

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION
[22 PA. CODE CHS. 14 AND 342]

Special Education Services and Programs

The State Board of Education (Board) amends Chapter 14 (relating to special education services and programs) and deletes Chapter 342 (relating to standards relating to special education services and programs) to read as set forth in Annex A, under the authority of the Public School Code of 1949 (24 P. S. 1-101—26-2606-B) (act).

Notice of proposed rulemaking was published at 30 Pa.B. 4628 (September 2, 2000) with an invitation to submit written comments within 30 days. In addition, the Board held hearings on the proposed amendments on September 15, 21 and 25, 2000.

These final-form regulations establish procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs.

Response to Comments

Adoption by Reference

Commentators and the House Education Committee recommended that the appropriate text of the Federal regulations from 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) be incorporated in the text of these final-form regulations. Other commentators supported the choice to adopt by reference. Early in its work, the Board's Standing Committee on Special Education studied and reviewed drafts of efforts to incorporate the Federal regulations in the text of Chapter 14 and determined that doing so would lead to unnecessarily lengthy regulations and lead to possible discrepancies between Federal intent and State intent. As a result, these final-form regulations have been drafted to incorporate Federal regulations by reference, adding in those areas where the Federal regulations require greater detail, when the Commonwealth's statutes or court decisions require specific language and when practices in this Commonwealth are different from those found in other jurisdictions. Federal regulations are adopted by reference in many regulations of this Commonwealth. The revised final-form regulations have added to all Federal regulation references in § 14.102 (relating to purposes) parenthetical descriptions of titles of those sections as provided in the Federal regulations to assist the reader. The Department of Education (Department) has and will continue to develop publications and other media to inform parents, teachers and administrators of their rights and responsibilities under both Federal and State statutes and regulations in regard to children with disabilities. Documents and websites which clearly link Federal and State regulations in a "side-by-side" format will be available upon final publication.

Section 14.101 (relating to definitions)

Defining "student with a disability"—The Independent Regulatory Review Commission (IRRC) recommended that a definition of "student with a disability" be added for clarification. A definition has been added in this final-form rulemaking. In addition, public commentators

and IRRC stated that the proposed rulemaking relying on the Federal definition is less specific than that currently found in Chapter 342 for students with mental retardation, which established an IQ of 80 or higher as a cutoff. By diminishing possible reliance on a single intelligence measure, multidisciplinary evaluation teams will be able to perform comprehensive evaluations, which may include IQ scores, to determine if a student has subaverage general intellectual functioning. Thus the Board elected to rely on the Federal definition.

Definitions of "early intervention services" and "mutually agreed-upon written arrangements"—IRRC recommended revising the definitions of "early intervention services" and "mutually agreed-upon written arrangements." The revised final-form rulemaking has deleted prior definitions and inserted references to the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503) in defining these two terms.

Definition of "parent"—IRRC recommended clarifying the role of foster parents in obtaining special education or early intervention services. A definition of parent is added in the revised final-form rulemaking which includes foster parents so that foster parents in this Commonwealth will henceforward be able to act as parents.

Section 14.122 (relating to screening)

Involvement of parents—Commentators, the House Education Committee and IRRC asked that provisions be added to the screening process requirements that would involve parents in this process. Language has been added in § 14.122(c)(7) (relating to screening).

Section 14.123 (relating to evaluation)

Group of qualified professionals—IRRC commented that this provision is vague and should be clarified. The professionals involved in each evaluation must be determined on a case-by-case basis. Listing all professionals who might serve would be nearly impossible to identify for the wide range of disabilities, be overly prescriptive and result in unnecessarily large evaluation teams. Ongoing guidance from the Department will be provided to help parents, teachers and administrators understand the professionals needed to evaluate students for disabilities.

School psychologists—Commentators, the House Education Committee and IRRC asked the Board to restore the requirement for school psychologists to be members of every multidisciplinary evaluation team. Other commentators supported the proposed rulemaking so that school psychologists would not be required to participate in evaluations which might be purely physical in nature (such as, deafness and hard of hearing, speech pathology). The final-form rulemaking has been revised to list those areas where a school psychologist must be part of the evaluation team. Similar language has been added to § 14.124 (relating to reevaluation).

Section 14.131 (relating to implementation of the IEP)

Implementation of the IEP within 10 days—Commentators, the House Education Committee and IRRC recommended that current language requiring the IEP to be implemented within 10 days be restored. The final-form rulemaking has been changed to include that requirement.

Sections 14.141 and 14.142 (relating to educational placement)

A number of issues regarding educational placement were raised by commentators, the House Education Com-

mittee and IRRC. These included: (1) "recommended" caseloads; (2) caseload limitations to be followed in intermediate unit (IU)-operated or multidistrict classes; (3) class size limitations; (4) the involvement of parents or teachers in the adoption of district caseloads; (5) caseloads and class sizes for regular education classes in which students with disabilities receive programs and services; and (6) age range limitations for special education classes. Public comments were received that favored educational placement as described in the proposed rule-making as well as in opposition to it.

As a result, this final-form rulemaking has been revised in a number of areas. Caseload limitations are now mandatory and a process is established where school districts may request a variance from the caseload limitations by application to the Secretary. As part of the application materials, the district must describe how parents, teachers and others were able to review and offer comments on the requested caseload variance. Language regarding caseload for classes attended by students from more than one district has been clarified to require the caseload of the district in which the class is operated to be applied. IU itinerant services provided to multiple districts must follow caseload limitations.

Public comments were received that supported the elimination of class size restrictions currently found in Chapter 342. These individuals and organizations supported the flexibility permitted districts to structure and staff the programs and services as required in student IEPs. Other public commentators and the House Education Committee asked the Board to restore class size restrictions to limit possibilities for overcrowding special education classes. The Board's goal in considering changes to the current chart was to strike a balance between students' rights for a free appropriate public education (FAPE) and flexibility in staffing and scheduling necessary to provide FAPE effectively and efficiently to all students requiring special education. In its consideration of a variety of options, the Board became convinced that the IEP—the document that identifies the specially-designed instruction necessary for a student to receive FAPE—is the controlling document from which school's schedule staff, programs and services. And with over 220,000 IEPs, many including a variety of instructional and related support requirements, flexibility is important to effectively and efficiently meet the requirements of those plans.

The original class size restrictions were developed in the 1970s when special education was designed to exclude rather than include children in the general curriculum and when fewer students were identified and served through special education. Since that time, the range and number of disabilities has grown as well as the range and number of educational and professional services that are necessary to address those disabilities. More importantly, the direction for the delivery of special education has changed from exclusion to inclusion.

