



Wyoming Department of Education

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MEMORANDUM NO. 2009-083

TO: School District Superintendents

FROM: Mary Kay Hill, Director
Administration Unit 

DATE: May 15, 2009

SUBJECT: Chapter 7 – 2nd Set Emergency Rules Governing Services for
Children with Disabilities Education

FOR YOUR INFORMATION

Please find enclosed emergency rules and signed certification page for Chapter 7, Services for Children with Disabilities Education. Emergency rules expire in 120 days (September 1, 2009) and will be replaced by permanent rules upon completion of the rulemaking process.

If you have any questions or need more information, please contact Jennifer Duncan at (307) 777-6213. Thank you.

MKH: jd

Enclosure

MAY 4 2009

CERTIFICATION PAGE FOR EMERGENCY RULES

NOTE: Emergency Rules are in effect for no longer than 120 days

Adoption Date 4/27/2009

GENERAL INFORMATION:

1 Agency: Wyoming Department of Education
Address: Hathaway Building, 2nd Floor, Cheyenne, WY 82002
Agency Contact Person for these Rules: Jennifer Duncan
Work Telephone: 777-6213

2. Are these new rules? Yes

3. Chapter number and name of rules being created: Chapter 7, Rules Governing Services for Children with Disabilities Education – 2nd Set

4. Concise statement of emergency requiring promulgation of these rules without notice or opportunity for hearing: The Wyoming Department of Education (Department) is required to promulgate rules which govern the educational services for the disabled population ages three (3) through twenty-one (21) that comply with Individual with Disabilities Improvement Act 20 U.S.C. 1400 et seq. and 34 C.F.R. Parts 300 and 301. In December of 2008, the United States Department of Education, specifically the Office of Special Education and Rehabilitative Services (OSERS), substantively modified 34 C.F.R. Parts 300 and 301. In light of these modifications, the Department promulgated a first set of emergency rules which became effective on January 15, 2009 which incorporated these amendments. The first set of emergency rules will expire on May 7, 2009. A second set of emergency rules is necessary to ensure that the educational programs for the disabled population remain compliant with the federal law and rules and regulations on the subject.

The Department is currently working to promulgate permanent rules which comply with the new guidance on this subject; however, a second set of emergency rules is necessary while the Department concludes this process.

FILING WITH LSO:

5. In accordance with W.S. 16-3-104(b)(ii) a copy of these rules were filed with the Legislative Service Office on: 4/28/2009

FILING FINAL RULES WITH SECRETARY OF STATE:

6. Yes No A disk with an exact copy of the attached rules is attached or an electronic mail including the copy of the rules was sent on: 4/28/2009

CERTIFICATION BY AGENCY:

The undersigned certifies that the foregoing information is correct.

Date: 4/27/2009

Dr. Jim McBride
State Superintendent of Public Instruction

GOVERNOR'S CERTIFICATION:

I have reviewed these rules and determined that they:

- 1.) Are within the scope of the statutory authority delegated to the adopting agency;
- 2.) Appear to be within the scope of the legislative purpose of the statutory authority; and
- 3.) Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

May 4, 2009
Date

W. Michael Burke
Governor

STATE OF WYOMING }
Office of the Secretary
Filed the 4th day of May
2009 at 4:45 P.M.
Max Maxfield
Secretary of State

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CHAPTER 7
SERVICES FOR CHILDREN WITH DISABILITIES

PART 1
GENERAL PROVISIONS

Section 1. **Authority.**

(a) The Wyoming rules are authorized by W.S. § 21-2-202(a)(xviii) and have been adopted by the Wyoming State Superintendent of Public Instruction as authorized by the Wyoming Administrative Procedure Act, W.S. § 16-3-101 through 16-3-115.

(b) These rules govern the operation of all special education programs and services provided to children with disabilities ages three through the completion of the school year in which the child turns twenty-one, pursuant to State law, by any Local Education Agency (LEA), by State and local juvenile and adult correctional facilities, and by other public agencies within the State of Wyoming.

(c) All Provisions under the Individuals with Disabilities Education Act 2004 (IDEA 04) (20 U.S. C. 1400 *et seq.*) and all Federal regulations pertaining to this legislation apply to each political subdivision of the State, irrespective of whether the subdivision received any Federal Part B funds. For purposes of services to children with disabilities between the ages of three (3) through completion of the school year in which the child turns twenty-one (21), unless specifically addressed in these rules, Wyoming hereby adopts Federal legislation IDEA 04 and the supporting Federal regulations 34 CFR 300.1 through 300.818. The requirements of IDEA 04 are binding on each school district or public agency that has direct or delegated authority to provide special education and related services to children with disabilities in Wyoming. This does not limit the responsibility of any public agency for providing or paying appropriate costs for a Free Appropriate Public Education (FAPE) for children with disabilities in Wyoming.

(d) The Wyoming Department of Education (WDE) shall ensure that Federal special education funds are appropriated to and spent by school districts or public agencies in accordance with 34 CFR 300.200 through 300.210 and that school districts or public agencies submit a plan to provide assurances to the WDE that they provide for the education of children with disabilities within their jurisdiction, having in effect policies, procedures, and programs that are consistent with the State policies and procedures established under Part B of IDEA 04. These funds shall be recovered by the WDE for services to any child determined to be erroneously classified and reported to the State as a child with a disability. The WDE may use whatever State, local, Federal or private sources of support that are available to meet the requirements of IDEA 04.

(e) These rules are effective as provided by W.S. § 16-3-104 and govern entitlement and programs for the 2006-07 school year and each year thereafter.

Section 2. **Definitions.**

(a) "Act" means the Individuals with Disabilities Education Act (IDEA) 2004, (20 U.S.C.1400 *et seq.*).

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

(i) Exception. The term does not include a medical device that is surgically implanted or the replacement of such a device.

(c) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(d) "Child with a disability" means a child evaluated in accordance with Part 3, Sections 4 and 5, of these rules as having:

(i) Cognitive disability, a developmental delay, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these rules as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; and

(ii) Who, by reason thereof, needs special education and related services.

(iii) If it is determined through an appropriate evaluation under Part 3, Sections 4 and 5, of these rules that a child has one of the disabilities identified in subsection (d)(i) of this Section, but only needs a related service and not special education, then the child is not a child with a disability.

(e) The terms used in the definition of a child with a disability are defined as follows:

(i) “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(A) Autism does not apply if a child’s performance is affected primarily because the child has an emotional disability as defined in these rules.

(B) A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the criteria in (i)(A) are satisfied.

(ii) “Cognitive disability” means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.

(iii) “Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(iv) “Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

(v) “Developmental delay” is a child with a disability ages three (3) through nine (9) who is determined, through appropriate diagnostic instruments and procedures, to be experiencing delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who, by reason thereof, needs special education and related services.

(A) A school district or public agency is not required to adopt or use the term developmental delay for any child within the district's jurisdiction.

(B) If the school district or public agency uses the term developmental delay as a category of disability for children with disabilities, the school district or public agency shall conform to the definition of that term detailed in these rules and the age range described in subsection (v) of this Section.

(vi) "Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general, pervasive mood of unhappiness or depression;

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(F) The term includes schizophrenia, but does not apply to children who are socially maladjusted, unless they have an emotional disability as defined in these rules.

(vii) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this subsection.

(viii) "Multiple disabilities" means concomitant impairments (such as cognitive disability-blindness, cognitive disability-orthopedic impairment, and cognitive disability-deafness, *etc.*), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, except the term does not include deaf-blindness.

(ix) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, *etc.*), and impairments from other causes (*e.g.*, cerebral palsy, amputations, and fractures or burns that cause contractures).

(x) "Other health impairment (OHI)" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and adversely affects a child's educational performance.

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

(xii) "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

(xiii) "Traumatic brain injury" (TBI) means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. TBI applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. TBI does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(xiv) "Visual impairment," including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes partial sight and blindness.

(f) "Consent" means the following:

(i) The parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that

revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(iv) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(g) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(h) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)(1)).

(i) "Day; business day; school day." These terms mean:

(i) "Day" means calendar day unless otherwise indicated as business day or school day;

(ii) "Business day" means Monday through Friday, except for Federal and State holidays unless holidays are specifically included in the designation of business day as described in Part 7, Section 2(c)(i); and

(iii) "School day" means any day, including a partial day that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including children with and without disabilities.

(j) "Educational Service Agency" (ESA) means a regional, public, multiservice agency authorized by State law to develop, manage, and provide services or programs to school districts or public agencies; and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; includes any other public institution or agency having administrative control and direction over public elementary or secondary schools, including entities that meet the definition of intermediate educational unit in Section 602(23) of the Act as in effect prior to June 4, 1997.

(k) "Equipment" means machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory and other technological aids and devices; and books, periodicals, documents and other related materials.

(l) "Evaluation" means procedures used in accordance with Part 3, Sections 4 and 5, of these rules to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(m) "Excess costs" means those costs that are in excess of the average annual per-student expenditure in a school district or public agency during the preceding year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(i) Amounts received

(A) Under Part B of IDEA 04;

(B) Under Part A of Title I of the ESEA; and

(C) Under Parts A and B of Title III of the ESEA.

(ii) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (i) of this subsection, but excluding any amounts for capital outlay or debt services.

(n) "Extended School Year" (ESY) means special education and related services provided to a child with a disability only if the child's IEP determines on an individual basis that the services are necessary for the provision of FAPE. The term means special education and related services that are provided to a child with a disability beyond the normal school year of the school district or public agency, in accordance with the child's IEP, and at no cost to the parents of the child. With respect to implementing extended school year services, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

(o) "Free Appropriate Public Education" (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the State of Wyoming, including the requirements of IDEA; that include preschool, elementary school, or secondary school education in the State; and are provided in conformity with an IEP.

(p) "Highly qualified." For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also include the following:

(i) Requirements for special education teachers in general. When used with respect to any public elementary or secondary school special education teacher teaching in Wyoming, highly qualified requires that:

(A) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher certification examination, and holds a certificate to teach in the State of Wyoming as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements set forth in the State's public charter school law;

(B) The teacher has not had special education certification or licensure requirements waived on a temporary, emergency, or provisional basis; and

(C) The teacher holds at least a bachelor's degree.

(ii) A teacher will be considered to meet the standard in paragraph (i) of this subsection if that teacher is participating in an alternative route to a special education certification program under which:

(A) The teacher receives high quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) The teacher participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) The teacher assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) The teacher demonstrates satisfactory progress toward full certification as prescribed by Wyoming certification requirements.

(iii) Any public elementary or secondary school special education teacher in Wyoming who is not teaching a core academic subject is highly qualified if the teacher meets the requirements of paragraph (i) or the requirements of paragraph (ii) of this subsection.

(iv) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children with disabilities who are assessed against alternate achievement standards, highly qualified means the teacher, whether new or not new to the profession, may either:

(A) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(B) Meet the requirements of paragraph (B) or (C) of section 9101 (23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subject matter knowledge appropriate to the level of instruction being provided and needed.

(v) Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either:

(A) Meet the applicable requirements of 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(B) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, High Objective Uniform State Standard of Evaluation (HOUSSE) covering multiple subjects; or

(C) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrates, not later than two years after the date of employment, competence in other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary teacher under 34 CFR 200.56(c), which may include a single, High Objective State Standard of Evaluation (HOUSSE) covering multiple subjects.

(vi) Notwithstanding any other right of action that a parent of a student may maintain under these rules, nothing in this Part shall be construed to create a right of action on behalf of an individual student or class of students for failure of a particular school district or public agency employee to be highly qualified, or to prevent a parent from filing a complaint to the WDE under 34 CFR 300.151 through 300.153 about staff qualifications.

(vii) Applicability of definition to ESEA and clarification of new special education teacher.

(A) A fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(viii) Private school teachers not covered. The requirements of this Section do not apply to teachers hired by private elementary and secondary schools, including private school teachers hired or contracted by the school district or public

agency to provide equitable services to parentally placed private school children with disabilities.

(q) "Homeless children." Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S. C. 11434(a)) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

(r) "Illegal drug." Illegal drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provision of Federal law.

(s) "Individualized Education Program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Chapter 7 rules.

(t) "Individualized education program team" means a group of individuals described in Chapter 7 rules responsible for developing, reviewing, or revising an IEP for a child with a disability.

(u) "Individualized Family Service Plan" (IFSP) is the specially designed program for an eligible child under three (3) years of age.

(v) "Intermediate Educational Unit (IEU)." The Wyoming Department of Health, Division of Developmental Disabilities, is deemed an intermediate educational unit as defined in W.S. § 21-2-702.

(w) "Local Education Agency" (LEA) means a public board of education or other public authority legally constituted within the State for either administrative control or direction of, or to perform a service or function for, public elementary, or secondary schools in a city, county, township, school district, or other political subdivision of the State, or for a combination of school districts or counties as recognized by the State as an administrative agency for public elementary schools or secondary schools. The term includes:

(i) An educational service agency (ESA) described in subsection (j) of this Section; and

(ii) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(x) "Native language," when used with respect to an individual who is Limited English Proficient (LEP) means the following:

(i) The language normally used by that individual, or, in case of a child, the language normally used by the parents of the child;

(ii) In all direct contact with the child (including evaluation of the child) the language normally used by the child in the home or learning environment;

(iii) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.

(y) "Parent" means:

(i) A biological, an adoptive, or a foster parent of a child;

(ii) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the State if the child is a ward of the State;

(iii) A person acting in the place of a biological or adoptive parent (including a grandparent or stepparent or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare; or

(iv) A surrogate parent who has been appointed in accordance with these rules.

(v) Except as provided in paragraph (vi) of this subsection, the biological or adoptive parent, when attempting to act as a parent under this subsection and when more than one party is qualified under this subsection to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(vi) If a judicial decree or order identifies a specific person or persons under paragraphs (i), (ii), (iii) of this subsection to act as a parent of a child or make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this subsection.

(z) "Personally identifiable" means the name of the child, the child's parents or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(aa) "Private school" is any nonpublic, elementary or secondary school providing basic academic education programs for children and may include parochial and church or religious schools and home-based educational programs.

(i) Parochial, church, or religious school is one operated under the auspices or control of a local church or religious congregation or a denomination

established to promote and promulgate the commonly held religious doctrines of the group though it may also include basic academic subjects in its curriculum.

(ii) "Home-based educational program" means under Wyoming law (W.S. § 21-4-101(a)(v)) a program of educational instruction provided to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian. An instructional program provided to more than one family unit does not constitute a home-based educational program. With respect to the definition of this paragraph the provisions of Part 7, Sections 7 and Section 8, do not apply.

(bb) "Public Agency" includes the Wyoming Department of Education (WDE), LEAs, ESAs, IEUs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities, including Developmental Preschool Centers in Wyoming.

(cc) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education; and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. The term also includes school health services, school nurse services, social work services in schools, and parent counseling and training.

(i) Exception. Services that apply to children with surgically implanted devices, including cochlear implants.

(A) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (*e.g.*, mapping), maintenance of that device, or the replacement of the device.

(B) Nothing in subsection (cc)(i) of this Section limits the right of a child with a surgically implanted device (*e.g.*, cochlear implant) to receive related services (as listed in subsection (cc) of this Section) that are determined by the IEP team to be necessary for the child to receive FAPE.

(C) Nothing in subsection (cc)(i) of this Section limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school or prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly.

(ii) Individual related services terms defined. The terms used in this definition are defined as follows:

(A) "Audiology" includes:

(I) Identification of children with hearing loss;

(II) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;

(III) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(IV) Creation and administration of programs for prevention of hearing loss;

(V) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(VI) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification;

(B) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(C) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(D) Interpreting services includes:

(I) The following when used with respect to children who are deaf or hearing impaired: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as Communication Access Real-Time Translation (CART), C-Print, and Type Well; and

(II) Special interpreting services for children who are deaf-blind.

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

(F) "Occupational Therapy" (OT) means services provided by a qualified occupational therapist that include:

(I) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(II) Improving the ability to perform tasks for independent functioning if functions are impaired or lost; and

(III) Preventing, through early intervention, initial or further impairment or loss of function.

(G) "Orientation and Mobility services" (O&M) refer to services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:

(I) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(II) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(III) To understand and use remaining vision and distance low-vision aids; and

(IV) Other concepts, techniques and tools.

(H) "Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(I) "Physical Therapy" (PT) means services provided by a qualified physical therapist.

(J) "Psychological services" includes:

(I) Administering psychological and educational tests and other assessment procedures;

(II) Interpreting assessment results; obtaining, integrating, and interpreting information about the child's behavior and conditions related to learning;

(III) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations;

(IV) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(V) Assisting in developing positive behavioral intervention strategies.

(K) "Recreation" includes:

(I) Assessment of leisure function;

(II) Therapeutic recreation services;

(III) Recreation programs in schools and community agencies; and

(IV) Leisure education.

