revise the child's services plan or utilize the state formal complaint process concerning alleged child find violations. However, parents can request mediation or due process if the parents believe the school has failed to properly evaluate and identify their child.

A private school official has the right to file a complaint with the SEA that the District did not engage in consultation that was meaningful and timely, or did not give due consideration to his or her views. The private school official must provide the basis for his or her belief that the District did not comply with these consultation requirements. As part of this complaint process, the District will forward appropriate documentation related to the private school official's complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, he or she may submit a complaint to the U.S. Secretary of Education. The complaint process is available to parents (or another individual or organization), even if services provided in a private school are on a services plan, and not an IEP. However, this right is limited to child find activities only.

CHAPTER 10: DISCONTINUING SPECIAL EDUCATION SERVICES

There are times when a child's eligibility for special education and related services ends or when the parent or student chooses to end the provision of special education services. This chapter discusses several instances in which students currently receiving special education services "discontinue" or exit from their special education program.

NO LONGER ELIGIBLE FOR SERVICES

When a parent or school personnel suspect that a child is no longer eligible for special education services and related services, a reevaluation will be conducted prior to the child's dismissal from the program to determine if the child is no longer a child with a disability. As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments (See Chapter 7, Reevaluation.). If it is determined by the IEP team through a reevaluation that the child is no longer a child with a disability, the District will provide the parents with Prior Written Notice (PWN) of this decision.

GRADUATION

All students receiving special education services will receive a regular high school diploma at the completion of their secondary program if they meet graduation requirements of the state. A regular high school diploma does not include an alternative diploma that is not fully aligned with the state's academic standards, such as a certificate of attendance, an occupational diploma/certificate, or General Educational Development Tests (GED) (Federal Register, August 14, 2006, p. 46580). If a modified or differentiated diploma or certificate is used for students receiving special education services; however, such diplomas or certificates do not end eligibility for special education services.

When the student enters high school, progress toward graduation is monitored annually and recorded on an official transcript of credits. Some students may require services through age 20 to meet IEP goals. The District's obligation to provide special education services ends (a) when the student meets graduation requirements and receives a regular high school diploma, (b) at the end of the school year in which the child reaches age 21, or (c) when an evaluation shows that the child is no longer eligible for special education services.

Students with disabilities are afforded the same opportunity to participate in graduation ceremonies as students without disabilities even if the IEP team determines that services will continue after the student has met all of the required credits (but an official diploma has not been awarded). A student may require services through age 20 to meet IEP goals or because he or she has not obtained all of the required credits for graduation. In either case, however, the student may be allowed to participate in graduation ceremonies with his or her classmates.

No reevaluation is required prior to exiting a student due to graduation (34 CFR § 300.305(e)(2)). However, before the student completes the last semester of high school in which she/he is expected to graduate, the District will provide the student (if over age 18) and the

parents with PWN of the discontinuation of services at the end of the school year. The PWN will clearly state that the student will no longer be entitled to receive special education services from the District after graduation. Parental consent is not required when a child graduates with a regular diploma (34 CFR § 300.102(a)(3)(iii)).

SERVICES TO AGE 21

The District makes a Free Appropriate Public Education (FAPE) available to any student who has not graduated with a regular high school diploma until the end of the school year in which the student turns 21. The school provides the student age 18 and over and the parents with PWN that the services will be discontinued at the end of the school year; however, parental consent is not required. A reevaluation is also not required when a student ages out of eligibility for services upon turning age 21 (34 CFR § 300.305(e)(2)).

Even when the student or parent states that he or she does not intend to return to school for the next school year, the IEP team will provide the student with notice that he or she is eligible to continue receiving services through age 20 and develop an IEP for the student.

If a student turns age 21 after September 1 of the school year, the District will permit the student to enroll and complete the school year if the student will graduate or exit with either a state-issued high school diploma, certificate of attendance, or district certificate. If a student turns age 21 on or prior to September 1, the District is not required to permit the student to enroll.

SUMMARY OF PERFORMANCE

A summary of performance (SOP) is required under the reauthorization of the IDEA for a child whose eligibility for special education services terminates due to graduation with a regular diploma or due to exceeding the age of eligibility. The District will provide the child with a summary of the child's academic achievement and functional performance which must include recommendations on how to assist the child in meeting the child's postsecondary goals (34 CFR § 300.305(e)(3)). The purpose of the SOP is to transfer critical information that leads to the student's successful participation in postsecondary settings. It includes a summary of the achievements of the student with current academic, personal, and career/vocational levels of performance. Information may be included as part of the summary based on assessment findings and team input. Any supporting documents will be appropriately referenced and included with the summary. The case manager is responsible for the completion of this form prior to the student's exit from the District.

The SOP must, at a minimum, address the following:

- Academic achievement: Information on reading, math, and language grade levels, standardized scores, or strengths.
- Functional performance: Information on learning styles, social skills, independent living skills, self-determination, and career/vocational skills.
- Recommendations: Team suggestions for accommodations, assistive services, compensatory strategies for postsecondary education, employment, independent living, and community participation.

STUDENT DROPS OUT OF SCHOOL

Under S.C. Code Ann. § 59-65-30 (2010), students are allowed to drop out of school at age 17 and may at some point obtain a GED. If a student with a disability drops out of school, documentation to that effect will be placed in the student's confidential file. The District will inform the parents that special education services continue to be available to the student through age 20. If the student reenrolls, the previous IEP will be implemented until a new IEP is developed. The new IEP will be developed as soon as possible after the student reenrolls. The District will report the student's truancy to the proper authorities if the student is younger than age 17.