The Board found that class size restrictions were incongruent with current practice in the delivery of special education, provided little flexibility for educational purposes, and focused compliance issues on staffing snapshots rather than on whether or not students were meeting the goals of their IEP. The Board believes that compliance should be driven by attention to the student's IEP and the effectiveness of programs designed to help the student achieve the student's goals as outlined in the IEP.

The Board maintains its choice to eliminate class size restrictions in the final-form regulation for four reasons: (1) there is no Federal requirement to establish class sizes; (2) staffing of classes for students with disabilities must be constructed by schools from the requirements established in student IEPs and cannot be determined effectively as a uniform Statewide standard; (3) caseloads provide general protections to prevent overcrowding; and (4) procedural safeguards ensure that class size cannot serve as an impediment to any student achieving the student's goals as established in the IEP.

No caseloads or class sizes are established in this final-form rulemaking for regular education classrooms in which students with disabilities are included for most or all of the school day. Doing so would result in class size restrictions for most classes in this Commonwealth, a decision which is currently within the purview of locally-elected school boards.

Language on age range restrictions in special education has been retained in this final-form rulemaking.

Section 14.143 (relating to disciplinary exclusion)

Proposed Chapter 14 contained a provision that a disciplinary exclusion of the student with a disability of 15 days or longer constituted a change in placement, triggering the convening of the IEP team. Public comments were received in support of the provision and in opposition. Those commentators requesting a change stated that the provision was in excess of the Federal requirement which stated that disciplinary exclusions which constituted a pattern would constitute a change in placement. The Board did not change the final-form rulemaking because the 15-day limitation creates a clear standard for all to follow.

Section 14.152 (relating to child find, public awareness and screening)

Comparability of screening requirements—Public commentators and IRRC pointed out that the public notice requirements seeking to identify children suspected of being disabled were less detailed for early intervention than they were for school age programs. Language has been modified in this final-form rulemaking to be comparable.

Section 14.162 (relating to scope of appellate panel review)

Language has been added to this section to clarify the scope of review by the panel of hearing officers to reflect Federal regulations.

Representation in Due Process Hearings

Commentators and the House Education Committee questioned the change directed by the Office of Attorney General regarding representation at due process hearings. Additional consultation affirms the position taken by the Office of Attorney General and described in the proposed rulemaking. As a result, no change is found in this final-form rulemaking. Some commentators stated that this provision would require parents to engage the services of attorneys to participate in due process hearings. Nothing in the final-form rulemaking limits parents' rights to represent themselves and the interests of their children in due process hearings.

Further Response to Public Comment

A document containing detailed response to comments not included here was mailed to all public commentators and provided to the Governor's Office, Standing Committees and IRRC. A copy is available from Peter H. Garland,

Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787 or TDD (717) 787-7367.

Affected Parties

Students who need or may need special education services and programs are affected by these final-form regulations. The final-form regulations also affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their child. School districts and intermediate units are affected through compliance with the final-form regulations.

Cost and Paperwork Estimates

These regulations provide procedures for consistent implementation of existing Federal and Commonwealth law and regulation. Adopting these revisions to Chapter 14 may result in savings by changing the reevaluation requirement from every 2 years to every 3 years (except for students who are mentally-retarded). This change could result in an approximate annual Statewide savings of \$4.75 million for school districts.

School districts will experience additional costs over time in complying with new Federal requirements (that is, the requirement that regular education teachers participate in IEP meetings) that might minimize the potential savings described in this Preamble. New Federal regulations have created additional paperwork requirements including regarding student goals and benchmarks in the IEP, and the more frequent issuance of procedural safeguards notices related to IEP team meetings, reevaluation, and in certain disciplinary situations.

Effective Date

These final-form regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of Chapter 14 will be reviewed by the Board every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Board submitted a copy of the proposed rulemaking published at 30 Pa.B. 4628 (September 2, 2000) to IRRC and to the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing the final-form regulations, the Board considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulations were deemed approved by the Senate Education Committee on February 26, 2001, and deemed approved by the House Education Committee on February 14, 2001. IRRC met on March 8, 2001, and disapproved the final-form regulations in accordance with section 6(a) of the Regulatory Review Act (71 P. S. § 745.6(a)).

Under section 7(a) of the Regulatory Review Act (71 P. S. § 745.7(a)), the Board, on March 15, 2001, served notice that the final-form regulations would be revised and promulgated under section 7(c) of the Regulatory

Review Act. On March 20, 2001, the Board submitted the agency report and the revised final-form regulations under section 7(c) of the Regulatory Review Act to the Office of the Governor, Senate Education Committee, House Education Committee and IRRC.

Under section 7(c) of the Regulatory Review Act the revised final-form rulemaking was approved by the Senate Education Committee on March 21, 2001, and deemed approved by the House Education Committee. IRRC met on April 5, 2001, and approved the revised final-form regulations.

Contact Person

The official responsible for information on the promulgation of these revised final-form regulations is Peter H. Garland, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787 or TDD (717) 787-7367. The contact person for the implementation of these revised final-form regulations is Frances Warkomski, Director, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-2311 or TDD (717) 787-7367.

The Federal regulations adopted by reference herein may be found at <http://www.ideapractices.org/lawandregs.htm>, <http://www.cisc.k12.pa.us/federalregister/> or by requesting a copy from Dr. Warkomski.

Alternative formats of the regulations (such as, Braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Warkomski at the telephone numbers and address previously listed.

Findings

The Board finds that:

(1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The regulations are necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 22 Pa. Code Chapters 14 and 342, are amended by deleting §§ 14.1—14.8, 14.21—14.25, 14.31—14.39, 14.41—14.45, 14.51—14.56, 14.61—14.68, 14.71—14.74, 342.1—342.8, 342.21—342.25, 342.31—342.39, 342.41—342.46, 342.51—342.56, 342.61—342.68 and 342.71—342.74; and by adding §§ 14.101—14.104, 14.121—14.124, 14.131—14.133, 14.141—14.144, 14.151—14.158, 14.161—14.162 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

PETER H. GARLAND,
Executive Director

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 2238 (April 21, 2001).)

Fiscal Note: Fiscal Note 6-270 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART I. BOARD OF EDUCATION

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

Sec.	
14.1—14.8.	(Reserved).
14.21—14.25.	(Reserved).
14.31—14.39.	(Reserved).
14.41—14.45.	(Reserved).
14.51—14.56.	(Reserved).
14.61—14.68.	(Reserved).
14.71—14.74.	(Reserved).