(L) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, the achievement of independence, and the integration into the workplace and community of a child with a disability. The term also includes vocational rehabilitation services provided to a child with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(M) "School health services and school nurse services" mean health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(N) "Social work services in schools" includes preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

(O) "Speech-language pathology services" include:

(I) Identification of children with speech or language impairments;

(II) Diagnosis and appraisal of specific speech or language impairments;

(III) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(IV) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(V) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(P) "Transportation" includes:

(I) Travel to and from school and between schools;

(II) Travel in and around school buildings; and

(III) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required, to provide special transportation for a child with a disability.

(dd) "School, elementary school, middle school, high school, secondary school."

(i) "Elementary school" means a nonprofit institutional day or residential school, including a public charter elementary school, that provides elementary education. Under Wyoming law (W.S. § 21-13-101(a)(iv)) an elementary school means a school consisting of Kindergarten through grade five, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees.

(ii) "Secondary school" means a nonprofit institutional day or residential school, including a public charter secondary school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade twelve.

(A) "Middle school" as defined in Wyoming law (W.S. § 21-13-101(a)(vii)) means a school, including a public charter middle school, consisting of grades six through eight or any combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees.

(B) "High school" as defined in Wyoming law (W.S. § 21-13-101(a)(vi)) means a school, including a public charter high school, consisting of grades nine through twelve, or any combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees.

(ee) “Scientifically-based research” has the meaning given the term in section 9101(37) of the ESEA.

(ff) “Serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18 U.S. Code and means a substantial risk of death, extreme physical pain, protracted or obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(gg) “Services plan” means a written statement that describes the special education and related services the school district or public agency will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary consistent with the service plan.

(hh) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. The term includes instruction in physical education. Special education includes each of the following: speech language pathology, if the service is considered special education rather than a related service; travel training; and vocational education. Individual special education terms are defined as follows:

(i) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(ii) "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education, and motor development.

(iii) "Specially-designed instruction" means adapting, as appropriate to the needs of an eligible child under these rules, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the school district or public agency that apply to all children.

(iv) "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and to learn the skills necessary to move effectively and safely from

place-to-place within that environment (*e.g.*, in school, in the home, at work, and in the community).

(v) "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree and includes vocational and technical education.

(ii) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(jj) "Transition services" means a coordinated set of activities for a child with a disability that:

(i) Is designed within a results-oriented process, that is focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation;

(ii) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests;

(iii) And includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives; and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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

(kk) Ward of the State.

(i) Subject to paragraph (ii) of this subsection, ward of the State means a child who, as determined by the State where the child resides, is a foster child, a ward of the State, or is in custody of a public child welfare agency.

(ii) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in subsection (y) in this Section.

(ll) "Weapon" means dangerous weapon as described in 18 U.S.C., Section 930.

PART 2
PROCEDURAL SAFEGUARDS

Section 1. **Prior Written Notice.**

(a) Written notice must be given to the parents of a child with a disability within a reasonable time before the school district or public agency:

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) The content of the notice must include:

(i) A description of the action proposed or refused by the school district or public agency;

(ii) An explanation of why the school district or public agency proposes or refuses to take the action;

(iii) A description of other options the IEP team considered and the reasons why those options were rejected;

(iv) A description of each evaluation procedure, assessment, record, or report the school district or public agency used as a basis for the proposed or refused action;

(v) A description of other factors that are relevant to the school district's or public agency's proposal or refusal;

(vi) A statement that the parents of a child with a disability have protection under the procedural safeguards; and if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(vii) Sources for parents to contact to obtain assistance in understanding the rules.

(c) Notice in understandable language. The written notice must be:

(i) Written in language understandable to the general public;

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and

(iii) If the native language or other mode of communication of the parent is not a written language, the school district or public agency must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, and that the parent understands the content of the notice;

(iv) And that there is written evidence that the requirements in subsection (c)(i), (ii), (iii) have been met.

(d) Graduation from high school with a regular diploma constitutes a change in placement, requiring prior written notice.

Section 2. **Notice of Procedural Safeguards.**

(a) A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy must also be given to the parents:

(i) Upon initial referral or parent request for evaluation;

(ii) Upon receipt of the first State complaint filed in that school year under the complaint procedures established through these rules and upon receipt of the first request for a due process hearing in a school year;

(iii) In accordance with the discipline procedures in Part 6;

(iv) Upon request by a parent.

(b) A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents of the procedural safeguards notice shall be in plain language per the rules of Section 1, subsection (c), of this Part and shall include a full explanation of the procedural safeguards under these rules relating to:

(i) Independent educational evaluation;

(ii) Prior written notice;

(iii) Parental consent;

(iv) Access to education records;

(v) Opportunity to present and resolve complaints through the due process hearing procedure and the State complaint procedures, including information about the difference between a due process hearing procedure and the State complaint procedure, including information about the jurisdiction of each procedure, what issues may be raised, and filing and decisional timelines and relevant procedures, including the following:

- (A) The time period of which to file a complaint; and
- (B) The opportunity for the agency to resolve the complaint.

(vi) The availability of mediation and the child's placement during the pendency of any due process hearing proceedings;

(vii) Procedures for children who are subject to placement in an interim alternative educational setting;

(viii) Requirements for unilateral placement by parents of children in private schools at public expense;

(ix) Hearing on due process requests, including requirements for disclosure of evaluation results and recommendations;

(x) Civil actions, including the time period in which to file those actions; and

(xi) Attorney's fees.

(d) The parent of a child with a disability may elect to receive notices required under this Section by electronic mail communication if the public agency makes that option available.

Section 3. **Parental Consent.**

(a) Consent for initial evaluation.

(i) The school district or public agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability must, after providing prior written notice as discussed in Section 1 of this Part and a copy of procedural safeguards as discussed in Section 2 of this Part, obtain informed consent from the parent of the child before conducting the evaluation.

(ii) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if, despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; the rights of the parents have

been terminated under Wyoming law; or the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Wyoming law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(b) If a parent of a child enrolled in a school district or public agency or seeking to be enrolled in a school district or public agency does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the school district or public agency may, but is not required to, pursue the initial evaluation by utilizing the procedural safeguards, including mediation or due process. The school district or public agency does not violate its obligations relative to Child Find and obligations for evaluation of children or determination of the child as being eligible as a child with a disability if it declines to pursue the evaluation.

(c) If the parent refuses to provide consent for an initial evaluation and the school district or public agency does not obtain agreement or a ruling that the initial evaluation may be conducted per due process or mediation efforts, the school district or public agency will not be considered to have prior knowledge that the child is a child with a disability.

(d) Parental consent for reevaluations.

(i) Each school district or public agency must obtain informed consent prior to conducting any reevaluation of a child with a disability.

(ii) Informed parental consent described in subsection (d)(i) of this Section need not be obtained if the school district or public agency can demonstrate that it made reasonable efforts to obtain such consent and the child's parent has failed to respond.

(iii) If the parent refuses to consent to the reevaluation, the school district or public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in Section 3(b) of this Part. The public agency does not violate its obligations relative to Child Find and obligations for evaluation and reevaluation of children or determination of the child as being eligible as a child with a disability if it declines to pursue the evaluation.

(e) Informed parental consent for provision of initial services. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(i) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(ii) If a parent of a child fails to respond to a request for, or refuses to consent to the initial provision of special education and related services the school district or public agency may not use due process or mediation in order to obtain agreement or a ruling that services may be provided to the child.

(iii) If the parent of the child refuses to consent to the initial provision of special education and related services or the parent fails to respond to a request to provide consent for the initial provision of special education and related services the school district or public agency:

(A) Will not be considered to be in violation of the requirement to provide FAPE to the child for failure to provide the child with the special education and related services for which the school district or public agency requests consent; and

(B) The school district or public agency is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district or public agency requests such consent.

(iv) The school district or public agency will not be considered to have prior knowledge that the child is a child with a disability.

(f) Consent for initial evaluation may not be construed as consent for initial provision of special education and related services.

(g) Revoking Consent subsequent to the initial provision of special education and related services.

(i) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(A) May not continue to provide special education and related services to the child, but must provide prior written notice consistent with Part 2 Section 1 of this Chapter of these rules before ceasing the provision of special education and related services;

(B) May not use due process or mediation procedures described in Part 2 of these rules in order to obtain a ruling or agreement that the services may be provided to the child;

(C) Will not be considered to be in violation of the requirement to provide FAPE to the child for failure to provide the child with further special education and related services; and

(D) The school district or public agency is not required to convene an IEP meeting or develop an IEP for the child for the further provision of special education and related services.

(h) Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation; or before administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(i) A parent's refusal to consent to one service may not be used to deny any other service, benefit, or activity of the school district or public agency.

(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or reevaluation, or the parent fails to respond to requests to provide consent, the school district or public agency may not use consent override procedures described in procedural safeguards; and the school district or public agency is not required to consider the child as eligible for services as a child with a disability.

(j) To meet the reasonable efforts requirements of this Section the school district or public agency must document its attempts to obtain parental consent, such as

(A) Detailed records of phone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Section 4. **Independent Educational Evaluation.**

(a) An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district or public agency responsible for the education of the child in question.

(b) Public expense means that the school district or public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(c) The parents of a child with a disability have the right to obtain an independent education evaluation of the child subject to subsections (d) through (e) of this Section.

(i) Each school district or public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the school district or public agency criteria applicable for independent education evaluations.

(d) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district or public agency subject to the conditions in subsection (d)(i)(A) or (B) and subsections (f) and (g) of this Section.

(i) If a parent requests an independent educational evaluation at public expense, the school district or public agency must, without unnecessary delay, either,

(A) File a request for a due process hearing to show that its evaluation is appropriate; or

(B) Ensure that an independent educational evaluation is provided at public expense, unless the school district or public agency demonstrates in a hearing that the evaluation obtained by the parent did not meet school district or public agency criteria.

(ii) If the school district or public agency requests a hearing and the final decision is that the school district's or public agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(iii) If a parent requests an independent educational evaluation, the school district or public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a request for a due process hearing to defend the public evaluation.

(iv) A parent is entitled to only one independent educational evaluation at public expense each time the school district or public agency conducts an evaluation with which the parent disagrees.

(e) Parent initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

(i) Must be considered by the school district or public agency, if it meets school district or public agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(ii) May be presented by any party as evidence at a due process hearing regarding the child.

(f) Requests for evaluations by hearing officer. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(g) Agency criteria for an independent educational evaluation.

(i) If an independent education evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an independent educational evaluation.

(ii) Except for the criteria described above, a school district or public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Section 5. Confidentiality of Student Records and Parent Access to Educational Records.

(a) Each school district and public agency must take steps to ensure that information and educational records for children with disabilities remain confidential and in compliance with the Family Educational Rights and Privacy Act (FERPA) of 1974 and implementing regulations 34 CFR part 99.

(i) Each school district or public agency shall give notice that is adequate to fully inform parents about the requirement of the Family Education Rights and Privacy Act of 1974 (FERPA).

(b) Access rights. Each school district or public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the school district or the public agency with respect to identification, evaluation, eligibility, IEP, educational placement, and provision of FAPE.

(i) Each school district or public agency must comply with a request, without unnecessary delay, and before any meeting regarding an IEP or due process hearing or resolution session and in no case more than forty-five (45) days after the request has been made.

(ii) The right to inspect and review educational records includes:

(A) The right to a response from the school district or public agency to reasonable requests for explanations and interpretations of the educational records;

(B) The right to request that the school district or public agency provide copies of the education records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the educational records;

(C) The right to have a representative of the parent inspect and review the educational records.

(iii) Each school district or public agency may presume that the parent has authority to inspect and review records relating to his or her child unless the school district or public agency has been advised that the parent does not have the authority under applicable Wyoming State law governing such matters as guardianship, separation, and divorce.

(iv) If any education record includes information on more than one child, a parent has the right to inspect and review only the information relating to his or her child or to be informed of that specific information.

(c) Lists of types and locations of information. Each school district or public agency shall provide the parents, on request, a list of the types and locations of educational records collected, maintained, or used by the school district or public agency.

(d) Record access. Each school district or public agency shall keep a record of parties obtaining access to education records collected, maintained, or used to provide FAPE (except access by parents and authorized employees of the public agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(e) With the exception of the IEP, the school district or public agency may charge a fee for copies of records which are made for the parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A school district or public agency may not charge a fee to search or retrieve the records.

(f) Amendment of record at parent request. A parent who believes that information in the education records collected, maintained, or used under this Part is inaccurate or misleading or violates the privacy or other rights of the child may request the school district or public agency amends the information. Upon receiving written parental request to amend a child's record, the school district or public agency shall decide whether to amend the information as requested within a reasonable period of time.

(i) If the school district or public agency refuses to amend the information in accordance with the request, the school district or public agency shall

inform the parent of the refusal and advise the parent of the right to a hearing in accordance with subsection (g) of this Section.

(g) Opportunity for hearing. The school district or public agency must, on request, provide an opportunity for a hearing to challenge information in the education record that is not accurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(h) Result of hearing.

(i) If as a result of the hearing the school district or public agency decides that the information in the child's record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district or public agency shall amend the information accordingly and inform the parent in writing.

(ii) If as a result of the hearing the school district or public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district or public agency shall inform the parent of the parent's right to place in the child's records a statement commenting on information in the record or setting forth reasons for disagreeing with the decision of the school district or public agency.

(A) Any statement or explanation placed in the records of the child as a result of this process must be maintained by the school district or public agency as long as the record or contested portion of the record is maintained by the school district or public agency; and

(B) If the records of the child or the contested portion is disclosed by the school district or public agency to any party, the parent statement or explanation must also be disclosed to the party.

(i) Consent for disclosure of records. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, in accordance with Section 5(i)(ii) unless the information is contained in education records, and the disclosure is authorized without parent consent under 34 CFR part 99.

(i) Except as provided in subsection (i), paragraph (ii), and subsection (i), paragraph (iii), of this Section, parent consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this Part. School districts or public agencies may release information without written parental consent to a receiving school district or public agency per requirements of Part 5, Section 2 (d)(i) and (ii), of these rules.

(ii) Parent consent, or the consent of an eligible child who has reached the age of majority under Wyoming law, must be obtained before personally identifiable

information is released to officials of participating agencies providing or paying for transition services in accordance with Part 5, Section 4 (c)(iii), of these rules.

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

(j) Safeguards. Each school district or public agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages and designate one person by position to assume responsibility for ensuring the confidentiality of any personally identifiable information.

(i) All persons collecting or using personally identifiable information shall receive training and instruction regarding policies and procedures set forth in this Section and FERPA.

(ii) Each school district or public agency shall maintain for public inspection a current list of names and positions of employees who have access to personally identifiable information.

(k) Destruction of information. Each school district or public agency shall inform the parents when personally identifiable information collected, maintained, or used under this Section is no longer needed to provide educational services to the child.

(i) The information must be destroyed at the request of the parent. However, the school district or public agency may keep a permanent record of the child's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed; and it may be maintained without time limitation.

(l) The parent represents the child with disabilities in all matters covered by these rules. Any child who has reached the age of majority and has not been declared incompetent by a Wyoming court is afforded the same rights as those of the parent. If the rights under this Section are transferred to the student who reaches the age of majority per procedures described in these rules, the school district or public agency shall provide the student and parent with any copy of the procedural safeguards notice.

Section 6. **Mediation Procedures.**

(a) Each school district or public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under these rules, including matters arising prior to the filing of a request for a due process hearing, to resolve the disputes through a mediation process.

(b) The procedures must ensure that the mediation process:

- (i) Is voluntary on the part of the parties;
- (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded by Part B of IDEA 04; and
- (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) A school district or public agency may establish procedures to offer to parents and schools or public agencies that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parties, with a disinterested party:

- (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or community parent resource center in the State; and
- (ii) Who would explain the benefits of, and encourage the use of, the mediation process.

(d) The WDE maintains a list of individuals who are qualified mediators and knowledgeable in laws and rules relating to the provision of special education and related services. The selection of mediators by the WDE is accomplished on a random, rotational, or other impartial basis. The parties may jointly recommend a mediator to the WDE; however, consistent with 34 CFR 300.506, the selection of the mediator is at the discretion of the WDE.

(e) The WDE shall bear the cost of the mediation process. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(f) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution and that:

- (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceeding; and

- (ii) Is signed by both the parent and a representative of the school district or public agency who has the authority to bind such agency.

(g) A written, signed mediation agreement under this Section is enforceable in any State district court or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used in any subsequent due process hearing or civil proceeding of any Federal or State court.

(h) Impartiality of mediator. An individual who serves as an impartial mediator:

(i) May not be an employee of the Wyoming Department of Education, the school district, or a public agency that is involved with the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(iii) A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the school district or public agency to serve as a mediator.

Section 7. **State Complaint Procedures.**

(a) The State of Wyoming adopts the following procedures in reference to the process of filing and responding to complaints alleging a violation of compliance with IDEA 04 and corresponding Federal regulations and State rules. In filing a complaint, an organization or individual may file a signed complaint that must include:

(i) A statement that a school district or public agency has violated a requirement of these rules;

(ii) The facts on which the statement is based; and

(iii) The signature and contact information for the complainant; and if alleging violations with respect to a specific child,

(A) The name and address of the residence of the child, the name of the school the child is attending, and in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending.