CHAPTER 11: CONFIDENTIALITY

Confidentiality of educational records is a basic right shared by all students in LEAs and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2011).

FEDERAL AND STATE REQUIREMENTS

Each school will annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to:

- Inspect and review the student's education records;
- Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that § 99.31 of FERPA authorize disclosure without consent; and
- File a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

The LEA must also inform parents of:

- The procedure for exercising the right to inspect and review education records.
- The procedure for requesting amendment of records.

The District may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The District shall effectively notify parents who have a primary or home language other than English. (34 CFR § 99.7) This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place.

Generally, most private and parochial schools at the elementary and secondary levels do not receive funds under any program administered by the Department of Education funds and are, therefore, not subject to FERPA. However, if a student is placed in a private school under IDEA, the placing District remains responsible under FERPA for that specific student's records and compliance with FERPA.

Definitions of terms used are as follows (34 CFR § 300.32):

Personally identifiable includes information such as the name of the child, child's parents, or other family member; address; personal identifier such as the child's social security number or student number; or list of personal characteristics or other information that would make it possible to identify the child.

Destruction means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so no one can be identified.

Educational records means any document or medium on which information directly related to one or more students is maintained by a participating agency.

Participating agency means any educational agency or institution that collects maintains or uses personally identifiable student information to provide special education and related services to children with disabilities.

ACCESS TO RECORDS

The FERPA and federal and state special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

Educational records may include, but not limited to:

- academic work completed and level of achievement
- attendance data
- scores and test protocols of standardized intelligence, aptitude, and psychological tests
- interest inventory results
- health data
- family background information
- information from teachers or counselors
- observations and verified reports of serious or recurrent behavior patterns
- IEPs
- documentation of notice and consent

Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 CFR § 99.3, states that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

The District will prevent the disclosure to any unauthorized person of personally identifiable information pertaining to all students. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

The FERPA allows parents to inspect and review all education records of their children maintained by an educational agency that receives federal funds. When a request is received at a school, the school will comply with a request to inspect records within a reasonable time, not to exceed 45 calendar days. The IDEA regulations stipulate, "(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution sessions § 300.510, and in no case more than 45 days after the request has been made."

The FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations (34 CFR § 300.622(a)). For example, FERPA allows the school to release records to authorized individuals, such as:

- other school officials, including teachers at the school where the student attends, who have a legitimate educational interest (34 CFR § 99.31(a)(1));
- officials of another school, LEA, or postsecondary educational institution where the student is enrolled or seeks or intends to enroll, If (a) the LEA's annual notice included a notice that the LEA forwards education records to other agencies that request records and in which the student seeks or intends to enroll; or (b) the LEA makes a reasonable attempt to notify the parents or the student of the disclosure at the last known address (34 CFR § 99.31(a)(2)), however no notice is required if the disclosure is initiated by the parent or adult student;
- authorized representatives of the US Comptroller General, US Secretary of Education, and State Educational Agencies in connection with an audit or evaluation of Federal or State supported programs, or for the enforcement or compliance with Federal legal requirements related to those programs (34 CFR § 99.31(a)(3));
- disclosure in connection with financial aid for which the student has applied or received to determine eligibility, amount, or conditions of the aid or to enforce the terms and conditions of the aid (34 CFR § 99.31(a)(4));
- disclosure to State and local officials to whom the information is specifically allowed to be reported pursuant to State statute (34 CFR § 99.31(a)(5));
- disclosure to organizations conducting studies for educational agencies to develop, validate or administer predictive tests; administer student aid programs; or improve instruction, but only if the study does not allow personal identification of parents and students to anyone other than representatives of the organization conducting the study, and if the information is destroyed when no longer needed for the purposes for which the study was conducted (34 CFR § 99.31(a)(6));
- disclosure to accrediting organizations to carry out their functions (34 CFR § 99.31(a)(7));
- disclosure to a parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code (34 CFR § 99.31(a)(8));
- disclosure of relevant educational records to a court in a legal action initiated by the District against a parent. Also, disclosure to comply with a judicial order or subpoena. However, these disclosures may be made only if the District makes a reasonable effort to notify the parents or eligible student of the order or subpoena in advance of compliance with the order or subpoena, unless the order or subpoena states that the existence or contents of the order or subpoena not be disclosed (34 CFR § 99.31(a)(9));
- disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 CFR § 99.31(a)(10));
- disclosure of directory information. This is information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized

activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended (34 CFR § 99.31(a)(11));

- disclosure to the adult student or student of any age if attending a postsecondary school, or to the parents of a student who has not reached 18 years of age and is not attending an institution of postsecondary education (34 CFR § 99.31 (a)(12)); and
- disclosure of the results of any disciplinary proceeding conducted by an institution of postsecondary education against an alleged perpetrator to an alleged victim of any crime of violence, as defined by § 16 of Title 18, United States Code (34 CFR § 99.31 (a)(13)); or
- disclosure to a parent of a student attending an institution of post secondary education regarding the illegal use of alcohol (34 CFR § 300.622(a)).