GENERAL PROVISIONS

14.101.	Definitions.
14.102.	Purposes.
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CHILD FIND, SCREENING AND EVALUATION

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IEP

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EDUCATIONAL PLACEMENT

14.141.	Terminology related to educational placement.
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14.143.	Disciplinary placements.
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EARLY INTERVENTION

14.151.	Purpose.
14.152.	Childfind, public awareness and screening.
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14.161.	Prehearing conferences.
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GENERAL PROVISIONS

§§ 14.1—14.8. (Reserved).

§§ 14.21—14.25. (Reserved).

§§ 14.31—14.39. (Reserved).

§§ 14.41—14.45. (Reserved).

§§ 14.51—14.56. (Reserved).

§§ 14.61—14.68. (Reserved).

§§ 14.71—14.74. (Reserved).

§ 14.101. Definitions.

In addition to the definitions in § 14.102 and 14.103 (relating to purposes; and terminology related to Federal

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

Act—The Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).

Agency—An intermediate unit, school district, approved private school, State-operated program or facility or other public (excluding charter schools under 24 P. S. §§ 17-1701-A—17-1732-A) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners—The minimum age established by the school district board of directors for admission to the district's first grade under § 11.15 (relating to admission of beginners).

Department—The Department of Education of the Commonwealth.

Developmental areas—Cognitive, communicative, physical, social/emotional and self-help.

Developmental delay—A child who is less than the age of beginners and at least 3 years of age is considered to have a developmental delay when one of the following exists:

(i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.

(ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY—Extended school year.

Early intervention agency—An intermediate unit, school district or licensed provider which has entered into a mutually agreed upon written arrangement with the Department to provide early intervention services to eligible young children in accordance with the act.

Early intervention services—As defined in the act.

Eligible young child—A child who is less than the age of beginners and at least 3 years of age and who meets the criteria in 34 CFR 300.7 (relating to a child with a disability).

IEP—Individualized education program.

IST—Instructional support team.

MDT—Multidisciplinary team.

Mutually agreed-upon written arrangement—As defined in the act.

Parent—The term as defined in 34 CFR 300.20 (relating to parent) and also includes individuals appointed as foster parents under 42 Pa.C.S. §§ 6301—6311 (relating to the Juvenile Act).

Secretary—The Secretary of the Department.

Student with a disability—A child of school age who meets the criteria in 34 CFR 300.7 (relating to a child with a disability).

§ 14.102. Purposes.

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1419) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.

(ii) The rights of children with disabilities and parents of these children are protected.

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 12418—12469 (March 12, 1999). The following sections are incorporated by reference.

(i) 34 CFR 300.4—300.6 (defining the terms “act”; “assistive technology device”; and “assistive technology service”).

(ii) 34 CFR 330.7(a) and (c) (defining the term “child with a disability”).

(iii) 34 CFR 300.8—300.24 (defining the terms “consent”; “day”; “business day”; “school day”; “educational service agency”; “equipment”; “evaluation”; “free appropriate public education”; “include”; “individualized education program”; “individualized education program team”; “individualized family service plan”; “local educational agency”; “native language”; “parent”; “personally identifiable”; “public agency”; “qualified personnel”; and “related services”).

(iv) 34 CFR 300.26 (defining the term “special education”).

(v) 34 CFR 300.28 and 300.29 (defining the terms “supplementary aids and services”; and “transition services”).

(vi) 34 CFR 300.121—300.125 (relating to free appropriate public education (FAPE); exception to FAPE for certain ages; full educational opportunity goal (FEOG); FEOG—timetable; and child find).

(vii) 34 CFR 300.138 and 300.139 (relating to participation in assessments; and reports relating to assessments).

(viii) 34 CFR 300.300 (relating to provision of FAPE).

(ix) 34 CFR 300.302—300.309 (relating to residential placement; proper functioning of hearing aids; full educational opportunity goal; program options; nonacademic services; physical education; assistive technology; and extended school year services).

(x) 34 CFR 300.311(b) and (c) (relating to FAPE requirements for students with disabilities in adult prisons).

(xi) 34 CFR 300.313 (relating to children experiencing developmental delays).

(xii) 34 CFR 300.320 and 300.321 (relating to initial evaluations; and reevaluations).

(xiii) 34 CFR 300.340 (relating to definitions related to IEPs).

(xiv) 34 CFR 300.342—300.346 (relating to when IEPs must be in effect; IEP meetings; IEP team; parent participation; and development, review and revision of IEP).

(xv) 34 CFR 300.347 (a), (b) and (d) (relating to content of IEP).

(xvi) 34 CFR 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEPs—accountability).

(xvii) 34 CFR 300.401 (regarding responsibility of state educational agency in connection with children with disabilities in private schools placed or referred by public agencies).

(xviii) 34 CFR 300.403 (relating to placement of children by parents if FAPE is at issue).

(xix) 34 CFR 300.450—300.462 (relating to children with disabilities enrolled by their parents in private schools).

(xx) 34 CFR 300.500—300.515 (regarding certain due process procedures for parents and their children).

(xxi) 34 CFR 300.519—300.529 (relating to discipline procedures).

(xxii) 34 CFR 300.531—300.536 (regarding certain procedures for evaluation and determination of eligibility).

(xxiii) 34 CFR 300.540—300.543 (relating to additional procedures for evaluating children with specific learning disabilities).

(xxiv) 34 CFR 300.550—300.553 (relating to least restrictive environment (LRE) including general LRE requirements; continuum of alternative placements; placements; and nonacademic settings).

(xxv) 34 CFR 300.560—300.574(a) and (b) (providing for confidentiality of information).

(xxvi) 34 CFR 300.576 (relating to disciplinary information).

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.125(a) (relating to child find).

§ 14.103. Terminology related to Federal regulations.

For purposes of interfacing with 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), the following term applies, unless the context clearly indicates otherwise:

Local educational agency—Where the Federal provision uses the term “local educational agency,” for purposes of this chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services. Applicability of this term to public charter schools is found in Chapter 711 (relating to charter school services and programs for children with disabilities).

§ 14.104. Educational plans.

(a) Each school district shall develop a special education plan aligned with the strategic plan of the school district under § 4.13 (relating to strategic plans). The special education plan shall be developed every 3 years consistent with the 3-year review cycle of the strategic

plan of the school district. The Secretary will prescribe the format, content and time for submission of the special education plan.