(B) A description of the nature of the problem of the child, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(iv) The complaint must allege a violation that occurred not more than one year prior to the date the complaint is received.

(v) The party filing the complaint must forward a copy of the complaint to the school district or public agency serving the child at the same time the party files the complaint with the WDE.

(b) Complaint procedures and time limit. Within sixty (60) days after the WDE receives a complaint the WDE, shall:

(i) Determine if it is necessary to conduct an independent investigation of the complaint and determine if it is necessary to conduct an independent, on-site investigation pertaining to the issues alleged in the complaint;

(ii) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) Provide the school district or public agency with the opportunity to respond to the complaint, including, at a minimum:

(A) At the discretion of the school district or public agency a proposal to resolve the complaint; and

(B) An opportunity for a parent who has filed a complaint and the school district or public agency to voluntarily engage in mediation consistent with Section 6 of this Part.

(iv) Review all relevant information and make an independent determination as to whether the school district or public agency is violating a requirement of Part B of IDEA 04 or of these rules;

(v) Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the WDE's final decision; and

(vi) Permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint or the parent (or individual or organization) and the school district or public agency agree to extend the timeline to engage in mediation or engage in other alternative means of dispute resolution .

(c) The WDE will assure effective implementation of the WDE's final decision, if needed, by such means as technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) Complaints filed under this Section and due process hearing requests.

(i) If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, the WDE must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described.

(ii) If an issue raised in a complaint filed under this Section has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the WDE must inform the complainant to that effect.

(iii) A complaint alleging a school district's or public agency's failure to implement a due process hearing decision must be resolved by the WDE.

(e) Remedies for denial of appropriate services. In resolving a complaint in which the WDE has found a failure to provide appropriate services, the WDE, pursuant to its general supervisory authority under Part B of IDEA 04, must address:

(i) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(ii) Appropriate future provision of services for all children with disabilities.

Section 8. **Impartial Due Process Hearing Procedures.**

(a) A parent or a school district or a public agency may request a due process hearing relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child. The parent of a child with a disability may request a due process hearing when the school district or public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child.

(i) The request for due process hearing must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for a due process hearing.

(A) This timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to the specific misrepresentation by the school district or public agency that it had resolved the problem forming the basis of the request for a due process hearing; or

(B) The school district's or public agency's withholding of information from the parent that was required to be provided to the parent.

(ii) The school district or public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if:

(A) The parent requests the information; or

(B) The parent or public agency files a request for a due process hearing under this Section.

(b) Request for due process hearing. The individual, the school district, or the public agency requesting a hearing shall submit a written request for a due process hearing which must remain confidential and which meets the requirements of this section. The party filing the request for a due process hearing must provide the document requesting a due process hearing to the other party and forward a copy of the document to the Wyoming State Superintendent of Public Instruction, Wyoming Department of Education, 2300 Capitol Avenue, Hathaway Building 2nd Floor, Cheyenne, Wyoming 82002-0050, (307) 777-7675. Parents, school districts, public agencies, and other parties may use the appropriate model form described in this subsection, or another form or other document, so long as the form or document that is used meets the content requirements for filing a request for due process hearing described in subsection (b)(i) and (ii) of this Section or the requirements for filing a State complaint as described in Section 7 of this Part.

(i) The content of the written request for due process hearing must include:

(A) The name and address of the child or in the case of a homeless child, available contact information for the child;

(B) The name of the school the child attends;

(C) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(D) A proposed resolution of the problem to the extent known and available to the party at the time.

(ii) A party may not have a due process hearing until the party or the attorney representing the party files a request for due process hearing that meets the requirements of this Part.

(c) Sufficiency of request for due process hearing. The request for due process hearing required by this Section must be deemed sufficient unless the party receiving the request notifies the WDE appointed hearing officer and the other party in writing, within fifteen (15) days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements of subsection (b) of this Section.

(i) Within five (5) days of receipt of notification under subsection (c) of this Section, the WDE appointed hearing officer must make a determination on the face of the request for due process hearing, whether the request meets the requirements of subsection (b) of this Section and immediately notify the parties in writing of that determination.

(ii) A party may amend its request for due process hearing only if the other party consents in writing to the amendment and is given the opportunity to resolve the issues in the due process hearing request through a resolution meeting; or

(A) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before the due process hearing begins.

(B) If a party files an amended request for due process hearing, the timelines for the resolution meeting and the time period to resolve the issues in dispute begin again with the filing of the amended request for a due process hearing.

(d) School district or public agency response to a request for due process hearing.

(i) If the school district or public agency has not sent a prior written notice specified in Part 2, Section 1, of these rules regarding the subject matter contained in the parent's complaint, the school district or public agency must within ten (10) days of receiving the request for due process hearing send to the parent a response that includes an explanation of why the public agency proposed or refused to take action raised in the due process hearing notice;

(ii) A description of other options that the IEP team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the school district or public agency used as a basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the school district's or public agency's proposed or refused action.

(v) A response by the school district or public agency to a due process hearing request under subsection (d) of this Section shall not be construed to preclude the school district or public agency from asserting that the parent's due process hearing request was insufficient, where appropriate.

(e) Other party response to a request for due process hearing. Except as provided in subsection (d) of this Section, the party receiving a request for due process hearing must, within ten (10) days of receiving the request for due process hearing, send to the other party a response that specifically addresses the issues raised in the request for due process hearing.

(f) Resolution meeting and process. Within fifteen (15) days of receiving a parent's request for due process hearing and prior to initiation of a due process hearing, the school district or public agency must convene a meeting with the parent and relevant

members of the IEP team, determined by both the parents and the school district or public agency, who have specific knowledge of the facts identified in the request for due process hearing and a representative of the school district or public agency who has decision making authority on behalf of the public agency. The purpose of the meeting is for the parent of the child to discuss the due process hearing request and the facts that form the basis of the due process hearing request so that the school district or public agency has the opportunity to resolve the dispute.

(i) The school district or public agency may not involve an attorney at this meeting unless the parent is accompanied by an attorney.

(ii) The meeting need not be held if the parent and the school district or public agency agree in writing to waive the meeting or agree to use the mediation process described in Section 6 of this Part.

(iii) Resolution time period. If the school district or public agency has not resolved the dispute in the request for due process hearing to the satisfaction of the parent within thirty (30) days of receipt of the request for due process hearing, the due process hearing may occur.

(iv) Except where the parties have jointly agreed to waive the resolution process or to use mediation, failure of a parent filing a request for due process hearing to participate in a resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held.

(v) If the school district or public agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the school district or public agency may, at the conclusion of the thirty (30) day period, request that the hearing officer dismiss the parent's due process hearing request.

(vi) If the school district or public agency fails to hold a resolution meeting specified in this Section within fifteen (15) days of receiving notice of a parent's request for a due process hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline.

(g) Adjustment to thirty (30) day resolution period. The forty-five (45) day timeline for a due process hearing starts the day after one of the following events:

(i) Both parties agree in writing to waive the resolution meeting;

(ii) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible;

(iii) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, the parent or public agency withdraws from the mediation process.

(h) Written settlement agreement. If a resolution to the dispute is reached as a result of a resolution meeting described in subsection (f) of this Section, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the school district or public agency who has the authority to bind the school district or public agency. The agreement is enforceable in State District Court or district court of the United States.

(i) Agreement review period. A party signing an agreement pursuant to subsection (h) of this Section may void the agreement within three (3) business days of the agreement's execution.

(j) Due process hearing conveniences and timeline. The school district or public agency shall ensure that within forty-five (45) days after the expiration of the thirty (30) day period for the resolution meeting session described in subsection (f) of this Section or the adjusted time period discussed in subsection (g) of this Section the hearing will be completed and a final decision reached and mailed to each of the parties, unless a continuance has been granted.

(i) A hearing officer may grant specific extensions of time beyond the periods of time described above at the request of either party.

(ii) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(k) Child's status during due process hearing proceedings. Except as provided for in subsection (l) of this Section pertaining to a request for a due process hearing relative to placement in an interim alternative educational setting or other decisions relating to discipline, during mediation, due process hearings or judicial proceedings, the child involved shall remain in the child's present educational placement unless the school district or public agency and the parents agree otherwise.

(i) If the hearing involves an application for initial admission to a school district or public agency, the child, with consent of the parents, shall be placed in the school district or public agency until all proceedings are completed. If at the conclusion of a hearing, the hearing officer agrees with the child's parents that a change of placement is appropriate, the placement must be treated as an agreement of all parties for the purposes of this paragraph.

(ii) If the hearing involves an application for initial services from a child who is transitioning from Part C to Part B of IDEA 04 and is no longer eligible for services because the child has turned three, the school district or public agency is not required to provide Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B of IDEA 04 and the parent

consents to the initial provision of special education and related services, then the school district or public agency must provide those special education and related services that are not in dispute between the parent and the school district or public agency.

(l) When a request for a due process hearing is made by either the parent or the school district or public agency concerning issues related to placement of the child in an interim alternative educational setting or other decisions relating to discipline, the child must remain in the interim alternative setting pending the decision of the hearing officer or until the expiration of the time period provided for with respect to placement in interim alternative educational settings, whichever comes first, unless the parent and the school district or public agency agree otherwise.

Section 9. **Impartial Due Process Hearing -- Agency Responsibility and Hearing Officer Determination, Disclosure and Parent Rights at Hearing.**

(a) Agency responsible for conducting the due process hearing. The WDE is responsible for conducting the due process hearing consistent with these rules and shall ensure that the parents or the school district or public agency involved in the dispute have the opportunity for an impartial due process hearing consistent with these procedures.

(b) Determination of hearing officer. The independent hearing officer shall conduct hearing activities in conformance with the WDE hearing procedures. The following people are excluded from acting as qualified independent hearing officers:

(i) Any person who is an employee of a school district or public agency involved in the education or care of children with disabilities; or

(ii) Any person who, with respect to the particular hearing, has any personal or professional interest which might conflict with the person's objectivity in the hearing.

(iii) Either party to a hearing may object to the assignment of a hearing officer by submitting a written objection to the WDE within ten (10) days of notification of the appointment of the hearing officer. The written objection must include information supporting a claim of personal or professional bias or interest leading to lack of objectivity. Within ten (10) days of receipt of such a written objection, the WDE shall rule on the objection and:

(iv) Appoint another person from the list of qualified independent hearing officers (if another hearing officer is appointed, the procedures for objecting also apply to the newly appointed hearing officer); or

(A) Verify that the individual originally proposed is qualified.

(v) A hearing officer may at any point withdraw from consideration or from service in any hearing in which the hearing officer believes a personal or

professional bias or interest in any of the issues to be decided in the hearing might conflict with the hearing officer's objectivity.

(c) Disclosure. At least five (5) business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(i) A hearing officer may bar any party that fails to comply with subsection (c) of this Section from introducing the relevant evaluation or recommendation at a hearing without the consent of the other party.

(d) Hearing rights. The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedure Act W.S. § 16-3-107 through 16-3-112.

(i) Any party to the hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

(D) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(E) Obtain written, or, at the option of parents, electronic findings of fact and decisions.

(ii) Parental rights at hearing. Parents involved in the hearing must be given the right to:

(A) Have the child who is the subject of the hearing present;

(B) Open the hearing to the public; and

(C) Have the record of the hearing and the findings of fact and decisions described in Section 9(d)(i)(D)(E) of this Part provided at no cost to parents.

(e) Decision of hearing officer. The hearing officer's determination of whether the child received FAPE must be made on substantive grounds.

(i) In matters relating to a procedural violation, the hearing officer may find that a child did not receive FAPE only if the procedural inadequacies:

(A) Impeded the child's right to FAPE;

(B) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

(C) Caused a deprivation of educational benefit.

(ii) Nothing in subsection (e) of this Section precludes a hearing officer from ordering a school district or public agency to comply with procedural requirements of Part B of IDEA 04. The decision of a hearing officer is binding upon both parties unless the decision is appealed through civil action per subparagraph (B) below in this subsection.

(A) The WDE, after deleting any personally identifiable information, must provide a copy of the findings of fact and the decision to the State Special Education Advisory Panel and to the public upon written request.

(B) Any party aggrieved by the findings and decisions of a hearing officer has the right to bring a civil action with respect to the request for a due process hearing. The action may be brought in any district court of the State of Wyoming or in a district court of the United States pursuant to the Individuals with Disabilities Education Act (IDEA 2004).

(C) The party bringing the action shall have ninety (90) days from the date of decision of the hearing officer to file a civil action.

Section 10. **Attorney's Fees.**

(a) In any action or proceeding brought under these rules and Section 615 in Part B of IDEA 04, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

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

(ii) To a prevailing party who is the WDE or the school district or public agency against the attorney of a parent who files a request for a due process hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation, or

(iii) To a prevailing party who is the WDE or school district or public agency against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or a subsequent cause of action was presented for any improper

purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) A court awards reasonable attorneys' fees consistent with the following:

(i) Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection;

(ii) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) days before the proceeding begins;

(B) The offer is not accepted within ten (10) days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation meeting described in Section 6 of this Part. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action and attorney fees may not be awarded for a resolution meeting.

(d) An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Except as provided for in subsection (f) of this Section the court reduces the attorneys' fees awarded if the court finds that:

(i) The parent or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parents did not provide to the school district or public agency the appropriate information in the request for due process hearing notice as specified in Section 8 of this Part.

(f) The provisions of subsection (e) of this Section do not apply in any action or proceeding if the court finds that the State or school district or public agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Procedural Safeguards of these rules and Section 615 in Part B of IDEA 04.

PART 3
SPECIAL EDUCATION PROCESS

Section 1. Free Appropriate Public Education.

(a) School districts and public agencies shall ensure that Free Appropriate Public Education (FAPE) is available to all children with disabilities, aged three (3) through the completion of the school year the child turns twenty-one (21), residing in Wyoming, including those who have been suspended or expelled from school as provided for in Part 6 of these rules.

(i) School districts and public agencies are not obligated to provide FAPE to students who have graduated with a regular high school diploma. This exception does not apply to students with disabilities who have graduated from high school, but have not been awarded a regular high school diploma. The term regular high school diploma does not include an alternative degree that is not fully aligned with State academic standards, such as a certificate or a general educational development credential (GED).

(ii) The obligation to provide FAPE does not apply to children with disabilities ages eighteen (18) through twenty-one (21), who in their last educational placement prior to their incarceration in an adult correctional facility:

(A) Were not identified as being a child with a disability and did not have an IEP.

(iii) The exception in paragraph (ii)(A) above does not apply to children aged eighteen (18) through twenty-one (21) who in their last educational placement prior to their incarceration in an correctional facility:

(A) Had been identified as a child with a disability and had received services in accordance with an IEP but left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but had been identified as a child with a disability.

(b) FAPE for children beginning at age three (3) begins no later than the child's third birthday, and an IEP or an IFSP must be in effect by that date. If the child's birthday occurs during the summer, the child's IEP team shall determine when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade. FAPE must be available to any child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

(d) The determination that a child is eligible as a child with a disability is made on an individual basis by the group responsible within the child's school district or public agency for making eligibility determinations.

(e) Assistive technology.

(i) Each school district or public agency must ensure that assistive technology devices or services as defined in Part 1 of these rules are made available to a child with a disability if required as part of a child's:

(A) Special education;

(B) Related services;

(C) Supplementary aids and services.

(ii) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices to receive FAPE.

(f) Physical education. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the school district or public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(i) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless the child is enrolled full time in a separate facility or the child needs specially designed physical education as prescribed in the child's IEP.

(ii) Special physical education. If specially designed physical education is prescribed in the child's IEP, the school district or public agency responsible for the education of the child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(iii) Physical education in separate facilities. The school district or public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this subsection.

(g) Nonacademic services.

(i) Each school district or public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities

in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(ii) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational services, special interest groups or clubs sponsored by the school district or public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or public agency, and assistance in making outside employment available.

(h) Routine checking of hearing aids and external components of surgically implanted medical devices.

(i) Hearing aids. Each school district or public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(ii) External components of surgically implanted medical devices. Consistent with subsection (h)(iii) of this Section, each school district or public agency must ensure that external components of surgically implanted medical devices are functioning properly.

(iii) For a child with a surgically implanted medical device who is receiving special education and related services, a school district or public agency is not responsible for post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(i) Residential Placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Section 2. **Educational Surrogate Parents.**

(a) Each school district or public agency shall ensure that the rights of a child with a disability are protected when:

(i) No parent as defined in these rules can be identified;

(ii) The school district or public agency, after reasonable efforts, cannot locate a parent;

(iii) The child with a disability is a ward of the State under Wyoming State law; or

(iv) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

(b) The duty of a school district or public agency includes the assignment of an individual to act as an educational surrogate for the parents. This must include a method:

(i) For determining whether a child with a disability needs an educational surrogate parent; and

(ii) For assigning an educational surrogate parent to the child.