To ensure protection of education records, the District will:

1. Obtain written consent before disclosing personally identifiable information to unauthorized individuals. A parent must provide consent if the child is under 18 years of age (unless one of the exceptions listed above applies). This consent will be obtained using the District Consent for Release of Information form.
2. Designate and train a records manager to assure security of confidential records for students with disabilities.
3. Keep a record or log of all parties obtaining access to education records, including the name of the party, the date access took place, and the purpose of the authorized use.
4. Maintain for public inspection a current listing of names and positions of employees who may have access to personally identifiable information.
5. Ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent of a child must have the right to inspect and review only the information relating to his or her child, or to be informed of that specific information.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information. The District maintains a record of the training provided, the person or persons providing the training, dates of the training, those attending, and subjects covered.
8. Provide a parent, upon request, a list of the types and locations of records collected, maintained, or used by the District.
9. Respond to any reasonable request made by a parent for an explanation and interpretation of a record.
10. Provide a parent, upon request, access to the child's records, and under certain circumstances, a copy of the records (34 CFR § 300.613). In general, records will be provided without cost to the parent; however, the law does allow for fees for copies of records made for a parent if the fee does not prevent a parent from exercising the right to inspect and review those records. A fee will not be charged to search for or retrieve information.

TRANSFER OF RECORDS

Education records include personally identifiable information, and will not be released to another agency or organization without parent consent. However, when a student transfers to another LEA, education records will be forwarded without student or parent consent since the annual FERPA notice to parents includes a statement that these records will be forwarded to the receiving school. Schools are permitted to disclose a student's education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. Immunization records are included in the educational records (under the annual notification exception) that may also be shared with a receiving school without student or parent consent. The District will not withhold records because of fines or other such reasons. If a student being served in special education transfers to another LEA, the IEP and any other educationally relevant records will be sent to the receiving LEA within two days of the receipt of the request, and generally will be sent immediately.

RELEASE OF INFORMATION

As discussed in previous sections, consent from the parent or adult student is generally required before education records may be released other than to an LEA (34 CFR § 300.622). Some examples of when parent consent is required include when the District accesses reimbursement from Medicaid, when the child is going to enroll in a private school, and when personally identifiable information is released to an agency.

- Parent consent is required when a school accesses reimbursement from Medicaid or private insurance for special education services. This will be obtained one time prior to accessing Medicaid reimbursement for the student using the Medicaid Release form. The district must obtain a one-time written consent from the parent, after providing written notification of the intent to bill, but before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Department of Health and Human Services). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.
- In addition to the requirement to provide written notification prior to accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent, the district will continue to provide written notification annually to the child's parents before accessing the public benefits or insurance.

Consent is not needed to disclose information under the following conditions:

1. The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.
2. A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—
 - Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
3. The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

The District will use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests by using such methods as passwords for access to electronic records, through written policies, and by limiting access to locked file cabinets.

AMENDMENT OF RECORDS

Parents have the right to request that their child's education records be changed if something is inaccurate, misleading, or in violation of the student's rights of privacy. For example, if a child is evaluated and is identified with a disability or health condition that later is determined to be wrong, the parents may ask that the school remove the records relating to the inaccurate diagnosis.

If the school does not agree that the education records should be changed, staff will provide an opportunity for a hearing, following FERPA requirements. The hearing officer would be the school's hearing officer, not a special education due process hearing officer (34 CFR § 300.618).

DESTRUCTION OF RECORDS

Federal auditing requirements necessitate the availability of education records for identified students for 5 years after they exit from special education services. After that period of time, the District may destroy records. However, before destroying special education records, the District will notify the parent (or the adult student) at their last known address that the information is no longer needed to provide services to the student and that the school is proposing to destroy them.

The requirement to notify the parent or the adult student before records are destroyed may be problematic if the student moves from the address last known to the District. The District may publish a public notice to students who graduated or left school five years previously. The notice will be addressed to students and guardians, advising them of the proposed destruction of records and asking them to contact the District if they object to the destruction.

In addition, the District may inform parents via public notice of when the special education records of their child will be destroyed with a statement in the District's handbook.

Parents may also ask that their child's records be destroyed. However, a permanent record of the following information may be maintained without time limitation:

- A student's name, address, and phone number;
- His or her grades;
- Attendance record;
- Classes attended;
- Grade level completed; and
- Year completed.

AGE OF MAJORITY

In South Carolina, the age of majority is 18. Students who are 18 years or older, unless they have a guardian appointed under State law, have the right to grant or withhold consent, have access to records, to amend records, and to file a complaint, etc. (See Chapter 1, Parent Rights In Special Education, for additional information on age of majority.) When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student, and he or she is known as an "eligible student" under FERPA.

TEST PROTOCOLS

Some individualized testing involves the use of test protocols. Test protocols commonly refer to written instructions on how a test must be administered and the questions posed. Generally, these test protocols are original creations of independent authors and/or organizations. Therefore, they may be protected by the U.S. Copyright Act of 1976, the Digital Millennium Copyright Act of 1988, as well as other State, Federal, and international acts and conventions. If a given test protocol is copyrighted, it may not be reproduced, transmitted, distributed, publicly displayed, nor may a derivative work be created therefrom, without express permission from the copyright owner, unless such use is allowed under the Fair Use Doctrine.

The Office of Special Education and Rehabilitative Services (OSERS) has noted that if a document is copyrighted, the IDEA's inspection and review rights generally do not implicate copyright law. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations. However, when a test protocol contains personally identifiable information directly related to a particular student, that protocol

is an education record and in some instances the District may need to give the parent access to test protocols. If it is determined that this is necessary, the District will do so in a timely manner.

CHAPTER 12: DISPUTE RESOLUTION

Dispute resolution options include informal approaches, mediation, due process complaints or hearings, expedited due process hearings in disciplinary situations, and state complaints. The purpose of these dispute resolution options is to allow the parties involved to continue working together after the disagreement is resolved in order to ensure the child with a disability has a FAPE available.