(b) Each school district's special education plan shall specify special education programs that operate in the district and those that are operated in the district by the intermediate units, area vocational technical schools and other agencies.

(c) Each school district's special education plan shall include procedures for the education of all students with a disability who are residents of the district including those receiving special education in approved private schools and students with a disability who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the Public School Code of 1949 (24 P. S. §§ 13-1305, 13-1306 and 13-1306.2).

(d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit. The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.

(e) Each early intervention agency shall develop an early intervention special education plan every 3 years.

(f) The Department will approve plans in accordance with the following criteria:

(1) Services and programs are designed to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.

(2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.

(3) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

(g) Portions of the plans that do not meet the criteria for approval will be disapproved. Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30-days after the receipt of the request. The Department will render a decision within 30-days following the hearing.

CHILD FIND, SCREENING AND EVALUATION

§ 14.121. Child find.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(1)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.

(c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

§ 14.122. Screening.

(a) Each school district shall establish a system of screening to accomplish the following:

(1) Identify and provide initial screening for students prior to referral for a special education evaluation.

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

(3) Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(4) Identify students who may need special education services and programs.

(b) Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections (a) and (c).

(c) The screening process shall include:

(1) For students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based or performance-based assessment.

(2) For students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.

(3) An intervention based on the results of the assessments under paragraph (1) or (2).

(4) An assessment of the student's response to the intervention.

(5) A determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.

(6) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(7) Activities designed to gain the participation of parents.

(d) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be referred for evaluation under § 14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.534(a)(1) (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.531—300.535, the initial evaluation report shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent.

§ 14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.536 (relating to reevaluation), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.

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

IEP

§ 14.131. IEP.

(a) In addition to the requirements incorporated by reference, the following provisions apply to IEPs:

(1) Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team. A parent may waive this provision.

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

(3) If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents. The interim IEP shall be implemented until a new IEP is developed and implemented or until the completion of due process proceedings under this chapter.

(4) If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.

(5) Every student receiving special education and related services provided for in an IEP developed prior June 9, 2001, shall continue to receive the special education

and related services under that IEP subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of IEP), each school district shall designate persons responsible to coordinate transition activities.

§ 14.132. ESY.

This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.

(1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor will be considered determinative:

(i) *Regression*—whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

(ii) *Recoupment*—whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(4) The need for ESY services will not be based on any of the following:

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

§ 14.133. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior support programs. Behavior support programs include a variety of techniques to develop and maintain skills that will enhance an individual student's or young child's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student or young child shall be the least intrusive necessary.

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques—Methods which utilize positive reinforcement to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—Devices and techniques designed and used to control acute or episodic aggressive behaviors or to control involuntary movements or lack of muscular control due to organic causes or conditions. The term includes physical and mechanical restraints.

(c) Restraints to control acute or episodic aggressive behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective. The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

(1) Corporal punishment.

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

(3) Locked rooms, locked boxes or other locked structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placement).

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) Agencies have the primary responsibility for ensuring that behavior management programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy on the use of behavior management techniques and obtaining parental consent prior to the use of highly restraining or intrusive procedures.

(g) In accordance with their plans, agencies may convene human rights committees to oversee the use of restraining or intrusive procedures and restraints.

EDUCATIONAL PLACEMENT

§ 14.141. Terminology related to educational placement.

Notwithstanding the requirements incorporated by reference with regard to educational placements, the following words and terms, when used in § 14.142 (relating to caseload for special education), have the following meanings:

Autistic support—Services for students with the disability of autism.

Blind and visually impaired support—Services for students with the disability of visual impairment, including blindness.

Deaf and hard of hearing impaired support—Services for students with the disabilities of deafness or hearing impairment.

Emotional support—Services for students with a disability whose primary identified need is emotional support.

Full-time—Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Itinerant—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

Learning support—Services for students with a disability whose primary identified need is academic learning.

Life skills support—Services for students with a disability focused primarily on the needs of students for independent living.

Multiple disabilities support—Services for students with multiple disabilities.

Part-time—Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

Physical support—Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

Resource—Regular classroom instruction for most of the

school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

Speech and language support—Services for students with the disability of speech and language impairment.

§ 14.142. Caseload for special education.

(a) This chart presents the maximum caseload allowed on a single teacher’s roll for each school district.

Type of Service	Itinerant	Resource	Part-time	Full-time:
Learning Support	50	20	15	12
Life Skills Support	20	20	15	12 Elementary 15 Secondary
Emotional Support	50	20	15	12
Deaf and Hearing Impaired Support	50	15	10	8
Blind or Visually Impaired Support	50	15	15	12
Speech and Language Support	65			8
Physical Support	50	15	12	12
Autistic Support	12	8	8	8
Multiple Disabilities Support	12	8	8	8

(b) A school district may request approval for a caseload chart which varies from that in subsection (a) as part of its special education plan consistent with § 14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

- (1) Ensure the ability of assigned staff to provide the services required in each student’s IEP.
- (2) Apply to special education classes operated in the school district.
- (3) Provide a justification for why the chart deviates from the caseload chart in subsection (a).
- (4) Describe the opportunities for parents, teachers and other interested parties to review and comment on the chart prior to its submission.
- (c) Classes or programs with students from more than one district regardless of whether operated by a school district, intermediate unit, or agency shall follow the caseload chart of the district where the class or program is located. Intermediate unit itinerant services provided to multiple districts shall follow the caseload chart under subsection (a).
- (d) Caseloads are not applicable to approved private schools.
- (e) The Department may withdraw approval of variance in the caseload chart for a school district if its caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:
 - (1) Graduation rates of students with a disability.
 - (2) Drop-out rates of students with a disability.
 - (3) Postsecondary transition of students with a disability.
 - (4) Rate of grade level retentions.
 - (5) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).
- (f) The maximum age range shall be 3 years in elementary school (grades K-6) and 4 years in secondary school

(grades 7-12). A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team and is justified in the IEP.

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR 300.519(b) (relating to change of placement for disciplinary removals), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student’s actions are consistent with 34 CFR 300.520 (a)(2)(i) and (ii) (relating to authority of school personnel). For this purpose, the definitions in 34 CFR 300.520(d) apply.

§ 14.144. Facilities

The comparability and availability of facilities for students with a disability shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

- (1) Students with disabilities will be provided appropriate classroom space.
- (2) Moving of a class shall occur only when the result will be:
 - (i) To bring the location for delivery of special education services and programs closer to the students’ homes.
 - (ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.
 - (iii) To respond to an emergency which threatens the students’ health or safety.
 - (iv) To accommodate ongoing building renovations, provided that the movement of students with disabilities due

to renovations will be proportional to the number of students without disabilities being moved.