(c) The school district or public agency shall select an educational surrogate parent based on the following criteria:

(i) The individual is not an employee of the WDE, the school district, or any other public agency that is involved in the education or care of the child;

(A) A surrogate parent is not considered an employee solely because he or she received compensation as a surrogate.

(ii) The individual has no personal or professional interests that conflict with the interest of the child the surrogate parent represents; and

(iii) The individual has knowledge and skills that ensure adequate representation of the child with a disability.

(iv) A foster parent may serve as an educational surrogate parent if he/she meets the above requirements.

(d) In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by a judge overseeing the child's case, provided that the surrogate meets the requirements of subsection (c)(i-iv) of this Section.

(e) In the case of a homeless child who is an unaccompanied youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogates without regard to subsection (c)(i-iv) of this Section, until a surrogate can be appointed that meets all of the requirements of subsection (c) of this Section.

(f) The educational surrogate parent may represent the child with a disability in all matters relating to the identification, evaluation, eligibility, programming, and educational placement of the child and to the provision of FAPE.

Section 3. **Transfer of Rights at the Age of Majority.**

(a) Beginning not later than one year before a child reaches the age of majority, the IEP must include a statement that the child has been informed of his or her rights that will transfer to the child on reaching the age of majority.

(b) Transfer of parental rights at age of majority. When a child reaches the age of majority that applies to all children except for a child with a disability who has been determined to be incompetent under Wyoming law,

(i) The school district or public agency shall provide any notice required under these rules to both the child and the parents;

(ii) All rights accorded to the parents under these rules transfer to the child; and

(iii) All rights accorded to the parents transfer to children who are incarcerated in an adult or juvenile, State, or local correctional institution.

(iv) Whenever the State provides for the transfer of rights, the school district or public agency shall notify the child and the parents of the transfer of rights.

Section 4. **General Evaluation Procedures.**

(a) Initial evaluations. School districts and public agencies shall conduct a full and individual initial evaluation to determine eligibility before the initial provision of special education and related services to a child with a disability.

(b) Consistent with consent requirements in these rules, either a parent of a child or a school district or public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(i) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(c) The initial evaluation to determine if the child is a child with a disability as defined in these rules and to determine the educational needs of the child pursuant to Section 6 of this Part must be conducted within sixty (60) days of receiving parental consent for the evaluation pursuant to Section 6 of this Part.

(i) The time frame does not apply to a school district or public agency if:

(A) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(B) A child enrolls in a school of another school district or public agency after the sixty (60) day time frame in subsection (c) has begun but prior to

a determination by the previous school district or public agency as to whether the child is a child with a disability. The exception in this subparagraph applies only if the subsequent school district or public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the subsequent school district or public agency and the parent agree to a specific date when the evaluation will be completed.

(ii) The sixty (60) day time frame specified in (c) may be extended by mutual written consent of the parent and the group of qualified professionals as specified in Section 6 of this Part.

(d) Prior to the initiation of the evaluation, the school district or public agency must provide prior written notice in accordance with Part 2, Section 1, of these rules to the parent of a child with a disability that describes any evaluation procedure the school district or public agency proposes to conduct.

(e) In conducting the evaluation, the school district or the public agency must:

(i) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

(A) Whether the child is a child with a disability; and

(B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum, or for preschool children to participate in appropriate activities.

(ii) Not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability and for determining the appropriate educational program for the child; and

(iii) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(f) Other evaluation procedures. Each school district or public agency must ensure:

(i) Assessments and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to provide or administer; and are used for purposes for which the assessments or measurements are valid and reliable;

(ii) Assessments are administered by trained and knowledgeable personnel; and

(iii) Assessments are administered in accordance with any instructions provided by the producer of the assessments;

(iv) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single intelligence quotient;

(v) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

(vi) The child is assessed in all areas of suspected disabilities, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(vii) That assessments of children with disabilities who transfer from one school district or public agency to another in the same school year are coordinated with those child's prior and subsequent school districts or public agencies as necessary and as expeditiously as possible to ensure prompt completion of full evaluations; and

(viii) In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.

(ix) Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the child are provided.

Section 5. **Additional Requirements for Evaluations and Reevaluations.**

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this Section, the evaluation team, or at the discretion of the school district or public agency, the IEP team, and other qualified professionals, as appropriate, shall:

(i) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child;

(ii) Review current classroom-based, local or State assessments and classroom-based observations; and

(iii) Review observations by teachers and related services providers;

(iv) Permit the review of evaluation information without a meeting;

and

(v) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child has a disability as defined in these rules and the educational needs of the child, or, in case of reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(B) The present levels of academic achievement and related developmental needs of the child;

(C) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Source of data. The school district or public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection (a) of this Section.

(i) Consistent with Section 6 of this Part, in the event the school district or public agency conducts assessments and other evaluation measures to determine if a child is or continues to be a child with a disability, they shall document that determination and provide a copy of the report to the parent as specified in Section 6, subsection (a), of this Part.

(c) Requirements if additional data are not needed. If the determination is that no additional evaluation data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the school district or public agency shall notify the child's parents of that determination, the reasons for that determination, and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

(i) The school district or public agency is not required to conduct the additional assessment unless requested to do so by the child's parents.

(d) Evaluations before a change in eligibility. A school district or public agency must evaluate a child in accordance with this Section before determining that the child is no longer a child with a disability:

(i) Except that an evaluation is not required before the termination of a child's eligibility due to graduation from a secondary school with a regular diploma; or

(ii) Due to exceeding age eligibility for FAPE.

(e) For a child whose eligibility terminates under the circumstances in subsection (d)(i) or (d)(ii), the school district or public agency must provide the child with a summary of the child's academic and functional performance, including recommendations on how to assist the child in meeting the child's post secondary goals.

(f) Reevaluation.

(i) The school district or public agency must ensure that a reevaluation of each child with a disability is conducted if the school district or public agency determines that the educational or related service needs, including improved academic achievement and functional performance of the child, warrant a reevaluation; or

(ii) If the child's parent or teacher requests a reevaluation.

(iii) A reevaluation must occur at least once every three (3) years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(iv) A reevaluation may not occur more than once per year, unless the parent and public agency agree otherwise.

Section 6. **Determination of Eligibility.**

(a) Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability as defined in Part 1, Section 2(d) and the educational needs of the child. The school district or public agency must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) A child must not be determined to be a child with a disability under this Section, if the determinant factor for that determination is:

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA), lack of appropriate instruction in math; or Limited English Proficiency; and

(ii) If the child does not otherwise meet the eligibility criteria.

(c) Procedures for determining eligibility and educational need. In interpreting evaluation data for the purpose of determining if a child has a disability and establishing the educational needs, each school district or public agency must:

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parental input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(iii) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child.

PART 4
DISABILITY CATEGORIES

Section 1. **Autism.**

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communications and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability as defined in Section 5 of this Part. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the criteria in this paragraph of this Section are satisfied.

(i) Autism eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall also include recommendations for instruction from a qualified diagnostician, such as a licensed clinical psychologist, school psychologist, psychiatrist or other qualified professional. The initial evaluation process shall include assessments in academic/pre-academic, adaptive behavior, communication/language development, parent interview/input, teacher interview/input, social/emotional, functional behavior and classroom-based assessments and qualitative data from at least two observations or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with autism if the criteria under (A) through (E) are satisfied.

(A) Impaired communication: The child is unable to use expressive and receptive language for social communication in a developmentally appropriate manner; lacks nonverbal communication skills, or uses abnormal nonverbal communication; uses abnormal form or content when speaking and/or is unable to initiate or sustain conversation with others.

(B) Inappropriate relationships: The child exhibits deficits relating to people, marked lack of awareness of other's feelings, abnormal seeking of comfort at times of distress, absent or abnormal social play and/or inability to make friends. The child does not relate to or use objects in an age-appropriate or functional manner.

(C) Abnormal sensory processing: The child exhibits unusual, repetitive, non-meaningful responses to auditory, visual, olfactory, taste, tactile and/or kinesthetic stimuli.

(D) Impaired cognitive development: The child has difficulty with concrete versus abstract thinking, awareness, judgment and/or the ability to generalize. The child may exhibit perseverative thinking or impaired ability to process symbolic information.

(E) Abnormal range of activities: The child shows a restricted repertoire of activities, interests, and imaginative development evident through stereotyped body movements, persistent preoccupation with parts of objects, distress over trivial changes in the environment, unreasonable insistence on routines, restricted range of interests, or preoccupations with one narrow interest.

Section 2. **Cognitive Disability.**

(a) “Cognitive disability” means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(i) Cognitive disability eligibility criteria: Criteria are established in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include assessments in academic/pre-academic, adaptive behavior, parent interview/input, teacher interview/input, cognitive/intellectual, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a cognitive disability if the criteria under (A) through (C) are satisfied.

(A) Documentation on an individual test of intelligence that the child's intellectual functioning is two or more standard deviations below the mean, taking into consideration the standard error of measurement. In the event that an individual test of intelligence is not able to be administered to the child, the evaluation team shall document how they determined that the child's profile of intellectual functioning indicates sub-average performance in a majority of areas.

(B) Documentation on an individually administered test or assessment that the child's academic or pre academic skills are coexistent with the child's deficits in intellectual functioning. Behavioral observations, criterion-referenced tests, or documentation of classroom performance may be used when a child's level of functioning cannot be appropriately measured by standardized tests.

(C) Documentation on standardized adaptive behavior measurements, that includes information gathered from parents and school staff that the child's deficits in adaptive behavior is coexistent with the child's deficits in intellectual functioning.

Section 3. **Deaf-Blindness.**

(a) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for a child with deafness or a child with blindness.

(i) Deaf-blindness eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation process shall include a licensed audiologist, certified teacher of the visually impaired, and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include assessments in academic/pre-academic, adaptive behavior, communication/language development, gross/fine motor, parent interview/input, teacher interview/input, social/emotional, audiological, vision, mobility, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with deaf-blindness if the criteria under (A) through (C) are satisfied.

(A) Eligibility criteria for hearing impairment (including deafness) are satisfied;

(B) Eligibility criteria for visual impairment (including blindness) are satisfied; and

(C) The child's current level of performance indicates significant problems with motor functioning, communication, self-help/adaptive skills, social skills, and/or pre-academic or academic skills.

Section 4. **Developmental Delay.**

(a) "Developmental delay" means a child with a disability ages three (3) through nine (9) who is determined through appropriate diagnostic instruments and procedures to be experiencing developmental delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who by reason thereof needs special education and related services. Developmental delay is a category available to children ages three (3) through nine (9) who do not qualify in other categories under this Part, but meet the developmental delay criteria.

(i) Developmental delay eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, adaptive behavior,

communication/language development, cognitive/intellectual, gross/fine motor, parent interview/input, teacher/caregiver, interview/input, social/emotional, classroom/daycare/pre-school-based assessments, and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a developmental delay if the criteria under (A) or (B) and (C) are satisfied.

(A) The child's performance is significantly below the mean performance 1.75 standard deviations expected of children of comparable chronological age in one area (physical, cognitive, social/emotional, communication, or adaptive functioning). In determining the child's performance as being markedly below the expected level for children of comparable age the team must be allowed to establish eligibility based on a preponderance of the information presented and that other measures may be used to determine eligibility such as observations, criterion referenced measures, clinical judgment and other clinically accepted practices.

(B) The child's performance is markedly 1.5 standard deviations below the mean performance expected of children of comparable chronological age in two or more areas (physical, cognitive, social/emotional, communication, or adaptive functioning). In determining the child's performance as being markedly below the expected level for children of comparable age the team must be allowed to establish eligibility based on a preponderance of the information presented and that other measures may be used to determine eligibility such as observations, criterion referenced measures, clinical judgment and other clinically accepted practices.

(C) Results of hearing and vision screening that provide evidence that the child's performance is not a result of a hearing or vision impairment.

Section 5. **Emotional Disability**

(a) "Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless they have an emotional disability as defined in these rules.

(i) Emotional disability eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified

professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include recommendations for social, emotional, or behavioral instruction from a qualified diagnostician, such as a licensed clinical psychologist, school psychologist, psychiatrist, or other qualified professional. The initial evaluation process shall include assessments in academic/pre-academic, parent interview/input, teacher interview/input, social/emotional, functional behavior, and classroom-based assessments, and qualitative data from at least two observations or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with emotional disability if the criteria under A through C are satisfied.

(A) Despite implementation of one or more positive regular education behavioral interventions, the child continues to exhibit behavioral or emotional responses in school that are so different from appropriate age, cultural, or ethnic norms that the responses adversely affect the child's academic, social, or vocational performance in one or more of the following areas:

(I) An inability to develop or maintain interpersonal relationships with peers and teachers; and/or

(II) Inappropriate types of feelings or behavioral response to a normal situation; and/or

(III) A general mood of unhappiness or depression; and/or

(IV) A tendency to develop physical symptoms, pain, or fears associated with personal or school problems.

(B) Demonstrates severe, chronic, and frequent inappropriate behavior or emotional responses that are not a result of situational anxiety, stress, or conflict. Demonstrates these behaviors or emotional responses in two or more settings of which one includes the school setting.

(C) Demonstrates patterns of behavior which cannot be attributed primarily to physical, sensory, or intellectual deficits.

Section 6. **Hearing Impairment Including Deafness.**

(a) "Hearing impairment including deafness" means a hearing impairment including deafness that, with or without amplification, adversely affects educational performance; may be permanent or fluctuating; may be so severe that the child is impaired in processing linguistic information through hearing, with or without amplification.

(i) Hearing impairment including deafness eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation process shall include a licensed audiologist and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include assessments in academic/pre-academic, communication/language development, parent interview/input, teacher interview/input, audiological, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a hearing impairment including deafness if the criteria under (A)(I), or (A)(II), or (A)(III), or (A)(IV) and (B) are satisfied.

(A) Documentation of the child's potential requirement for amplification and one of the following hearing losses:

- (I) Sensorineural hearing loss;
- (II) Conductive hearing loss;
- (III) Mixed hearing loss combination of conductive and sensorineural hearing losses; or
- (IV) Central hearing loss (impaired understanding and processing).

(B) Documentation that the hearing loss interferes with the student's ability to function in an educational program using traditional materials and techniques due to the child's delay in the use or understanding of spoken language.

Section 7. **Multiple Disabilities.**

(a) "Multiple disabilities" means concomitant impairments (such as cognitive disability-blindness; cognitive disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(i) Multiple disabilities eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, adaptive behavior, parent interview/input, teacher interview/input, cognitive/intellectual, and classroom-based assessments and qualitative data from at least one observation or other assessments

and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with multiple disabilities if the criteria under (A) and (B) are satisfied.

(A) Eligibility criteria for cognitive disability are established.

(B) Eligibility criteria for one of the following disability categories are established: deaf-blindness, other health impaired, hearing impairment including deafness, orthopedic impairment, or visual impairment including blindness.

Section 8. **Orthopedic Impairment.**

(a) “Orthopedic Impairment” means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis), and impairments from other causes (*e.g.*, cerebral palsy, amputations and fractures or burns that cause contractures).

(i) Orthopedic impairment eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, gross/fine motor, parent interview/input, teacher interview/input, physical/health/medical, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with an orthopedic impairment if the criteria under (A) and (B) plus (C) or (D) are satisfied.

(A) Documentation of an orthopedic impairment from a physician within the previous twelve (12) months for an initial evaluation and as deemed appropriate for determining continuing eligibility for reevaluation.

(B) Documentation that the child's impaired motor functioning significantly interferes with educational performance.

(C) Documentation that the child exhibits deficits in muscular or neuromuscular functioning that significantly limits the child's ability to move about, sit, or manipulate materials required for learning.

(D) Documentation that the child's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills.

Section 9. **Other Health Impaired.**

(a) "Other health impaired" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette Syndrome, and adversely affects a child's educational performance.

(i) Other health impaired eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, parent interview/input, teacher interview/input, physical/health/medical, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as other health impaired if the criteria under (A) and (B) are satisfied.

(A) Subject to the provisions of subdivision (I) of this subparagraph with respect to attention deficit disorder or attention deficit hyperactivity disorder, documentation of an acute or chronic health problem from a licensed physician within the previous twelve (12) months for an initial evaluation and as deemed appropriate for continuing eligibility for a reevaluation.

(I) In concert with the provisions of paragraph (i) of this Section, as determined appropriate by a school district or public agency a licensed psychologist or certified psychologist, in lieu of a physician may document the child meets eligibility requirements for an other health impairment with respect to attention deficit disorder or attention deficit hyperactivity disorder for an initial evaluation and as deemed appropriate for continuing eligibility for a reevaluation.

(B) Documentation that educational performance is adversely affected due to acute or chronic limited strength, vitality, or alertness.