INFORMAL APPROACHES TO DISPUTE RESOLUTION

IEP Review

One of the first options for dispute resolution is a review of the child's IEP. The parents and District can hopefully resolve issues about a child's program by conducting a review of the IEP and amending it, as appropriate, without even convening the entire IEP team. This process of amending IEPs has already been discussed. If the parent and District agree, an amendment to the IEP will be written and incorporated into the IEP.

If a parent has concerns about his or her child's program, it might be appropriate for the parent or district to request an IEP meeting. At the meeting, the team can hopefully work toward a solution that is agreeable to all. The solution does not have to be permanent. It might be a temporary compromise to try a particular form of instruction or classroom placement for a specified time period. During the time period, the team will monitor the child's progress and determine how well the compromise addressed the concern. The trial period may help the parents and District personnel come to a comfortable consensus on how to help the child.

IEP Facilitation

A facilitated IEP meeting includes an impartial facilitator who is not a member of the IEP team, but rather has been trained to help keep the IEP team focused on developing the child's program while addressing conflicts. The facilitator's job is to promote open, respectful communication and listening among IEP team members and to help work toward resolving differences of opinion. The facilitator does not impose a decision on the team, but rather helps to clarify points of agreement and disagreement. Most importantly, the facilitator ensures that the meeting remains focused on the child.

MEDIATION

Mediation is one of three formal methods of resolving disputes in special education at the local level. Other methods are a state complaint and a due process hearing. To begin the process of mediation, both parties must agree to mediate. Either the parents or District may suggest this option initially by asking the other party if they are willing to mediate the disputed issues. The cost of mediation is borne by the state; there are no costs to either the parents or the District.

Mediation Process

The SCDE has established mediation procedures to allow LEAs and parents to resolve any matter regarding special education, including matters arising prior to the filing of a due

process complaint. Federal regulations at 34 CFR § 300.506 set forth the following provisions for special education mediation:

- The mediation process is voluntary for both the parents and the District.
- Mediation may not be used to deny or delay a parent's right to a due process hearing, or any other parent right.
- Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.
- The SCDE is responsible for the costs of mediation. This cost is handled by the state's paying directly for the training of all mediators and by the flow through of the IDEA funds that may be used by the LEA for all aspects of the mediation process, including the costs of meetings to encourage mediation.
- Mediation must be provided in a timely manner and at a location that is convenient for both parties in the dispute.
- Agreements reached during mediation must be in writing and must include the resolution of each issue for which agreement was reached. Every mediation agreement must also include a statement that:
 - Discussions during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;
 - Each party understands that the agreement is legally binding upon them; and
 - The agreement may be enforced in state or federal court of competent jurisdiction.

The goal of the parties in mediation is to reach an agreement that is workable for all. If an agreement is reached, it is put in writing by the mediator and signed by both parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated.

Mediation Requests

When parents or District personnel disagree about a special education issue, either party may request mediation. However, both parties must agree to use this process. Therefore, the first step in initiating special education mediation is to ask the other party if it is willing to mediate the disputed issue. Mediation may be requested even after a due process hearing request has been filed. This is one reason that the timeline for mediation is short. Mediation must be completed within the due process timeline, and mediation may not be used to delay the parents' right to due process. However, the due process hearing timeline may be extended by the due process hearing officer for a specific period of time during the mediation process if requested by the parties (34 CFR § 300.515(c)).

At a minimum, mediation is available to resolve disputes relating to the following issues:

- Identification,
- Evaluation,
- Placement, and
- Provision of a FAPE to the child.

Once both parties agree in writing to mediation, the mediation session will typically occur within fourteen calendar days. The District will select a mediator on a random or rotational basis. If the mediator is not selected on a random or rotational basis, both parties must be involved in and agree to the selection of the mediator. If the District and parents do not agree

on the assignment of the mediator, the District will contact the Office of General Counsel at the SCDE so that a mediator can be appointed by the SCDE from the approved list. The SCDE maintains this list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

The District will provide parents with information concerning the mediation process and information identifying the mediator. The mediator will provide parents with his or her contact information and will notify both parties as to the date, time, location, and purpose for mediation. The location will be convenient to the parties and should be acceptable to everyone. A neutral location is preferred. In some cases where neutral sites are not readily available, mediations can be held on District property. The mediator also answers any questions about the process and may request additional information from the parties.

Mediation Participants

Mediation is an informal process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and a District representative. Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the District representative may ask an outside advocate to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a disability themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate assist them. The mediator makes the final decision as to who attends the mediation session.

Special Education Mediators

In order to be considered trained and qualified, mediators must fulfill the following requirements:

1. Be knowledgeable in laws and regulations relating to the provision of special education and related services;
2. May not be an employee of the SCDE, any state agency that provides a FAPE for children with disabilities, or the LEA that is involved in the education or care of the child; and
3. Must not have a personal or professional interest that conflicts with the person's objectivity.

Mediation Results

During mediation, the mediator will work with both parties to reach an agreement. If mediation discussions result in both parties' reaching agreement, the mediator records the results in a written mediation agreement, which is signed by both parties. When the issues in mediation involve IEP decisions, the mediation agreement may become part of the student's IEP if agreed to by the parties. The actions agreed upon in the mediation should be implemented immediately, unless the mediation agreement specifies otherwise.

If the IEP is changed by adding the mediation agreement, the IEP team may write a new IEP or amend the existing IEP to reflect the mediation agreement. The District is responsible for following up with the required notice and consent forms. The revised IEP is then implemented. If the mediation agreement is not part of the IEP, the District will ensure that any person

responsible for implementing the agreement is informed of his or her responsibilities. If the mediation is not successful, the mediator may declare that the mediation is at impasse and suggest that both parties consider other methods for dispute resolution, such as filing a complaint or requesting a due process hearing.