(v) That the location of classes shall be maintained within a school building for at least 3 school years.

(3) Each special education class is:

(i) Maintained as close as appropriate to the ebb and flow of usual school activities.

(ii) Located where noise will not interfere with instruction.

(iii) Located only in space that is designed for purposes of instruction.

(iv) Readily accessible.

(v) Composed of at least 28 square feet per student.

EARLY INTERVENTION

§ 14.151. Purpose.

(a) This section and §§ 14.152—14.158 (relating to early intervention) apply to services and programs for eligible young children.

(b) Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

(1) The Department will provide for the delivery of early intervention services.

(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by an intermediate unit, school district or other agencies.

§ 14.152. Child find, public awareness and screening.

(a) Each early intervention agency shall adopt and use a system to locate and identify eligible young children and young children thought to be eligible who reside within the boundary served by the early intervention agency.

(b) Each early intervention agency shall conduct awareness activities to inform the public of early intervention services and programs and the manner by which to request these services and programs.

(c) Each early intervention agency shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the area served by the agency of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to eligible young children in accordance with this chapter.

§ 14.153. Evaluation.

Notwithstanding the requirements adopted by reference:

(1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.

(2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment

of the family's perceived strengths and needs which will enhance the child's development.

(3) The assessment shall include information to assist the MDT to determine whether the child has a disability and needs special education and related services and to determine the extent to which the child can be involved in appropriate preschool activities.

(4) The following timeline applies to the completion of evaluations and reevaluations under this section:

(i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent.

(ii) Notwithstanding the requirements incorporated by reference in 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.

(iii) Reevaluations shall occur at least every 2 years.

(5) Each eligible young child shall be evaluated by an MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under § 14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under § 14.123(a).

§ 14.154. IEP.

(a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.

(b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:

(1) At least one special education teacher or special education provider.

(2) An agency representative familiar with appropriate activities for preschool children and knowledgeable about the availability of the resources of the early intervention agency. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative shall be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

(c) With parental consent, the IEP shall include a section on family services, which shall provide for appropriate services to assist the family in supporting the eligible young child's development.

(d) Notwithstanding the requirements incorporated by reference, the following timelines govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 days after the completion of the IEP.

(2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.

(e) For children who are within 1 year of transition to a program for school age students, the IEP shall contain goals and objectives which address the transition process.

(f) Progress indicators include but are not limited to, IEP annotation, dated progress and documented parental feedback.

(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior June 9, 2001, shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

§ 14.155. Range of services.

(a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided these other agencies are licensed, when appropriate, by the Department or the Department of Public Welfare.

(b) The IEP team shall review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child.

(c) The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

(1) Regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.

(2) Regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.

(3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with noneligible young children.

(4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.

(5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.

(6) Early intervention services provided in a specialized early intervention program.

(7) Early intervention services and programs provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.

(d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children. The duration of early intervention services shall be developed by each early intervention agency and shall be included in its plans under § 14.104 (relating to educational plans).

(e) The caseloads of professional personnel shall be determined on the basis of maximums allowed and the amount of time required to fulfill eligible young children's IEPs. The following caseloads shall be used in early intervention programs:

(1) *Supportive intervention.* In a regular preschool program in which supportive intervention is the primary method of service, the caseload range shall be 10-40 children with no more than six eligible young children serviced in the same session. Supportive intervention includes consultation, integrated therapies and other instructional strategies.

(2) *Specialized setting.* In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:

(i) *0-18 months*—One staff member for every three eligible young children, with a maximum class size of nine.

(ii) *18-36 months*—One staff member for every four eligible young children, with a maximum class size of 12.

(iii) *36 months and up*—One staff member for every six eligible young children, with a maximum class size of 18 children.

(3) *Home based program.* In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 eligible young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.

(4) *Early intervention program—speech and language.* In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.

(5) *Early intervention program—physical and occupational therapies.* In early intervention programs where physical therapy or occupational therapy, or both, is specified on the IEP, individual caseloads are determined with consideration of the type of services delivered and the time required for those services.

§ 14.156. System of quality assurance.

The Department will assure in accordance with section 302(b) of the act (11 P. S. § 875-302(b)) through its monitoring and technical assistance activities, a system of quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs; assurance of compliance with program standards; documented progress indicators; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or through providers contracted by the early intervention agency.

§ 14.157. Exit criteria.

(a) Under section 301(14) of the act (11 P. S. § 875-301(14)), children shall be exited subject to §§ 14.161 and

141.62 (relating to procedural safeguards) from early intervention based on one or more of the following criteria:

(1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.

(2) The child has functioned within the range of normal development for 4 months, with an IEP, and as verified by the IEP team.

(3) The parent or guardian withdrew the child from early intervention for other reasons.

(b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter prevents that placement.

§ 14.158. Data collection.

The Department will require early intervention agencies to maintain accurate information concerning eligible young children and the types of services received, and to report that information in aggregate at predetermined dates throughout the fiscal year. The Secretary will prescribe the format, content, data items and time for submission of the required information.

PROCEDURAL SAFEGUARDS

§ 14.161. Prehearing conferences.

The purpose of the prehearing conference is to reach an amicable agreement in the best interest of the student or young child.

(1) In addition to the requirements incorporated by reference in 34 CFR 300.503—300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district or early intervention agency in the case of a young child to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.

(2) When a parent requests and the school district or early intervention agency in the case of a young child agrees to participate in a prehearing conference, the conference shall be convened within 10 days of receipt of the parent notice and shall be chaired by the superintendent, the early intervention agency representative or their designees.

(3) A parent or the school district or early intervention agency in the case of a young child may waive the right to a prehearing conference and immediately request an impartial due process hearing under § 14.162 (relating to impartial due process hearing and expedited due process hearing).

(4) If the prehearing conference results in agreement, the provisions under § 14.131 (relating to IEP) shall be applied.

(5) Within 5-days of the agreement, a parent may notify the school district or early intervention agency in the case of a young child, in writing, of a decision not to approve the identification, evaluation, recommended assignment or the provision of a free appropriate public education. When a parent gives notice not to approve the identification, evaluation, recommended assignment, or the provision of a free appropriate public education, or if

the prehearing conference does not result in an agreement, the provisions under § 14.162 shall be applied.

§ 14.162. Impartial due process hearing and expedited due process hearing.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, a notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) If parents disagree with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation, or placement of, or the provision of a free appropriate public education to the student or young child, the parent may request an impartial due process hearing.