Section 10. **Specific Learning Disability.**

(a) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. A specific learning disability does not include learning problems that are primarily the

result of visual, hearing, or motor disabilities, of cognitive disabilities, of emotional disability, or of environmental, cultural or economic disadvantage.

(i) Specific learning disability eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, parent interview/input, teacher interview/input, cognitive/intellectual (only if the Wyoming Severe Discrepancy Model is used per subsection (c)(i)(B) of this Section), and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a specific learning disability if the criteria under this Section are satisfied.

(ii) With respect to the observation described in paragraph (i) above, the school district or public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. The group described in subsection (b) of this Section, must decide to either:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) Have at least one member of the group described in subsection (b) of this Section conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with Part 2, Section 3, is obtained.

(b) Additional group members required for the determination of whether a child suspected of having a specific learning disability must be made by the child's parents and a team of qualified professionals, which must include:

(i) The child's regular education teacher; or

(ii) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(iii) For a child of less than school age, an individual qualified by a State agency to teach a child of his or her age; and

(iv) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(c) Determining the existence of a specific learning disability. When determining whether a child has a specific learning disability as defined in these rules, the group as defined in subsection (b) of this Section shall:

(i) Determine and document that the child, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards, does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. The group can make this determination through the procedures described in subparagraphs (A) or (B) under this subsection.

(A) Response to scientific research-based intervention. The group may determine that the child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subsection (c)(i) of this Section when using a process based on the child's response to scientific, research-based intervention. Consistent with evaluation requirements in these rules, the group must document the determination that the child has a specific learning disability that complies with a scientific, research-based intervention; and

(I) In addition, the school district or public agency must adhere to the timeframes described in Part 3, Section 4, subsection (c), of these rules unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in subsection (b) of this Section; or

(B) Wyoming severe discrepancy. The group may determine that the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability using appropriate assessments. Consistent with evaluation requirements in these rules and subparagraph (B)(I)(1.), (2.), and (3.) of this subsection the group shall document that the child evidences a specific learning disability using the severe discrepancy between intellectual ability and achievement.

(I) In the event the school district or public agency chooses to establish a child's eligibility for a specific learning disability with respect to the determination that a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, and chooses to use a severe discrepancy between intellectual ability and achievement as per subsection (c)(i)(B) of this Section:

(1.) The school district or public agency must use the Wyoming Severe Discrepancy Formula in Appendix A of these rules.

(2.) In the event the school district or public agency determines the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, a severe discrepancy exists when application of the WDE formula results in a difference between expected and actual achievement greater than or equal to 1.5 standard deviations and a 1.0 standard deviation for continuing eligibility (See Appendix A).

(3.) With respect to the school district's or public agency's determination to establish a child's eligibility for a specific learning disability using the severe discrepancy formula rather than through using a process based on the child's response to scientific, research-based intervention outlined in subsection (c)(i)(A) of this Section, the group described in subsection (b) of this Part will document the determination that the child has a specific learning disability that complies with Wyoming's Severe Discrepancy Formula in Appendix A.

(ii) Determine and document that the findings under subsection (c)(i)(A) or (B) of this Section are not primarily the result of:

(A) A visual, hearing or motor disability, cognitive disability, or emotional disability; or

(B) Cultural factors, environmental or economic disadvantage, or Limited English Proficiency.

(d) Documentation of prior appropriate instruction. To ensure that underachievement in a child suspected of having a specific learning disability as referenced in subsection (c) of this Section is not due to lack of appropriate instruction in reading or math, the group defined in subsection (b) of this Section must, as part of the evaluation process, consider data that demonstrates:

(i) Prior to, or as part of, the referral process the child was provided appropriate instruction in the regular education settings, delivered by qualified personnel; and

(ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.

(e) Criteria for prompt school district or public agency initiated referral. The school district or public agency must promptly request parental consent to evaluate the

child to determine if the child needs special education and related services and adhere to the time frames in Part 3, Section 4, if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (d)(i) and (d)(ii) of this Section and whenever a child is referred for an evaluation.

(f) Specific documentation for the eligibility determination for a child suspected of having a specific learning disability, as required in Part 3, Section 6, of these rules must also contain a statement of:

- (i) Whether the child has a specific learning disability;
- (ii) The basis for the determination, including an assurance that the determination has been made in accordance with Part 3, Section 6, of these rules;
- (iii) Relevant behavior, if any noted, during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (iv) Educationally relevant medical findings if any;
- (v) Whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with subsection (c)(i) of this Section; and
 - (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with subsection (c)(i)(A); or
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with subsection (c)(i)(B) of this Section.
- (vi) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English Proficiency on the child's achievement level; and
 - (vii) If the child has participated in a process that assesses the child's response to scientific, research-based intervention; and
 - (A) The instructional strategies used and the student-centered data collected.
 - (B) The documentation that the child's parents were notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided that

include strategies for increasing the child's rate of learning, and the parents' right to request an evaluation.

(viii) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Section 11. **Speech or Language Impairment.**

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

(i) Speech or language impairment eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by a Speech Language Pathologist (SLP) and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, communication/language development, parent interview/input, teacher interview/input, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a speech or language impairment in the qualifying area/s of articulation, language, stuttering, or voice, if the specific criteria designated under a qualifying area are satisfied.

(b) Qualifying area. Articulation means speech sound production or phonological errors atypical of a child of comparable age and development.

(i) Eligibility criteria -- articulation: Criteria under (A) or (B) or (C) or (D) are required.

(A) Documentation that the child exhibits errors of speech sound production beyond the age at which 85% of typically developing children have achieved mastery (based on current developmental norms) or clinical judgment that evidences the child is in need of intervention;

(B) Documentation that the child's performance on a standardized evaluation instrument is 1.5 standard deviations or greater below the mean for chronological age on a norm-referenced test of articulation or phonology;

(C) Documentation that one or more phonological patterns of sound are significantly disordered and evidence that the child's conversational intelligibility is affected;

(D) Documentation that the child's scores are at a moderate, severe, or profound rating on appropriate evaluation instruments. In determining that the child's speech is unintelligible the use of clinical judgment and other measures may be used to document severity.

(c) Qualifying area. Stuttering means abnormal flow of speech evident in interruptions by hesitations, repetitious or prolongation of sounds, syllables, words or phrases or articulatory positions or by avoidance and struggle behaviors.

(i) Eligibility criteria -- stuttering: Criteria under (A) and (C) or (B) and (C) are required.

(A) Documentation that the child demonstrates at least a moderate rating or its equivalent on a formal fluency rating scale. In determining that the child's fluency is at least moderately impaired clinical judgment and other measures may be used to document how the child's fluency is impaired;

(B) Documentation that the child exhibits stuttering on 5% or more of words spoken in a representative language sample or demonstrates stuttering in varied speaking situations;

(C) An observation documenting that the child's stuttering interferes with communication and calls attention to itself.

(d) Qualifying area. Language impairment means a deficiency in language comprehension or production evident in the content, form or use of oral communication or its equivalent.

(i) Eligibility criteria -- language: Criteria under (A) or (B) and (C) are required.

(A) The child demonstrates on standardized measures an understanding and use of morphologic, syntactic, semantic, or pragmatic patterns at 1.5 standard deviations below the mean for chronological age.

(B) If the standardized measures do not accurately or sufficiently reflect that the child's language is impaired in the use of morphologic, syntactic, semantic, or pragmatic patterns the team must be allowed to establish eligibility based on a preponderance of the information presented and that other measures may be used to determine eligibility such as observations, criterion referenced measures, clinical judgment and other clinically accepted practices.

(C) Documentation that receptive or expressive language interferes with the child's oral communication or primary mode of communication.

(e) Qualifying area. Voice means a significant deviation in pitch, intensity, or quality which consistently interferes with communication, draws unfavorable attention, adversely affects the speaker or listener(s), or is inappropriate for the age, sex, or culture of the child.

(i) Eligibility criteria -- voice: Criteria under (A) through (C) are required.

(A) Documentation that the child exhibits abnormal voice quality, pitch, resonance, loudness or duration;

(B) Documentation that the condition is evident on two separate occasions, two weeks apart, at different times of the day;

(C) A physician's statement documenting that voice therapy is not contraindicated.

(f) The evaluation process must take into account that the child does not exhibit any one of the exclusionary variables (i) through (v).

(i) Mild, transitory, or developmentally appropriate speech or language difficulties that children experience at various times to various degrees; or

(ii) Speech or language difficulties resulting from dialectical difference or from learning English as a second language, unless the child has a language impairment in his or her native language; or

(iii) Difficulties with auditory processing without a concomitant impairment in speech sound production; or

(iv) A tongue thrust which exists in the absence of a concomitant impairment in speech sound production; or

(v) Elective or selective mutism or school phobia without a documented oral speech or language impairment.

Section 12. **Traumatic Brain Injury.**

(a) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory; perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(i) Traumatic brain injury eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation shall be conducted by qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, adaptive behavior, communication/language development, gross/fine motor, parent interview/input, teacher interview/input, cognitive/intellectual, physical/health/medical, social/emotional, and classroom-based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with traumatic brain injury if the criteria under (A) and (B) are satisfied.

(A) Documentation from a physician, within the previous twelve (12) months for an initial evaluation, and as deemed appropriate for a reevaluation, that the child has sustained a brain trauma (*e.g.*, skull fracture, contusions and/or bullet wound, *etc.*) resulting in the onset of an impairment.

(B) Documentation that the traumatic brain injury adversely affects the child's educational performance in one or more of the following areas: cognitive ability, social behavior, use of adaptive skills, physical ability, vision, hearing, and/or ability to communicate.

Section 13. **Visual Impairment Including Blindness.**

(a) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(i) Visual impairment including blindness eligibility criteria: Criteria are established through a comprehensive evaluation in accordance with the requirements of Part 3, Sections 4 and 5, of these rules. The initial evaluation team shall consist of a certified teacher of the visually impaired and other qualified professionals as determined appropriate by the school district or public agency. The initial evaluation process shall include academic/pre-academic, parent interview/input, teacher interview/input, vision, mobility, and classroom based assessments and qualitative data from at least one observation or other assessments and/or qualitative data as determined appropriate by the school district or public agency. In accordance with the requirements in Part 3, Section 6, of these rules, a child is identified as a child with a visual impairment including blindness if the criteria under (A) and one of the following, (B) through (F), are satisfied.

(A) Documentation of loss of vision which adversely affects the child's educational performance and requires the use of specialized texts, techniques, materials, or assistive technology devices; and

(B) Documentation of visual acuity in the better eye with best possible correction of:

(I) 20/200 or less (blind); or

(II) 20/50 or less (partially sighted); or

(C) Documentation of field loss, in which the peripheral field is so contracted that the widest diameter of the field covers an angular distance no greater than 20 degrees and that the reduced peripheral field affects the child's ability to learn; or

(D) Documentation of a progressive loss of vision which may, in the future, affect the child's ability to learn; or

(E) Documentation of blindness resulting from an active disease process; or

(F) Visual acuity which cannot be measured but in which the child is functionally blind as determined through a functional vision assessment.

PART 5
THE IEP PROCESS

Section 1. **General Provisions -- Individualized Education Programs (IEP).**

(a) General. The term Individualized Education Program (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with these rules.

(i) Initial IEPs; provision of services. Each school district or public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability and must ensure that a meeting to develop an IEP for the child is conducted within thirty (30) days of a determination that a child is a child with a disability and needs special education and related services; and

(ii) As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(iii) A meeting does not include informal, unscheduled conversations regarding teaching methodology, lesson plans, service coordination, or preparatory activities to develop proposals for a later meeting.

(iv) Parent access to the IEP. The school district or public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(v) Accessibility of the child's IEP to teachers and others. The school district or public agency must ensure that:

(A) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(B) Each teacher and provider described in paragraph (a)(v)(A) of this Section must be informed of his or her specific responsibilities related to implementing the child's IEP; and of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(b) Notwithstanding subsection (c) in this Section, at the beginning of each school year, or by the child's third birthday, each school district or public agency shall have an IEP in effect for each child with a disability within its jurisdiction.

(c) For a child with a disability who is age two (2) and who will turn age three (3) during the school year, the IEP team must consider an Individual Family Service Plan (IFSP) that contains the IFSP content (including the natural environments statement and including components for promoting school readiness, pre-literacy, language and

numeracy skills). The IFSP may, if agreed to by the school district or public agency and the child's parent, serve as the IEP for the child until the end of the school year in which the child turns three (3).

(i) If the school district or public agency uses an IFSP instead of an IEP, the school district or public agency must provide to the parent a detailed explanation of the difference between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written, informed consent from the parents.

Section 2. **IEPs for Children Who Transfer School Districts or Public Agencies.**

(a) IEPs for children who transfer school district or public agencies in the State of Wyoming. If a child with a disability (who had an IEP that was in effect in a previous school district or public agency in the State) transfers to a new school district or public agency in the State of Wyoming, and enrolls in a new school district or public agency within the same school year, the new school district or public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district or public agency) until the new school district or public agency either adopts the child's IEP from the previous school district or public agency or develops, adopts, and implements a new IEP that meets the applicable requirements of Section 1 of this Part.

(b) Children with disabilities transitioning from developmental preschool centers in the State of Wyoming to school districts or other public agencies. Consistent with prior written notice requirements discussed in Part 2 of these rules, and subject to the requirements in subsection (a) of this Section, the developmental preschool center shall invite a representative of the school district or public agency in which the child with a disability is anticipated to enroll, to participate in the last IEP meeting conducted by a developmental preschool center prior to the child's scheduled enrollment in the school district or public agency.

(i) When a child with a disability transfers from a developmental preschool center to a school district or public agency in the State of Wyoming, the new school district or public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency) until the new school district or public agency either adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP.

(ii) If the school district or public agency chooses not to use a developmental delay category as authorized per Part 1, Section 2 (e)(v), of these rules, the school district or public agency, consistent with consent requirements, shall:

(A) Conduct an evaluation per the requirements established in Part 3, Section 4 through Section 6, of these rules; and

(B) Meet the requirements identified in subsection (a) and (b)(i) above with respect to continuing to provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency until the completion of the evaluation per rules in Part 3, Section 4 through Section 6, of these rules.

(c) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous school district or public agency in another State) transfers to a school district or public agency in Wyoming and enrolls in a new school district or public agency in Wyoming within the same school year, the new school district or public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district or public agency) until the new school district or public agency:

(i) Conducts an evaluation pursuant to Part 3, Section 4 through Section 6, of these rules if the new school district or public agency determines an evaluation is necessary; and

(ii) Develops, adopts, and implements a new IEP, if appropriate.

(d) Timeline for transmittal of records. To facilitate the transition for a child transferring within the State of Wyoming from one school district or public agency to another school district or public agency described in subsection (a) and (b) of this Section:

(i) The new school district or public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous public agency in which the child was enrolled, pursuant to regulations pertaining to FERPA.

(ii) The previous school district or public agency in which the child was enrolled must take reasonable efforts to respond to the request from the new school district or public agency. Within five (5) business days of receipt of a request for records from the new school district or public agency, the previous school district or public agency must forward the requested records to the school district or public agency requesting the records.

Section 3. **IEP Team Membership.**

(a) Participants in general. The school district or public agency shall ensure that the IEP team for each child with a disability includes:

- (i) The parents of the child;
- (ii) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (iii) Not less than one special education teacher of the child, or if appropriate not less than one special education provider of the child;
- (iv) A representative of the school district or public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the school district or public agency;
- (v) An individual who can interpret the instructional implications of evaluation results;
- (vi) At the discretion of the parent or the school district or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (vii) Whenever appropriate, the child.

(b) The determination of the knowledge or special expertise of any individual described in (a)(vi) shall be made by the party (parents or school district or public agency) who invited the individual to be a member of the IEP team.

(c) A school district or public agency may designate a member of the IEP team to serve also as the school district or public agency representative if the criteria in (a)(iv) are satisfied.

(d) IEP team attendance.

(i) A member of the IEP team described in subsections (a)(ii) through (a)(v) of this Section is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or public agency agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related service is not being modified or discussed in the meeting.

(ii) A member of the IEP team described in subsection (d)(i) of this Section may be excused from attending the IEP meeting, in whole or in part, when the meeting involves a modification to or a discussion of the member's area of the curriculum or related services if the parent, in writing, and the school district or public agency consent to the excusal; and

(iii) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

(e) IEP requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, the review, and the revision of the IEP of the child, including the determination of:

(i) Appropriate, positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel.

Section 4. Parent Participation in IEP Meetings and Child and Other Agency Participation in Transition IEP Meetings.

(a) Public agency responsibility. Each school district or public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:

(i) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend;

(ii) Scheduling the meeting at a mutually agreed time and place.

(b) Information to parents about the meeting. The notice required under (a) (i) of this Section must:

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

(ii) For a child with a disability beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger if determined appropriate by the IEP team, the notice discussed in (a)(i) of this Section also must indicate that a purpose of the meeting will be the consideration of the post secondary goals and transition services for the child; indicate that the school district or public agency will invite the child; and identify any other agency that will be invited to send a representative.