The District will maintain copies of any forms or other formal written documentation generated by the mediation process. The District will send a copy of the mediation request form and of the written agreement reached by the parties to the Office of General Counsel.

STATE COMPLAINT

The complaint process is one of the methods parents or others have to resolve special education disagreements with the District. Although most differences are successfully resolved at the local level, filing a state complaint is one of the state processes available to parents.

Filing a Complaint

Any individual or organization may file a complaint if they believe that the District is not complying with federal or state laws or regulations relating to special education. The complaint must allege a violation that has occurred not more than one year prior to the date the complaint is received by the SCDE.

The complaint must be in writing and signed by the person or representative of the organization making the complaint. The complaint must include a statement that the District is not complying with the requirements of the IDEA and/or the SBE special education regulation, 43-243, and it must give the facts upon which that statement is based. The signature and contact information for the complainant and if alleging violations with respect to a specific child:

- the child's name and address of residence, or other contact information if the child is a homeless child or youth;
- contact information for the person filing the complaint;
- the name of the school the child is attending;
- a description of the nature of the problem involving the child, including facts related to the problem; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

The party filing the complaint must forward a copy of the complaint to the District at the same time the complaint is filed with the Office of General Counsel. If a complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint, that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved through the complaint process.

Investigating the Complaint

The complaint investigator at the SCDE must resolve a complaint within 60 calendar days from the date the complaint is received by both parties unless exceptional circumstances exist or the parents and District agree to extend the time to engage in mediation or in other alternative means of dispute resolution. During the 60 days, the complaint investigator must carry out an independent investigation, including an on-site investigation if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the District with the opportunity to respond to the complaint; review all relevant information and make an independent determination as to whether the District is violating a requirement of the IDEA, the applicable state and federal regulations, or state or District policies and procedures; and issue a written decision.

The complaint investigator may contact the person making the complaint and the Director of Special Services to clarify the issue(s), review all relevant records and documents, and determine whether or not the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of federal or state special education laws or regulations or the state's or District's policies and procedures. The investigator will contact the District against which the complaint is filed, and the District will respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint. Both parties can provide additional information to the investigator that is relevant to the issue. It is left to the complaint investigator to review and determine the relevance of any addition information.

After the investigation, the complaint investigator issues a written decision addressing each of the allegations in the complaint. The written decision includes: (a) findings of fact and conclusions; (b) the reasons for SCDE's final decision; and (c) any corrective action or actions that are required including the specific period of time within which each corrective action must be completed. The written decision is final and not subject to appeal although both parties retain all rights to mediation and/or due process hearing to further pursue the matter.

Following Up on the Complaint

If there are any corrective actions to be taken by the District, the District will take those actions. When the corrective actions are completed by the District, the complaint investigator sends a letter of completion to the District with a copy to the person making the complaint. At that point, the complaint file is closed.

DUE PROCESS HEARINGS

Due process is a set of procedures that seeks to ensure fairness of educational decisions and accountability, both for parents and for educational professionals. Due process rights begin when educational professionals or the parents request an initial evaluation to determine whether or not a student is eligible and needs special education and related services. The due process hearing provides a forum where disagreements about the identification, evaluation, educational placement, and provision of a FAPE for students with disabilities may be resolved.

Every special education due process hearing and review is provided at no cost to the child or the parent of the child. The costs of the initial hearing will be paid for by the District except for parent's attorney fees and expert witnesses unless the parent substantially prevails and requests reimbursement from the federal court.

Filing the Due Process Hearing Request

The District, the parents of a child with a disability, or the student (if the student is age 18 or older) have the right to file a due process hearing complaint. A special education due process hearing may be initiated to resolve differences about a child's identification, evaluation, educational placement, or provision of a FAPE. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. There are two exceptions to this timeline including when an District has misrepresented that it has resolved the problem or the District has withheld information that it was legally required to give to the parent (34 CFR § 300.507(a)(2)).

To request a due process hearing, the party filing the complaint sends a copy of the due process hearing request to the other party and to the Office of General Counsel. This notice is confidential and will contain the following information:

- name of the child;
- address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- name of the school the child is attending;
- description of the nature of the problem and the facts that form the basis of the complaint; and
- a proposed resolution of the problem.

When the District receives this request for a due process hearing, District personnel will:

- inform parents about mediation;
- inform parents of free or low-cost legal services; and
- provide a copy of the Parent Rights document for the first due process complaint in the school year (34 CFR § 300.504).

Assigning a Special Education Due Process Hearing Officer

The District will maintain a current list of trained, qualified special education due process hearing officers. This list will include the names and qualifications of the special education due process hearing officers who are available.

The District is responsible for conducting due process hearings in accordance with all federal and state requirements, including assigning special education due process hearing officers. The District will appoint a special education due process hearing officer within 10 calendar days of receiving or initiating a hearing request. The special education due process hearing officer will have no personal or professional interest that would conflict with his or her objectivity. The special education due process hearing officer will not be an employee or former employee (an officer, agent, District board official) of the District. The special education due process hearing officer will have knowledge and understanding of the IDEA and legal

interpretations pertaining to law; have knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and have knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. The special education due process hearing officer will be at least 21 years of age and be a high school graduate (or hold an equivalent credential). Only persons who have been trained by the SCDE may be special education due process hearing officers. If a special education due process hearing officer does not adhere to the federal and state regulations or policies and procedures, including all timelines, he or she will be removed from the list of qualified hearing officers.