(c) A school district may request a hearing to proceed with an initial evaluation, an initial educational placement or a reevaluation when the district has not obtained parental consent as required by 34 CFR 300.505(c) (relating to parental consent). When a parent rejects the district's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, the school district may request an impartial due process hearing.

(d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place and time reasonably convenient to the parents and child involved. A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a place and time reasonably convenient to the parents and child involved. These options shall be set forth in the notice provided for requesting a hearing.

(e) The hearing shall be an oral, personal hearing and shall be closed to the public unless the parents request an open hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) A written or at the option of the parents, electronic verbatim record of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) A party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers and appellate hearing officers:

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

(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a school district which receives a request for an impartial due process hearing shall forward the request to the entity providing coordination services under paragraph (1) without delay.

(3) The Secretary will contract for the services of hearing officers for hearings related to an eligible young child or thought to be eligible young child and for appellate hearing officers for school aged students and may compensate the hearing officers and appellate hearing officers for their services. The compensation does not cause the hearing officers and appellate hearing officers to become employees of the Department.

(4) Neither a hearing officer nor an appellate hearing officer may be an employee or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child or by a person having a personal or professional interest that would conflict with the person's objectivity in the hearing. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following timeline applies to due process hearings:

(1) A hearing shall be held within 30 days after a parent's or school district's initial request for a hearing. If the school district uses the coordination services under subsection (p), the parent's request must be forwarded by the school district within 5 days of the receipt of the request to the service agency supported by the Secretary.

(2) The hearing officer's decision shall be issued within 45 days after the parent's or school district's request for a hearing.

(3) The appellate hearing panel shall render a decision within 30 days after a request for review.

(4) A hearing officer or appellate hearing officer may grant specific extensions of time beyond the periods in paragraphs (1)—(3) at the request of either party.

(5) If an expedited hearing is conducted under 34 CFR 300.528 (relating to expedited due process hearings), the hearing officer decision shall be mailed within 45 days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) If the decision of the hearing officer is appealed, the panel of appellate hearing officers as provided in subsection (o) shall conduct an impartial review of the hearing. The review shall do the following:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights under subsections (e)—(n) apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the panel of appellate hearing officers.

(5) Make an independent decision on completion of the review.

(6) Give to the district a written copy of the findings of fact and decisions and provide at the option of the parents, a written or electronic copy of the findings of fact and decisions.

(s) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

PART XVI. STANDARDS

CHAPTER 342. (Reserved)

§§ 342.1—342.8. (Reserved).

§§ 342.21—342.25. (Reserved).

§§ 342.31—342.39. (Reserved).

§§ 342.41—342.46. (Reserved).

§§ 342.51—342.56. (Reserved).

§§ 342.61—342.68. (Reserved).

§§ 342.71—342.74. (Reserved).

[Pa.B. Doc. No. 01-1030. Filed for public inspection June 8, 2001, 9:00 a.m.]

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 711]

Charter School Services and Programs for Children with Disabilities

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

Annex A, under the authority of sections 1701-A—1732-A of the Public School Code of 1949 (24 P. S. §§ 17-1701-A—17-1732-A) (act).

Notice of proposed rulemaking was published at 30 Pa.B. 3463 (July 8, 2000) with an invitation to submit written comments. In addition, a notice was published at 30 Pa.B. 5290 (October 14, 2000) providing an opportunity for additional public input.

Purpose

Under section 1732-A(c)(2) of the act (24 P. S. § 17-1732-A(c)(2)), the Secretary has the authority and the responsibility to ensure that charter schools comply with Federal laws and regulations governing children with disabilities, and further provides that the Secretary shall promulgate regulations to implement this provision. The missions, programs and curricula of charter schools are to promote the inclusion of all children.

Requirements of the Regulations

These final-form regulations define terms related to special education for charter schools and outline the Department's authority in its duties to assure charter schools' compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities. These regulations adopt provisions of specific Federal law (IDEA/504) that apply to special education in charter schools.

Response to Comments

Adoption by reference—Public commentators, House and Senate Education Committees and the Independent Regulatory Review Commission (IRRC), recommended that the appropriate text of the Federal regulations from 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) be incorporated in the text of these final-form regulations. Early in its work to develop these final-form regulations, the Department determined that doing so would lead to unnecessarily lengthy regulations and lead to possible discrepancies between Federal intent and State intent. As a result, these final-form regulations were drafted to incorporate Federal regulations by reference, adding in those areas where the Federal rules require greater detail, when the Commonwealth's statutes or court decisions require specific language and when practices in this Commonwealth are different from those found in other jurisdictions. Federal regulations are adopted by reference in many regulations of the Commonwealth. The Department has and will continue to develop publications and other media to inform parents, teachers and administrators of their rights and responsibilities under both Federal and State statutes and regulations in regard to children with disabilities.

Section 711.1 (relating to definitions)

In response to comments from the public, House and Senate Education Committees and IRRC, several changes were made to the definitions in the final-form regulations. The term "at risk student" was deleted, the statutory definition for "charter school" was included, and the definitions for "regional charter school" and "school entity" were added in this final-form rulemaking. Clarification was made that charter schools are exempt from Chapter 14 (relating to special education services and programs).

Section 711.3 (relating to incorporation of Federal regulations).

Public commentators, House and Senate Education Committees and IRRC recommended changes to clarify

that charter schools have duties under both 34 CFR Part 300 and section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance). The final-form regulations were changed to clarify the provisions under both 34 CFR Parts 104 and 300 as described in § 711.2 (relating to purpose and intent) and § 711.3. It was also suggested that § 711.3 be expanded to include additional applicable provisions of Federal regulations. This section was amended to include 34 CFR 300.3, 300.121—300.125, 300.138—300.139, 300.401 and 300.574(a) and (b).

Section 711.4 (relating to supervision)

Public commentators and IRRC recommended this section be expanded to clarify how the Department will meet its obligation of monitoring activities. This section was revised accordingly.

Section 711.6 (relating to annual report)

Public commentators and IRRC suggested the annual report include additional information similar to that provided by school districts. Changes to the final-form rulemaking were made to clarify the specific information that charter schools will be required to include in their annual report.

Section 711.7 (relating to enrollment)

Public commentators and IRRC recommended clarification of the phrase "reasonable criteria." This subsection was revised to remove the language that was vague and redundant. Specifying the criteria or categories of criteria would be difficult because each charter school establishes a unique educational program.