(c) Transition service participants at IEP meetings.

(i) In accordance with subsection (b)(ii) of this Section, the school district or public agency must invite the child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of post secondary goals for the child and the transition services needed to assist the child in reaching those goals.

(ii) If the child does not attend the IEP meeting, the school district or public agency must take other steps to ensure that the child's preferences and interests are considered.

(iii) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district or public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(d) Other methods to ensure parent participation. If neither parent can attend an IEP meeting, the school district or public agency shall use other methods to ensure parent participation, including individual or conference telephone calls or video conferences.

(e) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the school district or public agency is unable to convince the parents that they should attend. In this case the school district or public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.

(f) Ensuring parent understanding of IEP proceedings. The school district or public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

Section 5. **IEP Definition and Required Content.**

(a) The term Individualized Education Program or IEP has the meaning defined in Part 1, Section 2, subsection (s), of these rules. Each IEP shall include a statement of the child's present levels of academic achievement and functional performance, including:

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(iii) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability.

(b) Children who take alternate assessments. For children who take alternative assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short term objectives.

(c) Measuring and reporting progress. The IEP must include a statement on how the child's progress toward meeting the annual goals described in (a)(iii) of this Section will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as the use of quarterly or other reports, concurrent with the issuance of report cards) will be provided.

(d) Special education and related services. The IEP must include a statement of special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on the behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with the child's present level of academic achievement and functional performance, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this Section.

(e) Participation with nondisabled children. The IEP must include a statement regarding an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in activities described in subsection (d) of this Section.

(f) Assessment accommodations. The IEP must include a statement of any individual, appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments; and

(i) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or district-wide assessment of student

achievement, a statement of why the child cannot participate in the regular assessment; and why,

(ii) The particular alternate assessment selected is appropriate for the child.

(g) Projected date for services. The IEP must include the projected date for the beginning of the services and modifications discussed in this Section and the anticipated frequency, location, and duration of those services and modifications.

(h) Transition services. Beginning not later than the first IEP to be in effect when the child turns sixteen (16) (or younger, if determined appropriate by the IEP team), and updated annually thereafter, the IEP must include:

(i) A statement of appropriate measurable post secondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services (including courses of study) needed to assist the child in reaching these goals; and,

(iii) Beginning not later than one (1) year before the child reaches the age of majority, a statement that the child has been informed of the child's rights under these rules, if any, that will transfer to the child on reaching the age of majority.

(i) Construction. Nothing in this Section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in this Section of the rules or to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Section 6. **Development, Review, and Revision of the IEP.**

(a) Development of IEP. In developing each child's IEP, the IEP team must consider:

- (i) The strengths of the child;
- (ii) The concerns of the parent for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

(b) Consideration of special factors.

(i) The IEP team must in the case of a child whose behavior impedes the child's learning or that of others consider the use of positive behavioral interventions and supports and other strategies, to address that behavior.

(ii) The IEP team must in the case of a child with limited English proficiency consider the language needs of the child as those needs relate to the child's IEP.

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

(iv) The IEP team must consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) The IEP team must consider whether the child needs assistive technology devices and services.

(vi) A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child; and supplementary aids and services, program modifications, and support for school personnel consistent with Section 5 of this Part.

(c) Review and revision of IEP. Each school district or public agency shall ensure that the IEP team:

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, and revises the IEP as appropriate to address:

(A) Any lack of expected progress toward the annual goals and in the general education curriculum, and also, if appropriate;

(B) The results of any reevaluation conducted;

(C) Information about the child provided to or by the parents;

and

(D) The child's anticipated needs or other matters.

(E) Consideration of special factors. In conducting a review of the child's IEP, the IEP team must consider the special factors described in subsection (b) of this Section.

(d) Failure to meet transition objectives. If a participating agency, other than the school district or public agency, fails to provide the transition services described in the IEP, the school district or public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(e) IEP amendment. Changes to the IEP may be made by either the entire IEP team at an IEP team meeting, or, subject to the participation of or approval by the LEA representative as defined in Section 3 (a)(iv) of this Part and as provided in subsection (f) of this Section, by amending the IEP rather than redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(f) Amendment agreement.

(i) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the school district or public agency may agree not to convene an IEP team meeting for the purposes of making those changes; and instead may, with participation of or approval by the school district or public agency representative as defined in Section 3 (a)(iv) of this Part, develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to a child's IEP in accordance with the provisions of this subsection, the public agency must ensure that the child's IEP team is informed of those changes.

(g) Consolidation of the IEP meetings. To the extent possible, the school district or public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

Section 7. **Children with Disabilities in Adult Prisons.**

(a) The following requirements do not apply to children with disabilities who are convicted as adults under Wyoming State law and incarcerated in adult prisons:

(i) Requirements pertaining to participation of children with disabilities in general assessments;

(ii) Requirements relating to transition planning and transition services do not apply with respect to the children whose eligibility will end because of their age before they will be released from prison based on consideration of their sentence and eligibility for early release.

(b) Modifications of IEP or placement for incarcerated students.

(i) The IEP Team of a child with a disability who is convicted as an adult under Wyoming State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a *bona fide* security-compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements relating to least restrictive environment, transition services, and planning and participation in general assessments do not apply with respect to children with disabilities incarcerated in adult prisons.

Section 8. **Placement and Least Restrictive Environment (LRE).**

(a) Least Restrictive Environment (LRE). Each school district or public agency shall ensure:

(i) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) That special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Continuum of alternative placements. Each school district or public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum required must:

(i) Include the alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

(ii) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(c) Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each school district or public agency must ensure that:

(i) The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child. The decision must also consider the meaning of the evaluation data, and the placement options; and

Section 8 (a)(i)(ii). (A) Must be made in conformity with the LRE provisions in

(ii) The child's placement:

(A) Is determined at least annually;

(B) Is based on the child's IEP; and

(C) Is as close as possible to the child's home.

(iii) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(iv) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(v) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(vi) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or public agency shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.

(vii) A placement decision may be made by a group without the involvement of a parent if the school district or public agency is unable to obtain the parent's participation in the decision. In this case, the school district or public agency must have a record of its attempt to ensure their involvement.

(d) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Part 3, Section 1, subsection (g), of these rules, each school district or public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The school district or public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

Section 9. **Extended School Year (ESY).**

(a) Each school district or public agency shall ensure that extended school year services are available as necessary to provide a FAPE.

(b) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the child.

(c) In implementing these requirements, a school district or public agency may not:

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(d) Extended school year services mean special education and related services that:

(i) Are provided to a child with a disability beyond the normal school year of the school district or public agency:

(A) In accordance with the child's IEP; and

(B) At no cost to the parent of the child; and

(C) Meet the standards of the WDE.

PART 6
DISCIPLINE PROCEDURES FOR CHILDREN WITH DISABILITIES

Section 1. **Change of Placement for Disciplinary Removals.**

(a) For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

- (i) The removal is for more than ten (10) consecutive school days; or
- (ii) The child has been subjected to a series of removals that constitute a pattern;

(A) Because the series of removals total more than ten (10) school days in a school year;

(B) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
and

(C) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) The school district or public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

(c) Disciplinary information. A school district or public agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(i) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(ii) If the child transfers from one school to another, the transmission of any of the child's records must include both the child's IEP and any statement of current or previous disciplinary action that has been taken against the child.

Section 2. **Authority of School Personnel.**

(a) Case-by-case determination. School district or public agency personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this Section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(i) School personnel under this Section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

(ii) After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the school district or public agency must provide services to the extent required under subsection (d) of this Section.

(iii) Determination of Setting. The child's IEP team determines the interim alternative educational setting for services.

(c) Additional authority. For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to the requirements of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities except as provided in subsection (d) of this Section.

(d) Services for children when behavior is not a manifestation of the disability.

(i) A child with a disability who is removed from the child's current placement pursuant to subsections (c) of this Section, or pursuant to Section 3, subsection (e) of this Part, must:

(A) Continue to be provided educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(B) Receive, as appropriate, a Functional Behavioral Assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(ii) The services required under (d)(i), (d)(iii), (d)(iv), and (d)(v) of this Section may be provided in an interim alternative educational setting.

(iii) A school district or public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if it provided services to a child without disabilities who is similarly removed.

(iv) After a child with a disability who has been removed from his or her current placement for ten (10) school days in the same school year (if the current removal is not more than ten (10) consecutive school days and not a change of placement), school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(v) If the removal is a change of placement, the child's IEP team determines appropriate services under (d)(i).

Section 3. **Manifestation Determination.**

(a) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or public agency, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or public agency) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the school district's or public agency's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the child's disability if the school district or public agency, the parent, and relevant members of the IEP team determine that a condition in either subsection (a)(i) or (a)(ii) of this Section was met.

(c) If the school district or public agency, parent, and relevant members of the child's IEP team determine the conduct in question was the direct result of the school

district's or public agency's failure to implement the IEP, the school district or public agency must take immediate steps to remedy those deficiencies.

(d) Determination that behavior was a manifestation. If the school district or public agency, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

(i) Either conduct a Functional Behavioral Assessment (FBA), unless the school district or public agency conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) Except as provided in subsection (e) of this Section, return the child to the placement from which the child was removed, unless the parent and the school district or public agency agree to a change in placement as part of the modification of the behavioral intervention plan.

(e) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

(i) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district or public agency; or

(ii) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a school district or public agency; or

(iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district or public agency.

(f) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or public agency must notify the parents of that decision and provide the parents the procedural safeguards notice.

(i) Definitions. For purposes of this Section, the following definitions apply:

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

(B) Illegal drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of Title 18 U.S. Code and means a substantial risk of death, extreme physical pain, protracted or obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(D) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of Title 18 U.S. Code.

Section 4. **Appeals Regarding Disagreements Pertaining to Disciplinary Decisions.**

(a) The parent of a child with a disability who disagrees with any decision regarding placement under Section 1, Section 2, or Section 3, of this Part or a school district or public agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a due process hearing pursuant to the rules in Part 2, Sections 8 and Section 9, of these rules.

(b) Authority of the Hearing Officer.

(i) A hearing officer pursuant to Part 2, Section 9, of these rules hears and makes a determination regarding an appeal under subsection (a) of this Section.

(ii) In making the determination under subsection (b)(i) of this Section, the hearing officer may:

(A) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sections 1 or 2 of this Part or that the child’s behavior was a manifestation of the child’s disability; or

(B) Order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(c) The procedures under subsections (a) and (b) of this Section may be repeated if the school district or public agency believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(d) Expedited due process hearing.

(i) Whenever a hearing is requested under this Part, the parents or the school district or public agency involved in the dispute must have the opportunity for an impartial due process hearing as described in Part 2, Sections 8 and 9, of these rules, except as provided in this subsection.

(A) The WDE and school district or public agency must arrange for an expedited due process hearing, which must occur within twenty (20) school days of the date the hearing is filed. The hearing officer must make a determination within ten (10) school days after the hearing.

(B) Unless the parents and school district or public agency agree in writing to waive the resolution meeting or agree to use the mediation process discussed in Part 2 of these rules:

(I) A resolution meeting must occur within seven (7) days of receiving notice of the request for a due process hearing; and

(II) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the request for a due process hearing.

(e) Placement during appeals. When an appeal has been made under this Part by either the parent or the school district or public agency, the child must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period for placement in an interim alternative educational setting, or until the time period for the disciplinary action specified in Section 2 (c) of this Part expires, whichever occurs first, unless the parent and the school district or public agency agree otherwise.

Section 5. Protections for Children not yet Eligible for Special Education and Related Services.

(a) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct of the school district or public agency may assert any of the protections provided for if the school district or public agency had knowledge (in accordance with subsection (b) of this Section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A school district or public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(i) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) The parent of the child requested an evaluation of the child to determine if the child is a child with a disability consistent with these rules; or

(iii) The teacher of the child, or other personnel of the school district or public agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the school district or public agency or to other supervisory personnel of the public agency.

(c) A school district or public agency would not be deemed to have knowledge if:

(i) The parent of the child refused to allow an evaluation of the child to determine if the child is a child with a disability; or if the child was determined to be a child with a disability, the parent refused to provide consent to allow special education or related services to be provided to the child;

(ii) The school district or public agency conducted an evaluation and determined that the child was not a child with a disability under this Part.

(d) If a school district or public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as applied to children without disabilities who engage in comparable behaviors.

(e) Request for evaluation during disciplinary procedures. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

(i) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services;

(ii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or public agency and information provided by the parents, the school district or public agency shall provide special education and related services.

Section 6. **Referral to and Action by Law Enforcement and Judicial Authorities.**

(a) Nothing in these rules prohibits a school district or public agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records. A school district or public agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(c) A school district or public agency reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA) of 1974.

PART 7
CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS

Section 1. Private School Placements by Public Agencies.

(a) Developing IEPs. Before a school district or public agency places a child with a disability in, or refers a child to, a private school or facility, the school district or public agency shall initiate and conduct a meeting to develop an IEP for the child.

(b) The school district or public agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the school district or public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls or video conferencing.

(c) Reviewing and revising IEPs. After a child with a disability enters a private school or facility, any meetings to review and to revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the school district or public agency:

(i) If the private school or facility initiates and conducts these meetings, the school district or public agency shall ensure that the parents and a school district or public agency representative:

(A) Are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

(d) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this Part remains with the school district or public agency and the WDE.

Section 2. Placement of Children by Parents if FAPE is at Issue.

(a) General.

(i) The school district or public agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district or public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the school district or public agency must include that child in the population whose needs are addressed consistent with these rules in this Part.

(ii) Disagreements about FAPE. Disagreements between the parents and a school district or public agency regarding the availability of a program appropriate

for a child and the question of financial reimbursement are subject to due process procedures pursuant to Part 2 of these rules.

(b) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a school district or public agency, enroll the child in a private preschool, elementary or secondary school without the consent of or referral by the school district or public agency, a court or a hearing officer may require the school district or public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or public agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school districts or public agencies.

(c) Limitation on reimbursement. The cost of reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended prior to removal of the child from the school district or public agency, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district or public agency to provide FAPE to their child, including stating their concerns and intent to enroll their child in a private school at public expense; or

(i) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the school district or public agency, the parents did not give written notice to the school district or public agency of their intent to reject the placement proposed by the school district or public agency and their intent to enroll their child in a private school; or

(ii) If, prior to the parents' removal of the child from the school district or public agency, the school district or public agency informed the parents, through the notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iii) Notwithstanding this notice requirement of subsection (c)(i) of this Section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(A) The school prevented the parents from providing notice; or

(B) The parents had not received the procedural safeguards explaining the written notice requirement included in subsection (c)(i) of this Section;

(C) Compliance with subsection (c) of this Section would likely result in physical harm to the child.

(iv) Upon judicial review, the cost of reimbursement may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

(A) The parent is not literate or cannot write in English; or

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

Section 3. **Child Find for Parentally-Placed Private School Children with Disabilities.**

(a) Definition of parentally-placed private school children with disabilities. Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of an elementary school or a secondary school per Wyoming law.

(b) General. Each school district or public agency must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious, elementary and secondary schools located in the school district served by the school district or public agency.

(c) Child find design. The child find process must be designed to ensure the equitable participation of parentally-placed private school children and an accurate count of those children.

(d) Activities. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for the school district's or the public agency's children.

(e) Cost and completion period. The cost of carrying out the child find requirements in this section, including any individual evaluations, may not be considered in determining if the school district or public agency has met financial obligations under Section 5 of this Part. The child find process must be completed in a time period comparable to that for other students attending public schools in the school district or public agency.

(f) Out-of-state children. Each school district or public agency in which private, including religious, elementary and secondary schools are located must, in carrying out the child find requirements in this Section, include parentally-placed private school children who reside in a State other than Wyoming.

Section 4. Provision of Services for Parentally-Placed Private School Children with Disabilities -- Basic Requirements.

(a) To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the school district or public agency, provisions must be made for the participation of those children with disabilities in the program assisted or carried out under Part B of IDEA 04, by providing them with special education and related services, including direct services determined in accordance with Sections 9 and 10 of this Part.

(b) Services plan for parentally-placed private school children with disabilities. A services plan consistent with the requirements of this Part must be developed and implemented for each private school child with a disability who has been designated by the school district or public agency in which the private school is located to receive special education and related services under this Part.

(c) Record keeping. The school district or public agency must maintain records, and provide to the WDE the following information related to parentally-placed private school children with disabilities: the number of children evaluated, the number of children determined to be children with disabilities, and the number of children served.

Section 5. Expenditures.

(a) Formula. To meet the requirements of this Part, each school district or public agency must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(i) For children aged three (3) through the completion of the school year the child turns twenty-one (21), an amount that is the same proportion of the school district's or public agency's total subgrant under Section 611(f) of Part B of IDEA 04 as the number of private school children with disabilities aged three (3) through the completion of the school year the child turns twenty-one (21) who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the school district or public agency, is to the total number of children with disabilities in its jurisdiction aged three (3) through the completion of the school year the child turns twenty-one (21).