Parents or attorneys representing the parents have the right to raise an objection as to the special education due process hearing officer appointed by the District on the basis of a potential bias or personal or professional conflict. If the determination is made by the special education due process hearing officer that a potential bias or conflict exists, he or she must remove himself/herself and the District will go to the next name of the list of persons qualified to serve as special education due process hearing officers.

Resolution Meeting

When the parent has requested a due process hearing, the District will schedule a resolution meeting to occur within 15 calendar days of receiving the due process requests. The District will convene a resolution meeting with the parent, the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the District who has the authority to make binding decisions on behalf of the District. The parent and the District determine which members of the IEP team will attend the meeting. The District will not include their attorney unless the parents bring their attorney.

The purpose of this meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint. The District then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties will develop a legally binding written agreement that both the parent and the representative of the District sign. The agreement is, by law, enforceable in any state or federal court of competent jurisdiction. However, the law also permits either party to void the agreement within 3 business days of the date the agreement was signed. The resolution agreement will be signed by the parent and a representative of the District that has the authority to bind the District.

If a resolution of the complaint is not reached at the meeting and the District has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the District's receipt of the complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence. This includes the issuance of a written decision within 45 calendar days after the end of the resolution period. If no resolution is reached during the resolution session and the parties do not believe they can reach a mutually agreeable resolution, the parties may contact the special education due process hearing officer to request the timeline start prior to the end of the 30-day resolution period.

The parent's failure to participate in a resolution meeting when he or she has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held (34 CFR § 300.510(b)(3)). In addition, if the District is unable to obtain the participation of the parent in the resolution meeting after

reasonable efforts have been made (and documented) the District may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents' due process complaint (34 CFR § 300.510(b)(4)). If the District fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion (34 CFR § 300.510(b)(5)). A resolution meeting, however, is not required if the parent and the District agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. If no resolution is reached during the session, the parties may contact the special education due process hearing officer and request the timeline start.

Prehearing Requirements

The party receiving a due process hearing request must send the party filing the request a response that specifically addresses the issues raised in the complaint within 10 calendar days of receiving the complaint. If either the District or the parent believes that a due process complaint it has received does not meet the legal notice requirements (see Section 1 of this chapter for the requirements), the party may submit to the special education due process hearing officer a sufficiency challenge. The sufficiency challenge must be submitted within 15 calendar days of the date of the party's receipt of the due process complaint. The special education due process hearing officer has up to 5 calendar days from the receipt of the sufficiency challenge to determine whether or not the original complaint notice is sufficient. The special education due process hearing officer shall immediately notify the parents and the District in writing of his or her decision.

If the District has not sent Prior Written Notice (PWN) to the parent regarding the problem described in the parent's due process complaint notice, the District, within 10 days of receiving the complaint, will send to the parent a response that includes: (1) an explanation of why the agency proposed or refused to take the action raised in the complaint; (2) a description of other options that the IEP team considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (4) a description of the other factors that are relevant to the agency's proposed or refused action (34 CFR § 300.508(e)(1)).

A party may amend its due process complaint notice only if: (a) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or (b) the special education due process hearing officer grants permission not less than 5 days before a due process hearing occurs. When a complaint is amended the timelines start over.

Within 5 business days prior to a hearing, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the evaluation that they intend to use at the hearing. Failure to provide this evidence to the other party in a timely fashion gives the other party a right to request that the special education due process hearing officer prohibit the introduction of the evidence at the hearing.

If the District and the parent agreed to the resolution meeting but have not resolved the issues within 30 days of the date the due process complaint was received, the hearing may begin.

Conducting a Due Process Hearing

The due process hearing will be held at a time and place reasonably convenient to the parent of the child and will be a closed hearing, unless the parent requests an open hearing. The parties will be notified in writing of the time and place of the hearing at least 5 days prior to the hearing. Both parties have the right to be present at the hearing, as well as be accompanied and advised by legal counsel and people who have special knowledge about children with disabilities.

Parties have the right to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena by the special education due process hearing officer. Under S. C. Code Ann. § 59-33-90 (2004), special education due process hearing officers have the authority to issue subpoenas related to meeting the requirements set forth in the IDEA. Each party may present witnesses in person or present their testimony by affidavit if the due process hearing officer agrees, including expert medical, psychological or educational testimony. Each party has a right to prohibit the other party from raising any issue at the hearing that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing.

Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. They also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents.

Reaching a Decision

The 45 day timeline for completion of a due process hearing starts on the day after *one* of the following events occurs:

- both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
- the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
- both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation.

A special education due process hearing officer may grant extensions of time upon request of either party unless the due process hearing is an expedited hearing. The request must be in writing. Extensions will only be granted for good cause. The special education due process hearing officer will notify the parties in writing of the decision to grant or deny the extension request. If the request is granted, the decision must also include a definite date for the timeline to resume.

After the close of the special education due process hearing, the special education due process hearing officer will render a decision on the matter, including findings of fact and conclusions, within 10 calendar days. The decision must be written or, at the option of the parent, must be an electronic decision. Any action of the special education due process hearing officer resulting from a due process hearing is final, subject to appeal and review.

A written decision of the result of any hearing will be provided to the District and will be sent by certified mail to the parent or attorney of the child. In addition, the special education due process hearing officer must delete personally identifiable information from the report and send a copy to the Office of General Counsel, which must make the decision available to the Special Education Advisory Council. (34 CFR § 300.509(d))

Appealing the Due Process Decision

If the District or the parents are dissatisfied with the decision of the special education due process hearing officer, either party may file a notice of appeal with the Office of General Counsel not later than 10 calendar days after the date of the receipt of the written decision. A request for an extension to file an appeal (beyond the 10-day time limit) must be made in writing to the Office of General Counsel within 5 days of the receipt of the local decision. Within ten business days of receiving a request for an extension to file an appeal, the state-level review officer may grant the request for good cause shown. The concept of “good cause” may not include negligence or a matter of low priority in filing the request for appeal. In no event will the state-level review officer grant an extension of more than 20 days beyond the original 10-day timeline.