Section 711.8 (relating to education records)

Public commentators and IRRC suggested a change to ensure that: (a) all records are transferred; and (b) confidentiality is maintained. The final-form rulemaking was amended accordingly.

Section 711.21 (relating to child find)

Public commentators and IRRC recommended this section be modified to be consistent with Federal regulations specifically 34 CFR 300.125(a)(i) (relating to child find). The final-form rulemaking was changed to add the word "located" to be consistent with Federal regulations.

Section 711.22 (relating to reevaluation)

Because provisions on evaluation have been adopted by reference, evaluation was removed from the title of this section. Public commentators and IRRC suggested that this section didn't include the requirements of *PARC v. Commonwealth*, 343 F. Supp. 279 (1972) consent decree for students with mental retardation to be reevaluated every 2 years. Language was added on the final-form rulemaking regarding the right of parents and teachers to request reevaluation of a student with a disability at any time.

Section 711.61 (relating to suspension and expulsion)

Public commentators, the House and Senate Education Committees and IRRC suggested that this section was incomplete in identifying the requirements under 34 CFR 300.520—300.529. As a result, this section was modified accordingly and the citations to the Federal regulations added to § 711.3.

Section 711.62 (relating to procedural safeguards)

Public commentators and IRRC recommended that mediation be included as an option for dispute resolution.

Although provisions for mediation are adopted by reference, language was added to this final-form rulemaking to highlight its availability. IRRC requested that the term "without delay" be replaced by a specific time frame. This final-form rulemaking was amended accordingly.

Cost and Paperwork Estimates

These final-form regulations will ensure compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities while not adding to the cost of providing special education services in charter schools. Charter schools are local education agencies that must provide a Free Appropriate Public Education (FAPE) to all who enroll. The missions and programs of charter schools are diverse, often allowing children to make educational progress without special education services. By following Federal statutes, regulations and court decrees, charter schools have the opportunity to minimize redundant paperwork and reroute their financial resources toward programs and services for children who need them. Because charter schools are local education agencies that are supervised by the Department, they will have access to systems already created and developed by the Department and therefore will not need to create and develop their own. Charter schools will be able to access staff training through the Department's training and technical assistance network and intermediate units. Charter schools and parents will have access to the due process and complaint system that has already been developed by the Department to resolve conflicts. Reliance upon proven systems already in place will reduce the cost and paperwork associated with the staff development and complaint management systems that are required for compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities.

Effective Date

These final-form regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The Department will review the effectiveness of Chapter 711 every 4 years; therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2000, the Department submitted a copy of the regulations published at 30 Pa.B. 3463, to IRRC and to the Chairpersons of the House and Senate Committees on Education.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulations were deemed approved by the Senate Education Committee and approved by the House Education Committee on February 14, 2001. IRRC met on March 8, 2001, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

The official responsible for information on these final-form regulations is Dr. Dale Baker, Department of Educa-

tion, Office of Educational Initiatives, 333 Market Street, Harrisburg, PA 17126-0333, at (717)-705-0930 or TDD at (717)-783-8445.

Findings

The Department finds that:

(1) Public notice of the intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form regulations are necessary and appropriate for the administration of the act.

Order

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

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

(b) The Secretary will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

CHARLES B. ZOGBY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 26, 2001).)

Fiscal Note: Fiscal Note 6-269 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

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

GENERAL PROVISION AND SUPERVISION

- Sec. 711.1. Definitions.
- 711.2. Purposes and intent.
- 711.3. Incorporation of Federal regulations.
- 711.4. Supervision.
- 711.5. Personnel.
- 711.6. Annual report.
- 711.7. Enrollment.
- 711.8. Education records.
- 711.9. Payments.

IDENTIFICATION AND EVALUATION

- 711.21. Child find.
- 711.22. Reevaluation.

IEP

- 711.41. IEP.
- 711.42. Transportation.
- 711.43. Educational placement.
- 711.44. ESY.

PROCEDURAL SAFEGUARDS

- 711.61. Suspension and expulsion.
711.62. Procedural safeguards.

GENERAL PROVISION AND SUPERVISION

§ 711.1. Definitions.

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

Act—The Charter School Law (24 P. S. §§ 17-1701-A—17-1732-A).

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

Child with a disability—As defined in 34 CFR 300.7 (relating to child with a disability).

Department—The Department of Education of the Commonwealth.

ESY—Extended school year.

FAPE—Free appropriate public education.

IDEA—Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1485).

IEP—Individualized education program.

Regional charter school—An independent public school established and operated under a charter from more than one local board of school directors and in which students are enrolled or attend.

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

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

Secretary—The Secretary of the Department.

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

§ 711.2. Purposes and intent.

(a) This chapter specifies how the Commonwealth, through the Department, will meet its obligation to ensure that charter schools comply with the IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), and Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

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

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

§ 711.3. Incorporation of Federal regulations.

(a) Charter schools assume the duty to ensure that a FAPE is available to a child with a disability in compliance with the IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) and section 504 and its implementing regulations in 34 CFR Part 104

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

(b) The requirements of 34 CFR Part 300 are incorporated by reference as follows:

- (1) 300.3 (relating to regulations that apply).
- (2) 300.4—300.26.
- (3) 300.28 and 300.29 (relating to supplementary aids; and transition services).
- (4) 300.121—300.125.
- (5) 300.138 (relating to participation in assessments).
- (6) 300.139 (relating to reports relating to assessments).
- (7) 300.300 (relating to provision of FAPE).
- (8) 300.302—300.309.
- (9) 300.312 and 300.313 (relating to children with disabilities in public charter schools; and children experiencing developmental delays).
- (10) 300.320 and 300.321 (relating to initial evaluations; and reevaluations).
- (11) 300.340 (relating to definitions related to IEPs).
- (12) 300.342—300.346.
- (13) 300.347(a) and (b) (relating to content of IEP).
- (14) 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEP accountability).
- (15) 300.401 (relating to responsibility of State educational agency).
- (16) 300.403 (relating to placement of children by parents if FAPE is at issue).
- (17) 300.500—300.515.
- (18) 300.519—300.529.
- (19) 300.531—300.536.
- (20) 300.540—300.543.
- (21) 300.550—300.553.
- (22) 300.560—300.573.
- (23) 300.574 (a) and (b) (relating to children's rights).
- (24) 300.576 (relating to disciplinary information).