(ii) For children aged three (3) through five (5), an amount that is the same proportion of the school district's or public agency's total subgrant under Section 619(g) of Part B of IDEA 04 as the number of parentally-placed private school children with disabilities aged three (3) through five (5) who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the

school district or public agency, is to the total number of children with disabilities in its jurisdiction aged three (3) through five (5).

(iii) As described in subsection (a)(ii) of this Section, children aged three (3) through five (5) are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of an elementary school in Part 1 of these rules.

(iv) If a school district or public agency has not expended for equitable services all funds described in subsections (a)(i) and (a)(ii) of this Section by the end of the fiscal year, the school district or public agency must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the school district or public agency after timely and meaningful consultation with representatives of private schools must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the school district or public agency.

Section 6. Annual Count of the Number of Parentally-Placed Private School Children with Disabilities.

(a) Each school district or public agency must, consistent with the consultation process discussed in Section 7 of this Part, determine the number of parentally-placed private school children with disabilities attending private schools located in the school district or public agency, and ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The child count must be used to determine the amount that the school district or public agency must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(c) Supplement, not supplant. State and local funds may supplement and in no way supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this Part.

Section 7. Consultation in Determining Services.

(a) Each school district or public agency shall consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and

development of special education and related services for the children regarding the following:

(i) The child find process and how parentally-placed private school children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process.

(ii) The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of funds was calculated.

(b) The consultation process -- general. The consultation process includes discussions among the school district or public agency, private school officials, and representatives of parents of parentally-placed private school children with disabilities, relative to how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(c) Provision of special education and related services. The consultation process includes a discussion relative to how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:

(i) The types of services, including direct services and alternate service delivery mechanisms; and

(ii) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(iii) How and when those decisions will be made.

(d) Written explanation by school district or public agency regarding services. If the school district or public agency disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through contract), the school district or public agency will provide to the private school officials a written explanation of the reasons why the school district or public agency chose not to provide services directly or through contract.

(e) Written affirmation. When timely and meaningful consultation has occurred, the school district or public agency must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the school district or public agency must forward the documentation of the consultation to the WDE.

Section 8. **Compliance.**

(a) General. A private school official has the right to submit a complaint to the WDE that the school district or public agency:

(i) Did not engage in consultation that was meaningful and timely; or

(ii) Did not give due consideration to the views of the private school official.

(b) Procedure.

(i) If the private school official wishes to submit a complaint, the official must provide the WDE the basis of the noncompliance by the school district or public agency with the applicable private school provisions in this Part; and

(ii) The school district or public agency must forward the appropriate documentation to the WDE.

(iii) If the private school official is dissatisfied with the decision of the WDE, the official may submit a complaint to the Secretary of Education by providing the information on noncompliance described in (b)(i) of this Section, and the WDE must forward the appropriate documentation to the Secretary of Education.

Section 9. **Equitable Services Determined.**

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

(i) Decisions about the services that will be provided to parentally placed private school children with disabilities must be made in accordance with the service plan discussed in subsection (b) of this Section.

(ii) Decisions. The school district or public agency shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(b) Services Plan. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from a school district or public agency, the school district or public agency must:

(i) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(ii) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district or public agency shall use other methods to ensure participation by the private school, including individual or conference calls or video conferencing.

Section 10. **Equitable Services Provided.**

(a) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified teacher requirements discussed in Part 1 of these rules.

(b) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(c) Services provided in accordance with service plan. Each parentally-placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district or public agency will provide to the child in light of the services that the school district or public agency has determined it will make available to parentally-placed private school children with disabilities.

(d) The services plan must, to the extent appropriate:

(i) Meet the IEP content requirements as described in Part 5, Section 5, of these rules; or for preschool children aged three (3), meet the IEP or IFSP requirements discussed in Part 5, Section 1, subsection (c), of these rules with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with IEP requirements described in Part 5, Section 6, of these rules.

(e) Provision of equitable services. The provision of services pursuant to this Section must be provided by employees of a school district or public agency or through contract by a school district or public agency with an individual, association, organization, agency, or other entity.

(f) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and non-ideological.

Section 11. **Location of Services and Transportation.**

(a) Services on private school premises. Services provided to parentally-placed private school children with disabilities may be provided on the premises of private, including religious schools, to the extent consistent with law.

(b) Transportation. If necessary for the child to benefit from or participate in the services, a parentally-placed private school child with a disability must be provided transportation:

(i) From the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) School districts or public agencies are not required to provide transportation from the child's home to the private school; and

(iii) The cost of the transportation may be included in calculating whether the school district or public agency has met the private school funding requirements.

(c) Separate classes prohibited. A school district or public agency may not use funds available under Part B of IDEA 04 for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site, and the classes include children enrolled in public schools and children enrolled in private schools.

Section 12. **Due Process Hearings and State Complaint Rights.**

(a) Due process hearing not applicable except for child find. Except as provided in subsection (b) of this Section, the procedures in Part 2, Sections 2, 6, 8, 9 and 10, do not apply to complaints that a school district or public agency has failed to meet the requirements of Part 7, Sections 4, 5, 6, 7, 8, 9, 10, and 11, including the provision of services indicated on the child's services plan.

(b) Child find complaints to be filed with the school district or public agency in which the private school is located.

(i) The procedures in Part 2, Sections 2, 6, 8, 9, and 10, do apply to complaints that a school district or public agency has failed to meet the child find requirements of Part 7, Section 3, including the requirements of Part 2, Section 3, relative to parental consent, Part 3, Sections 4, 5, and 6, relative to evaluations and determination of eligibility including eligibility determinations for specific learning disabilities described in Part 4, Section 10, subsections (b) through (f).

(ii) Any request for due process hearing regarding the child find requirements as described in (b)(i) of this Section must be filed with the school district or

public agency in which the private school is located, and a copy must be forwarded to the WDE.

(c) State Complaints. Complaints filed by a private school official that the WDE or the school district or public agency has failed to meet the requirements of this Part must be filed under the State Complaint Procedures discussed in Part 2, Section 7, of these rules.

Section 13. **Property, Equipment, and Supplies.**

(a) A school district or public agency must control and administer the funds used to provide special education and related services discussed in this Part and hold title to and administer materials, equipment, and property purchased with funds for the purposes provided in Part B of IDEA 04.

(b) The school district or public agency may place equipment and supplies in a private school for the time needed for the services to be provided to the child and may remove the materials or equipment when no longer needed.

(c) No funds may be used for repairs, minor remodeling, or construction of private school facilities.

(d) Use of public school personnel. The school district or public agency may use Federal funds under Part B of IDEA 04 to make public school personnel available in other-than-public facilities to serve parentally-placed private school children with disabilities if those services are not provided by the private school.

(e) Use of private school personnel. A school district or public agency may use federal funds under Part B of IDEA 04 to pay for services of an employee of a private school to provide services to a parentally-placed private school child with a disability if the employee performs the services outside of his or her regular hours of employment and the employee performs the services under public supervision and control.

PART 8
SCHOOL DISTRICT OR PUBLIC AGENCY USE OF PART B FEDERAL FUNDS AND STATE ENFORCEMENT

Section 1. **School District or Public Agency Eligibility for Federal Part B Funds.**

(a) Condition of assistance. A school district or public agency per procedures authorized in State law is eligible for Federal funding under Part B of IDEA 04 for a fiscal year if the school district or public agency submits a plan that provides assurances to the WDE that the school district or public agency meets each of the conditions set forth in this Part:

(i) Consistency with WDE policy. The school district or public agency, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with WDE policies and procedures established to address these rules.

(ii) Use of funds. Funds provided to the school district or public agency under Part B of IDEA 04 must be used to pay only the excess cost of providing special education and related services to children with disabilities and must be used to supplement and not supplant State and local funds consistent with subsection (b) of this Section.

(b) Excess cost requirement. The excess cost requirement prevents a school district or public agency from using funds provided under Part B of IDEA 04 to pay all the costs directly attributable to the education of a child with a disability. A school district or public agency meets the excess cost requirement if it has spent at least the minimum average amount for the education of its children with disabilities before Part B funds are used.

(c) Maintenance of effort. Except as provided for in sub paragraphs (d) and (e) of this section, Federal funds provided to a school district or public agency under Part B of IDEA 04 must not be used to reduce the level of expenditures for the education of children with disabilities made by the school district or public agency from local funds below the level of those expenditures for the preceding year.

(i) A school district or public agency that relies on local funds only for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per-capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available.

(d) Exception to maintenance of effort. A school district or public agency may reduce the level of expenditures by the school district or public agency under Part B of

IDEA 04 below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(i) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(ii) A decrease in the enrollment of children with disabilities or the termination of the obligation of the school district or public agency to provide a program of special education to a particular child that is an exceptionally costly program because the child has left the jurisdiction of the school district or public agency or has reached the age at which the obligation of the school district or public agency to provide FAPE to the child has terminated or the child no longer needs the special education program;

(iii) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or construction of school facilities.

(e) Adjustments to local fiscal efforts in certain fiscal years. For any fiscal year for which the Federal funds Part B allocation received by the school district or public agency exceeds the amount the school district or public agency received for the previous fiscal year, the school district or public agency may reduce the level of maintenance of effort expenditures discussed in subsection (c) of this Section by not more than 50% of the amount of that excess.

(f) Use of amounts to carry out activities under ESEA. If a school district or public agency exercises the authority under this provision, the school district or public agency must use an amount of local funds equal to the reduction in expenditures discussed in paragraph (e) to carry out any activities that could be supported with funds under the ESEA regardless of whether the school district or public agency is using funds under the ESEA for those activities.

(g) State prohibition. Notwithstanding subsection (e) of this Section, if the WDE determines the school district or public agency is unable to establish and maintain programs of FAPE that meet the requirements of IDEA 04 or that the WDE has taken action against the school district or public agency relative to section 616 of IDEA 04 and the rules in this Part, the WDE must prohibit the school district or public agency from reducing the level of expenditures under subsection (e) of this Section for that fiscal year.

(h) Special rule, application of early intervening services to reduction in maintenance of effort. The amount of funds expended by a school district or public agency for early intervening services discussed in Section 3 of this Part shall count toward the maximum amount of expenditures that the school district or public agency may reduce under subsection (e) of this Section. Appendix B of these rules provides guidance in determining these calculations.

(i) Joint establishment of eligibility.

(i) General. The WDE may require a school district or public agency to establish its eligibility jointly with another school district or public agency if the WDE determines that the school district or public agency will be ineligible because the school district or public agency will not be able to establish or maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(ii) Amount of payments. If the WDE requires joint establishment of eligibility under paragraph (i) above, the total amount of funds available to the affected school district or public agency must be equal to the sum of the payments that each school district or public agency would have received under this Part if the agencies were eligible for those payments.

Section 2. **Permissive Use of Part B Funds.**

(a) School wide programs under Title 1 of the ESEA.

(i) A school district or public agency may use funds received under Part B of IDEA 04 for any fiscal year to carry out a school-wide program under section 1114 of the ESEA except that the amount used in any school-wide program may not exceed the amount received by the school district or public agency under Part B for that fiscal year divided by the number of children with disabilities in the jurisdiction of the school district or public agency and multiplied by the number of children with disabilities participating in the school-wide program.

(ii) Funding conditions. The funds described in subsection (a)(i) of this Section are to be considered as Federal Part B funds for purposes of the calculations required relative to excess cost discussed in Section 1(e) of this Part.

(b) Meeting Part B requirements. Except as provided in subsection (a)(i) and (a)(ii) of this section, all other requirements of Part B of IDEA 04 must be met by the school district or public agency using Part B funds, including ensuring that children with disabilities receive services in accordance with a properly developed IEP and are afforded all the rights and services guaranteed to children with disabilities.

(c) Personnel development. The school district or public agency must ensure that all personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared and may use Part B funds to address these matters.

(d) Use of funds that also benefit nondisabled children. A school district or public agency may use Part B funds for the costs of special education and related services, and supplementary aids and services provided in a regular class or other education-related setting, to a child with a disability in accordance with the IEP of the

child, even if one or more nondisabled children also benefit from these aids and services.

(e) Administrative case management. A school district or public agency may use funds received under Part B of IDEA 04 to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related service personnel providing services to children with disabilities that is needed for the implementation of those case management activities.

(f) Early intervening educational services. A school district or public agency may use Part B funds received under IDEA 04 to implement coordinated early intervening educational services in accordance with Section 3 of this Part.

(g) Other WDE approved costs. Consistent with these rules, the WDE may determine other costs to be appropriate for Part B funding.

Section 3. **Early Intervening Services.**

(a) General. A school district or public agency may not use more than 15% of the amount the school district or public agency receives under Part B of IDEA 04 for any fiscal year, less any amount reduced by the school district or public agency pursuant to Section 1, subsection (e), of this Part, if any, in combination with other amounts (which may include amounts from other sources), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in Kindergarten through grade 12 (with a particular emphasis on students in Kindergarten through grade 3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. Appendix B of these rules provides technical assistance for examples of how maintenance of effort reductions relative to Section 1, subsection (e), of this Part, and funds for early intervention services affect one another.

(b) Activities. In implementing coordinated, early intervening services under this Section, a school district or public agency may carry out activities that include:

(i) Professional development (which may be provided by entities other than school districts or public agencies) for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction in the use of adaptive and instructional software; and

(ii) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction to children who are not currently identified as children with disabilities.

(c) Reporting. Each school district or public agency that develops and maintains coordinated, early intervening services under this Section and uses Part B funds for this purpose, must annually report to the WDE on:

(i) The number of children served under this Section who received early intervening services; and

(ii) The number of children served under this Section who received early intervening services and subsequently received special education services as having been identified as children with disabilities per these rules during the preceding two year period.

(d) Coordination with ESEA. Funds made available to carry out this Section may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for activities and services assisted under this Section.

(e) Disproportionality. In the case of a determination by the WDE of a significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the WDE must:

(i) Provide for the review and, if appropriate, revision of policies, procedures, and practices used by the school district or public agency in the identification or placement to ensure that policies, procedures, and practices comply with IDEA 04 and these rules; and

(ii) Require any school district or public agency identified as having the determination of disproportionality per subsection (e) of this Section to reserve the maximum amount of Part B Federal funds to provide comprehensive, coordinated early intervening services to serve children in the school district or public agency, particularly, but not exclusively, children in those groups that were significantly over identified under this Section; and

(iii) Require the school district or public agency to publicly report on the revisions of policies, practices, and procedures described in this Section.

(f) Construction. Nothing in this Section relating to the provision of early intervening services to children not currently identified as children with disabilities or the use of Part B Federal funds for this purpose shall be construed to either limit or create a right to FAPE or to delay appropriate evaluation of a child suspected of having a disability.

Section 4. **Charter Schools and Part B Funds.**

(a) Charter schools that are public schools to the school district or public agency.

(i) The school district or public agency must serve children with disabilities attending those charter schools in the same manner the school district or public agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the school district or public agency has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provide Part B funds to those charter schools on the same basis the school district or public agency provides funds to the school district's or public agency's other schools, including a proportional distribution based on relative enrollment of children with disabilities; and

(iii) At the same time as the school district or public agency distributes other Federal funds to the school district's or public agency's other public schools consistent with the Wyoming charter school laws W.S. § 21-3-301 to W.S. § 21-3-314.

(b) Public Charter schools that are school districts or public agencies. If the public charter school is a school district or public agency that receives funding under IDEA 04 directly from the WDE, that charter school is responsible for ensuring that the requirements of these rules are met consistent with Wyoming charter school laws referenced in subsection (a)(iii) above.

Section 5. **WDE Enforcement – General.**

(a) Information required by WDE. The school district or public agency must provide the WDE with information to enable the WDE to carry out its duties under Part B of IDEA 04, including information relating to performance goals and indicators as specified in CRF 300.157, and the performance of children with disabilities participating in special education and related services.

(i) The school district or public agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of IDEA 04.

(ii) The school district or public agency must cooperate with the Office of Special Education Programs under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(b) Modifications of school district or public agency policies or procedures. The WDE may require a school district, a public agency, or a State agency to modify its policies or procedures relative to how the school district, a public agency, or State agency demonstrates it meets the requirements of these rules, but only to the extent necessary to ensure compliance with these rules. The WDE may require these modifications if:

(i) There is a new interpretation of an applicable provision of IDEA 04 by Federal or State courts; or

(ii) There is an official finding of noncompliance of the school district, public agency, or State agency with Federal or State rules or regulations.

(c) School district or public agency compliance. If the WDE, after reasonable notice and an opportunity for a hearing, determines that a school district, public agency, or State agency fails to comply with any requirement of this Part, the WDE must reduce or must not provide any further Part B payments to the school district, public agency, or State agency until the WDE is satisfied that the school district, public agency, or State agency is complying with the requirement.