The appeal will include a statement of the decision of the local due process hearing officer, the specific points being appealed, copies of all items entered as evidence, and the names and addresses of the parents if the District is appealing the decision. The appealing party may also include written arguments. When parents appeal the decision, the District will provide a statement of the decision and copies of all items entered as evidence. The District will also provide a written transcript of the local due process hearing to the Office of General Counsel. The Office of General Counsel must appoint a state-level hearing officer and submit to the state-level hearing officer the request for appeal, the transcript, and any other relevant documentation.

The state-level due process hearing officer must conduct an impartial review of the hearing and make an independent decision based on the review. The decision of the state-level review officer is final unless either party chooses to bring a civil action in either state or federal district court of competent jurisdiction. Personally identifiable information is also deleted from the report, and is made available to the Special Education Advisory Council and to the public by the Office of General Counsel.

Stay-Put

While the due process hearing is pending, the student involved in the complaint will remain ("stay-put") in the current educational placement, unless:

- The parents and the District agree to a different placement.
- The proceedings arise in connection with the initial admission of the child to school, in which case the child will be placed in the appropriate regular education classroom

or program, unless otherwise directed by a special education due process hearing officer because a child's behavior is substantially likely to result in injury to the student or to others.

- The student is in an IAES for disciplinary reasons. (34 CFR § 300.533)

If the due process hearing involves an evaluation or initial services under Part B for a child who is transitioning from Part C services to Part B services and is no longer eligible for Part C services because the child has turned age three, the District is not required to provide the Part C services that the child was receiving. However, if the child is found eligible for special education services and related services under Part B, and the parent consents to the initial provision of special education and related services, then the District will provide those special education and related services that are not in dispute between the parent and the District.

Civil Action

After a local due process hearing, or an appeal of that hearing, is completed either the parents or the District may pursue a civil action through a state or federal court for reimbursement of attorneys' fees. Federal and state regulations allow the civil action by either party. (34 CFR § 300.516).

Attorney's Fees

If the parents prevail in the due process hearing or upon appeal, a court may award some or all of the attorney's fees parents have paid in conjunction with the due process hearing. Only a court can award attorney fees to the parents and only if the parents are the prevailing party. Although the special education due process hearing officer has no authority to order attorney's fees, the hearing officer must find that the party seeking attorney's fees is a prevailing party in the action. There may be limitations, however, on the amount of attorney fees ordered by the court. For example, if the court finds that the parents prolonged the process or if the fees charged are more than the hourly rate usually charged, the judge has the authority to reduce the award requested by the parents.

The District may be awarded attorney fees if 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. The District may be awarded attorney fees if the parent's request for a due process hearing 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. In determining the amount of the reimbursement of attorney fees, the judge must follow the IDEA regulations (34 CFR § 300.517).

Expedited Due Process Hearings

Whenever a due process hearing is requested by a parent to appeal a decision regarding placement for disciplinary reasons, a manifestation determination, or a decision concerning extended school year services or when the hearing is requested by a District that believes maintaining the current placement of a child is substantially likely to result in injury to that child or to others, the hearing is considered to be expedited. The District is responsible for arranging the expedited due process hearing, which will occur within 20 school days of the date the

complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Unless the parents and District agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting will occur within 7 days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The decisions from expedited due process hearings are appealable consistent with 34 CFR § 300.514. When an appeal is made by either the parents or the District, the child will remain in the IAES pending the decision of the special education due process hearing officer or until the expiration of the time period (period of disciplinary removal if the behavior is not a manifestation of the disability or period due to removal for special circumstances – drugs, weapons, or serious bodily injury), whichever occurs first, unless the parent and District agree otherwise.

CHAPTER 13: SURROGATE PARENTS

A student who does not have a parent or guardian to represent his or her interests in the special education process and make educational decisions for the student, has the right to have a surrogate parent appointed to ensure the child's rights are represented. South Carolina law defines "parent" as a biological parent, adoptive parent, step-parent, or a person with legal custody. The IDEA defines "parent" as:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) 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 a ward of the State);
- (4) 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
- (5) A surrogate parent who has been appointed in accordance with the IDEA regulations at 34 C.F.R. § 300.519 or section 639(a)(5) of the IDEA.

A surrogate parent must be appointed when no parent or guardian can be identified; the school district/agency, after reasonable efforts, cannot locate a parent; the child is a ward of the state under the laws of the state of South Carolina; or 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)).

A surrogate parent is an adult, other than a child's parent, appointed to represent the educational interests of a student who may be or who has been determined eligible for special education and related services. A student who is suspected of having a disability that qualifies him or her for special education and related services may have a surrogate parent appointed for him or her during the evaluation process. The surrogate parent may represent the student in all matters relating to education, including identification and evaluation.

QUALIFICATIONS OF A SURROGATE PARENT

A surrogate parent must have knowledge and skills that ensure adequate representation of the child. A surrogate parent may not be an employee of the state educational agency (SEA), the local educational agency (LEA), or any other agency that is involved in the education or care of the child. In addition, the surrogate parent may not have any personal or professional interest that conflicts with the interest of the child the surrogate parent represents. A qualified surrogate parent may not be an employee of either the school district/agency or any public and private agency involved in the education or care of the child. An otherwise qualified surrogate parent should have no other interests that conflict with the interest of the child represented. An individual may have a conflict of interest if he or she is also responsible for other children who may have competing interests or if he or she holds a position that might restrict or bias the ability to act on behalf of the child's best interests.