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

- (1) 104.3(f), (h)—(j), (k)(2) and (l) (relating to definitions).
- (2) 104.4—104.8.
- (3) 104.10 (relating to effect of state or local law or other requirements and effect of employment opportunities).
- (4) 104.11 and 104.12 (relating to discrimination prohibited; and reasonable accommodation).
- (5) 104.21—104.37.

§ 711.4. Supervision.

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

(b) The Department will supervise charter schools' compliance with the IDEA in accordance with the policies and procedures in the Department's IDEA grant application under 34 CFR 300.110 (relating to condition of assistance) and as approved by the United States Department of Education.

(c) Charter schools shall:

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

(2) Provide all information requested by the Department.

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

§ 711.5. Personnel.

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

§ 711.6. Annual report.

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

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

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

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

(4) The services and programs utilized by the charter school through the assistance of the intermediate unit in which the charter school is located under section 1725-A(a)(4) of the act (24 P. S. § 17-1725-A(a)(4)).

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

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

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

§ 711.7. Enrollment.

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

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

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

§ 711.8. Education records.

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

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

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

§ 711.9. Payments.

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

(1) A child with an IEP from a school entity in this Commonwealth begins attending the charter school.

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

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

IDENTIFICATION AND EVALUATION

§ 711.21. Child find.

(a) To enable the Commonwealth to meet its obligations under 34 CFR 300.125 (relating to child find), each charter school shall establish written policies and procedures to ensure that all children with disabilities that are enrolled in the charter school, and who are in need of special education and related services, are identified, located and evaluated.

(b) Each charter school's written policy shall include:

(1) Public awareness activities sufficient to inform parents of children applying to or enrolled in the charter school of available special education services and programs and how to request those services and programs.

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

§ 711.22. Reevaluation.

(a) The parent or teacher of a child with a disability has the right under 34 CFR Part 300 (relating to

assistance to states for the education of children with disabilities) to request a reevaluation at any time.

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

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

IEP

§ 711.41. IEP.

When a child with an IEP transfers to a charter school from another public agency, private school, approved private school or private agency in this Commonwealth, the charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of the IDEA.

§ 711.42. Transportation.

(a) A child with a disability who resides in the school district in which the charter school is located, or who is a resident of a school district which is part of a regional charter school, shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Nonresident students shall be provided transportation under section 1361 of the Public School Code of 1949 (24 P. S. § 13-1361).

(b) This chapter does not prohibit a charter school and a school district from entering into agreements regarding the provision of transportation as a related service or accommodation to children with disabilities.

§ 711.43. Educational placement.

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

§ 711.44. ESY.

To implement 34 CFR 300.309 (relating to day; business day; school day), the State ESY Standards are as follows:

(1) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Recovery—Recovery of skills or behavioral patterns, or both, specified on the IEP to a level demonstrated prior to the interruption of educational programming.

Regression—Reversion to a lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occur as the result of an interruption in educational programming.

(2) A child with disabilities is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment capacity, or other factors, makes it unlikely that the student will maintain skills and behavior relevant to established IEP goals and objectives.

(3) Factors such as those listed in this section shall be considered by the IEP teams whenever relevant, but no single factor is determinative of need for ESY services.

(4) Factors in addition to recoupment and regression include:

(i) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(ii) The extent to which a skill or behavior is particularly crucial to reaching the goals of self-sufficiency and independence from caretakers.

(iii) The extent to which successive interruptions in educational programming reduce a student's motivation and trust and may lead to an irreversible withdrawal from the learning process.

(5) Charter schools are responsible for considering the need for ESY services for each eligible student, including each student placed by the charter school in an approved private school or other placement site not operated by the charter school.

(6) Consideration of the need for ESY services shall occur at the IEP team meeting to be convened annually, or more frequently if conditions warrant consistent with Federal requirements in 34 CFR 300.343(c) (relating to IEP meetings). Consideration means that ESY services are raised and discussed at the IEP team meeting. In making a determination that a student is eligible for ESY services, the IEP team shall rely on criteria in this section and applicable judicial decisions.

(7) The need for ESY services is most applicable to students with disabilities that are thought of as severe (that is, students with autism/pervasive developmental disorder, serious emotional disturbance, severe levels of mental retardation, degenerative impairments with mental involvement and severe multiple disabilities) and to IEP goals that are associated with self-sufficiency and independence from caretakers. IEP teams may not limit their consideration of need for ESY services to students with particular types or degrees of disability, particular student goals, particular methods of programming provided during the regular school term, or the availability of retrospective data on regression and recoupment.

(8) ESY services shall be designed to maintain skills and behaviors established in IEP goals and objectives.

(9) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(10) Documentation that ESY services have been considered shall be made on each eligible student's IEP. When determined to be necessary by the IEP team, ESY services shall be reflected on a student's IEP.

(11) The need for ESY services will not be based on any of the following:

- (i) The desire or need for day care or respite care services.
- (ii) The desire or need for a summer recreation program.
- (iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of FAPE.

PROCEDURAL SAFEGUARDS

§ 711.61. Suspension and expulsion.

- (a) For purposes of this chapter, the terms “suspension” and “expulsion” have the meanings as set forth in § 12.6 (relating to exclusions from school).
- (b) Charter schools shall comply with Chapter 12 (relating to students) and 34 CFR 300.519—300.529.
- (c) Any removal from the current educational placement is a change of placement for a student who is identified with mental retardation.
- (d) When a child with a disability has been expelled from a charter school, the charter school shall provide the child with a disability with the education required under § 12.6(e) until the charter school is notified in writing that the child is enrolled in another public agency, private school, approved private school or private agency.

§ 711.62. Procedural safeguards.

- (a) The charter school shall ensure that procedures are established and implemented to allow parties to disputes regarding any matter described in 34 CFR 300.503(a)(1) (relating to prior notice by the public agency; content of notice), to resolve the dispute through a mediation process that, at a minimum, must be available whenever a hearing is requested under 34 CFR 300.507 or 300.520—300.528.

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

- (1) The Secretary may contract for coordination services in support of hearings conducted by local charter schools. The coordination services shall be provided on behalf of charter schools and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.
- (2) If a charter school chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary’s approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a charter school which receives a request for an impartial due process hearing shall forward the request within 5 days of its receipt to the entity providing coordination services under paragraph (1).
- (3) The Secretary will contract for the services of panels of appellate hearing officers and may compensate appellate hearing officers for their services. The compensation does not cause the appellate hearing officers to become employees of the Department.
- (4) Neither a hearing officer nor an appellate hearing officer may be an employee or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

[Pa.B. Doc. No. 01-1031. Filed for public inspection June 8, 2001, 9:00 a.m.]