(i) Notice Requirement. If a school district, public agency, or State agency receives notice discussed in (c) above, the school district, public agency, or State agency must, by means of public notice, take measures necessary to bring the pendency of an action pursuant to this Section to the attention of the public within the jurisdiction of the agency.

(ii) In carrying out the responsibilities of this paragraph the WDE must consider the decision resulting from any due process hearing that is adverse to the school district, public agency, or State agency involved in the decision.

(d) Direct services by the WDE. The WDE must use Part B payments that would otherwise have been available to a school district or public agency to provide special education and related services directly to children with disabilities residing in the area served by the school district or public agency, or for whom that public agency is responsible, if the WDE determines that the school district or public agency:

(i) Has not provided the information needed to establish the eligibility of the school district or public agency, or elected not to apply for its Part B allotment under the IDEA 04;

(ii) Is unable or unwilling to establish and maintain programs of FAPE that meet the requirements of these rules;

(iii) Is unable or unwilling to be consolidated and coordinate with one or more school districts or public agencies in order to establish and maintain programs; or

(iv) Has one or more children with disabilities who can be best served by a regional or State program or service delivery system designed to meet the needs of these children.

Section 6. **WDE Monitoring Focus and Targets.**

(a) Monitoring focus -- general. The WDE must monitor the implementation of these rules and make determinations annually on the performance of each school district or public agency using the categories described in Section 7(a) of these rules consistent with 34 CFR § 300.603(b)(1); and,

(i) Enforce the requirements of IDEA 04 by school districts or public agencies in accordance with applicable Federal regulations 34 CFR § 300.604 using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions of funding of a school district or public agency), (b)(2)(i) (a corrective action or improvement plan), (b)(2)(v) and (c)(2) (withholding funds, in whole or in part by the WDE), and report annually on the performance of the WDE and each school district or public agency as provided in subsection (d) of this Section. The primary focus of the WDE monitoring activities must be on:

(ii) Improving the educational results and functional outcomes for all children with disabilities; and

(iii) Ensuring that public agencies meet the program requirements of these rules and Part B of IDEA 04, with particular emphasis on those requirements that are most closely related to improving educational results of children with disabilities.

(b) Monitoring focus, targets. The WDE must monitor school districts and public agencies using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(i) Provision of FAPE in the least restrictive environment.

(ii) The WDE exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services.

(iii) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(c) In Exercising its monitoring responsibilities under subsection (b) of this Section, the WDE must ensure that when it identifies noncompliance with the requirements of these rules by school districts and public agencies, the noncompliance is corrected as soon as possible, and in no case later than one year after the WDE's identification of the noncompliance.

(d) Public reporting and privacy. Subject to paragraph (ii) of this subsection, the WDE must annually report to the public on the performance of each school district or public agency on the targets in the State's performance plan as soon as practicable but no later than 120 days following the WDE's submission of its annual performance report to the Secretary pertaining to the State Performance Plan; and

(i) Make each of the following items available through public means: the State's performance plan under Section § 300.601(a); annual performance reports pertaining to the State performance plan; and the WDE's annual reports on the performance of each school district or public agency located in the State. In doing so, the WDE must, at a minimum, post the plan and reports on the WDE's Web site, and distribute the plan and reports to the media and through public agencies.

(ii) The WDE must not report to the public or to the Secretary of Education any information that would result in the disclosure of personally identifiable information about individual children, or where available data are insufficient to yield statistically reliable information.

(iii) If the WDE, in meeting the requirements of this subsection, collects performance data through State monitoring or sampling, the WDE must include in its report the most recently available performance data on each school district or public agency, and the date the data were obtained.

(e) Public Attention-Whenever the WDE receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Section § 300.604, the WDE must, by means of a public notice take such actions as may be necessary to notify the public within the State of the pendency of an action, including at a minimum, by posting the notice on the WDE's Web site and distributing the notice to the media and through public agencies.

Section 7. **WDE Determinations.**

(a) Determinations. Based on information provided to the WDE obtained from monitoring visits and any other public information made available, the WDE determines if the school district or public agency:

(i) Meets the requirements and purposes of Part B of IDEA 04 and these rules;

(ii) Needs assistance in implementing the requirements of Part B of IDEA 04 and these rules;

(iii) Needs intervention in implementing the requirements of Part B of IDEA 04 and these rules;

(iv) Needs substantial intervention in implementing the requirements of Part B of IDEA 04 and these rules.

(b) Needs assistance. If the WDE determines for two (2) consecutive years that a school district or public agency needs assistance based on information obtained through monitoring visits, review of complaints filed pursuant to Part 2 of these rules, or due process hearing determinations that are adverse to the school district or public agency or any other public information made available. The WDE shall take one or more of the following actions:

(i) Advise the school district or public agency of available sources of technical assistance that may help to address the areas in which the WDE determines the school district or public agency needs assistance. This technical assistance may include:

(A) The provision of advice by experts to address the areas in which the WDE determines the school district or public agency needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(B) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically-based research;

(C) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance and support; and

(D) Devising additional approaches to providing technical assistance, such as collaboration with institutions of higher education, educational service agencies, national centers of technical assistance, and private providers of scientifically-based technical assistance.

(ii) Direct the use of State-level funds under section 611(e) of Part B of IDEA 04 on the area or areas in which the school district or public agency needs assistance.

(iii) Identify the school district or public agency as high risk and impose special conditions on the school district's or public agency's grant under Part B of IDEA 04.

(c) Needs Intervention. If the WDE determines for three (3) or more consecutive years, based on information obtained through monitoring visits, review of complaints filed pursuant to Part 2 of these rules or due process hearing determinations that are adverse to the school district or public agency or any other public information made available, that a school district or public agency needs intervention in implementing the requirements of Part B of IDEA 04 and these rules, the following shall apply:

(i) The WDE may take any of the actions described in Section 7(b) of this Part.

(ii) Require the school district or public agency to prepare a corrective action plan or improvement plan if the WDE determines the school district or public agency should be able to correct the problem within one year;

(iii) Withhold, in whole or in part, any further payments to the school district or public agency under Part B of IDEA 04.

(d) Needs substantial intervention. Notwithstanding subsections (b) and (c) of this section, at any time the WDE determines, based on information obtained through monitoring visits, review of complaints filed pursuant to Part 2 of these rules or due process hearing determinations that are adverse to the school district or public agency or any other public information made available, that a school district or public agency needs substantial intervention in implementing the requirements of Part B of IDEA 04 and these rules, or that there is a substantial failure to comply with any condition of a school district's or public agency's eligibility under Part B of IDEA 04, the WDE shall withhold, in whole or in part, any further payments to the school district or public agency under Part B of IDEA 04.

(e) Notice and opportunity for hearing. For determinations made under subsection (c) and (d) of this Section, the WDE shall provide reasonable notice to the school district or public agency of an opportunity for a hearing on those determinations. The hearing consists of an opportunity to meet with the State Superintendent to demonstrate why the WDE should not make the determination described in subsection (c) and (d) of this Section.

APPENDIX A

Wyoming's Severe Discrepancy Formula

A School district or public agency is not required to use the Wyoming Severe Discrepancy Formula in order for a child to be considered eligible as a child with a disability under the category of Specific learning disability (SLD) as per Part 4 Section 10 of these rules. In the event a school district or public agency elects to establish a child's eligibility as a child with a disability under the category of SLD through use of a severe discrepancy model the school district or public agency must use the Wyoming Severe Discrepancy Formula as per Appendix A of these rules and document compliance on the eligibility report.

The assessment of academic functioning level must include individually administered norm-reference tests that are highly reliable and valid (see Salvia & Ysseldyke, 1981; 1985) and administered by an individual specifically trained to administer and interpret the instrument. Criterion-referenced tests, informal measures, work samples, classroom observations, and the child's educational history should be used as needed to corroborate norm-referenced test scores. Achievement measures should be administered in each of the areas of the suspected disability (core achievement areas: oral expression, listening comprehension, written expression, basic reading skills, problem solving, reading fluency, reading comprehension, mathematical calculations, or mathematical reasoning).

A child whose primary disability is a learning disability must demonstrate a severe discrepancy between current achievement level and expected achievement level. Expected achievement is based on the child's assessed intellectual standard scores in one or more core achievement areas that are 22 (15 upon re-evaluation) standard score points or more below the anticipated achievement level as predicted by a measure of intellectual functioning.

Notes of Clarification

In all cases, achievement standard scores should be based on age norms rather than grade norms.

- The severe discrepancy criterion should not be viewed as a rigid cut-off. The evaluator should consider factors such as the standard errors of measurement of the instruments, the child's behavior during the evaluation, the cultural, environmental, or economic disadvantage and language background of the child, and other individual characteristics of the child in determining if a severe discrepancy exists. If a child does not meet the criterion for a severe discrepancy, yet the IEP Team nonetheless determines the child is learning disabled, a specific written justification must be provided for such a decision, including the basis for concluding that a severe discrepancy exists, documentation of the child's inability to progress adequately in one or more basic academic areas in the regular class setting and other related information.

- When using the Wechsler Intelligence Scale for Children-Revised, (or other applicable editions) the Full Scale Score should generally be used as an indicator of potential. However, if the Verbal and Performance IQ Scores differ significantly, the Full Scale Score is less useful for documenting potential. (In such cases, the difference between Verbal and Performance Scores should be statistically significant and diagnostically meaningful). When such a difference exists, the higher score may be used as an estimate of potential.
- The table on the following page entitled Expected Achievement Levels with Correction For Regression (STD. Scores) should be used to determine the child's expected achievement level. This table takes into account the correlation between the intellectual and achievement measures being used as well as regression toward the mean. To use this table, the following steps should be followed:
 - **Step 1:** Determine the correlation between the intellectual and achievement measures being used. Correlations between such tests are generally available in the extensive research literature on this topic or in the test manual.
- **Note: If the correlation between intellectual and achievement measures is not known, it is recommended that .65 be used as an adequate median correlation between such measures.**
 - **Step 2:** Locate the child's intellectual standard score in the first column (X) of the table located on TABLE B, entitled Expected Achievement Levels with Correction For Regression (STD. Scores)
 - **Step 3:** Follow that row determined in Step 2 to the column with the correlation (xy) value closest to the correlation between the chosen measures of intellectual functioning and achievement.

TABLE B

Expected Achievement Levels with Correction for Regression (STD. Scores)

Table B	Correlations Between Intellectual and Achievement Measures									
Rxy	0.4	0.45	0.5	0.55	0.6	0.65	0.7	0.75	0.8	0.9
X										
140	116	118	120	122	124	126	128	130	132	134
139	116	118	120	121	123	125	127	129	131	133
138	115	117	119	121	123	125	127	129	130	132
137	115	117	119	120	122	124	126	128	130	131
136	114	116	118	120	122	123	125	126	128	130
135	114	116	118	119	121	123	125	126	128	130
134	114	115	117	119	120	122	124	126	127	129
133	113	115	117	118	120	121	123	125	126	128
132	113	114	116	118	119	121	122	124	126	127
131	112	114	116	117	119	120	122	123	125	126
130	112	114	115	117	118	120	121	123	124	126
129	112	113	115	116	117	119	120	122	123	125
128	111	113	114	115	117	118	120	121	122	124
127	111	112	114	115	116	118	119	120	122	123
126	110	112	113	114	116	117	118	120	121	122
125	110	111	113	114	115	116	118	119	120	121
124	110	111	112	113	114	116	117	118	119	120
123	109	110	112	113	114	115	116	117	118	120
122	109	110	111	112	113	114	115	117	118	119
121	108	109	111	112	113	114	115	116	117	118
120	108	109	110	111	112	113	114	115	116	117
119	108	109	110	110	111	112	113	114	115	116
118	107	108	109	110	111	112	113	114	114	115
117	107	108	109	109	110	111	112	113	114	114
116	106	107	108	109	110	110	111	112	113	114
115	106	107	108	108	109	110	111	111	112	113
114	106	106	107	108	108	109	110	111	111	112
113	105	106	107	107	108	108	109	110	110	111
112	105	105	106	107	107	108	109	109	110	110
111	104	105	106	106	107	107	108	108	109	109
110	104	105	105	106	106	107	107	108	108	109
109	104	104	105	105	105	106	106	107	107	108
108	103	104	104	104	105	105	106	106	106	107
107	103	103	104	104	104	105	105	105	106	106
106	102	103	103	103	104	104	104	105	105	105
105	102	102	103	103	103	103	104	104	104	104
104	102	102	102	102	102	103	103	103	103	103
103	101	101	102	102	102	102	102	102	102	103
102	101	101	101	101	101	101	101	102	102	102
101	100	100	101	101	101	101	101	101	101	101
100	100	100	100	100	100	100	100	100	100	100
99	100	100	100	99	99	99	99	99	99	99
98	99	99	99	99	99	99	99	99	98	98
97	99	99	99	98	98	98	98	98	98	97
96	98	98	98	98	98	97	97	97	97	97
95	98	98	98	97	97	97	97	96	96	96
94	98	97	97	97	96	96	96	96	95	95
93	97	97	97	96	96	95	95	95	94	94

92	97	96	96	96	95	94	94	94	94	93
91	96	96	96	95	95	94	94	93	93	92
90	96	96	95	95	94	94	93	93	92	92
89	96	95	95	94	93	93	92	92	91	91
88	95	95	94	93	93	92	92	91	90	90
87	95	94	94	93	92	92	91	90	90	89
86	94	94	93	92	92	91	90	90	89	88
85	94	93	93	92	91	90	90	89	88	87
84	94	93	92	91	90	90	89	88	87	86
83	93	92	92	91	90	89	88	87	86	86
82	93	92	91	90	89	88	87	87	86	85
81	92	91	91	90	89	88	87	86	85	84
80	92	91	90	89	88	87	86	85	84	83
79	92	91	90	88	87	86	85	84	83	82
78	91	90	89	88	87	86	85	84	82	81
77	91	90	89	87	86	85	84	83	82	80
76	90	89	88	87	86	84	83	82	81	80
75	90	89	88	86	85	84	83	81	80	79
74	90	88	87	86	84	83	82	81	79	78
73	89	88	87	85	84	82	81	80	78	77
72	89	87	86	85	83	82	80	79	78	76
71	88	87	86	84	83	81	80	78	77	75

APPENDIX B

Maintenance of Effort and Early Intervening Services.

LEAs that seek to reduce their local maintenance of effort in accordance with Part 8 Section 1 subsection (h) of these rules and CFR. 300.205(d) and use some of their Part B funds for early intervening services under Part 8 Section 3 of these rules must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds it uses for one purpose affect the amount that it may use for the other. Below are examples that illustrate how maintenance of effort reductions and early intervening services affect one another.

Example 1:

In this example, the amount that is 15% of the LEAs total grant which is the maximum amount that it may use for early intervening services(EIS) is greater than the amount that may be used for local maintenance of effort(MOE) reduction (50% of the increase in the LEA’s grant from the prior year’s grant).

Prior year Allocation-----\$900,000

Current Years Allocation-----\$1,000,000

Increase-----\$100,000

Maximum Available for MOE Reduction----\$50,000

Maximum Available for EIS-----\$150,000

If the LEA chooses to set aside \$150,000 for EIS, it may not reduce MOE (MOE maximum \$50,000 minus \$150,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$100,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$100,000 means \$0 can be used for MOE).

If the LEA chooses to set aside \$50,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$50,000 means \$0 can be used for MOE).

If the LEA chooses to set aside \$30,000 for EIS, it may reduce its MOE by \$20,000 (MOE maximum \$50,000 less \$30,000 for EIS means \$20,000 can be used for MOE).

If the LEA chooses to set aside \$0 for EIS, it may reduce its MOE by \$50,000 (MOE maximum \$50,000 less \$0 for EIS means \$50,000 can be used for MOE).

Example 2:

In this example, the amount that is 15% of the LEA's total grant, which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50% of the increase in the LEA's grant from the prior year's grant).

Prior Year's Allocation-----\$1,000,000

Current Year's Allocation-----\$2,000,000

Increase-----\$1,000,000

Maximum Available for MOE Reduction-----\$500,000

Maximum Available for EIS-----\$300,000

If the LEA chooses to use no funds for MOE, it may set aside \$300,000 for EIS (EIS Maximum \$300,000 less \$0 for MOE means \$300,000 for EIS).

If the LEA chooses to use \$100,000 for MOE, it may set aside \$200,000 for EIS (EIS Maximum \$300,000 less \$100,000 for MOE means \$200,000 for EIS).

If the LEA chooses to use \$150,000 for MOE, it may set aside \$150,000 for EIS (EIS Maximum \$300,000 less \$150,000 for MOE means \$150,000 for EIS).

If the LEA chooses to use \$300,000 for MOE, it may not set aside anything for EIS (EIS Maximum \$300,000 less \$300,000 for MOE means \$0 for EIS).

If the LEA chooses to use \$500,000 for MOE, it may not set aside anything for EIS (EIS Maximum \$300,000 less \$500,000 for MOE means \$0 for EIS).