The IDEA explicitly excludes employees of any agency that is involved in the education or care of the child from serving as the child's surrogate parent which means that an employee of the South Carolina Department of Social Services may not act as a surrogate parent. Furthermore, operators and staff of group homes and residential treatment facilities may not serve as surrogate parents because of the requirement that surrogate parents have no interest that conflicts with the interest of the child represented. On the other hand, a foster parent is not considered an agency employee involved in the care of a child solely because he or she receives payment for the child cared for in the foster home. However, if the foster parent meets the definition of a parent under the IDEA, it is not necessary for the foster parent to be appointed as a surrogate parent. If the foster parent does not have an "ongoing, long-term parental relationship" with the child or is unwilling to represent the child's educational interests, the school district/agency may need to appoint a surrogate parent to do so.

SURROGATE PARENT RESPONSIBILITIES AND RIGHTS

A surrogate parent represents the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a FAPE. Examples of activities that surrogate parents may be involved in include, but are not limited to, giving or refusing consent for the initial evaluation, reevaluations, and initial placement of the child in special education; reviewing all educational records and reports related to the child; participating in and contributing to the child's evaluation, eligibility determination, and placement; participating in the development, review, and revision of the child's individualized education program (IEP); and initiating dispute resolution proceedings (e.g., filing a written complaint or requesting mediation or a due process hearing) when disputes arise concerning the identification, evaluation, placement, or provision of a FAPE. The duties of a surrogate parent are limited to matters related to the provision of a FAPE. A surrogate parent has the same rights and procedural safeguards as a parent of a student with disabilities.

CIRCUMSTANCES REQUIRING THE APPOINTMENT OF A SURROGATE PARENT

A surrogate parent will be appointed when no parent or guardian can be identified; the school district/agency, after reasonable efforts, cannot locate a parent; the child is a ward of the state under the laws of the state of South Carolina; or 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)). In cases where a parent is unresponsive, lives a great distance from their child's school, or is incarcerated, the District may obtain written authorization from the parent to appoint a surrogate parent to represent the child after the initial consent for placement is obtained. Parent permission for the appointment of a surrogate must be voluntary and explicitly authorized in writing and is revocable at any time. The surrogate, once appointed, will then represent the child until such time as the parent revokes authorization.

When a student reaches the age of majority (18 years of age in South Carolina) parental rights in the special education process transfer to the student. However, if the student is determined incompetent under state law to make educational decisions, and parental rights have therefore not transferred to the student, or to another named guardian, a surrogate parent will be appointed.

PROCEDURE FOR APPOINTING A SURROGATE PARENT

Any of the following individuals may file a request that a surrogate parent be appointed for a particular student:

- Any employee of a school district/agency or public agency,
- Any employee of the SCDE, or a residential school or hospital,
- any physician, judicial officer, or other person whose work involves the education or treatment of children and who knows a child needing special education services and who knows that the parents or guardians are either not known or cannot be located or that the child is a ward of the state,

The school district/agency involved in the child's educational process is required to appoint a surrogate parent. Requests for the appointment of a surrogate parent should be made in writing to the Director of Special Services. The Director or his/her designee will investigate the need for a surrogate parent and if a surrogate parent is needed, the surrogate parents will be selected by the Director of Special Services. The appointment of a surrogate parent will be made using a written form, and the form will be filed in the student's due process folder. The District maintains a list of people eligible to serve as surrogate parents and can make appointments from this list. In the case of a child who is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child's case, as long as the surrogate meets the requirements of a surrogate parent. Surrogate parents will be assigned within 30 days of the determination that a surrogate parent is needed. The District will ensure that surrogate parents meet the necessary qualifications, are properly trained, and actively participate in the special education decision-making process.

A surrogate parent will continue in his/her appointed role until the child is determined to be no longer eligible for special education and related services; the legal guardianship of the child is assigned to a person who is able to assume the role of parent; or either the identity or the whereabouts of the parent that was previously unknown becomes known, the child reaches the age of majority and rights transfer to the student, or a need to appoint a different surrogate parent arises. The appointment of a surrogate parent can be terminated at any time the surrogate no longer meets the requirements, for any of the reasons stated previously, or when a surrogate parent is determined to no longer be adequately representing the child or requests termination of his or her appointment. As with the appointment of a surrogate parent, the termination of a surrogate parent's appointment will be in writing and will identify the reason(s) for the termination.

APPENDIX

LIST OF ABBREVIATIONS

BIP – Behavior Intervention Plan

ELDA-English Language Development Assessment

ESY – Extended School Year

FAPE – Free Appropriate Public Education

FBA – Functional Behavior Assessment

FERPA – Family Education Rights and Privacy Act

HSAP – High School Assessment Program

IAES – Interim Alternative Educational Placement

IDEA – Individuals with Disabilities Education Act (2004)

IEP – Individualized Education Plan

IFSP – Individual Family Services Plan

LEA – Local Education Agency

LRE – Least Restrictive Environment

PASS – Palmetto Assessment of State Standards

PLAAFP –Present Levels of Academic Achievement and Functional Performance

PWN – Prior Written Notice

SBE – State Board of Education

SC-ALT – South Carolina Alternative Assessment

SCDE – South Carolina Department of Education

SEA – State Education Agency

SIP Team – Student Intervention Planning Team

SOP – Summary of Performance