
IOWA IDEA Eligibility Document

Part B Policies



Updated December 2010

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Helping Communities Meet the Learning Needs of All Their Children and Adults

DATE: February 1, 2011
FROM: Thomas Mayes /mr
REGARDING: IOWA IDEA Eligibility Document

Enclosed is a copy of the updated IOWA IDEA Eligibility Document, Part B Policies, for your files.

Feel free to contact me at the number listed above should you have any questions.

Thank you!

Iowa Eligibility Document

Special Education Policies – IDEA

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I. FREE APPROPRIATE PUBLIC EDUCATION

It is the policy of the State of Iowa to provide a free appropriate public education (FAPE) for all resident children with disabilities in this state, in programs supervised by, and meeting standards established and approved by the State Education Agency (SEA). This declared policy is consistent with the State's mandate for special education law enacted July 1, 1974, and as subsequently amended.

A free appropriate public education is defined to include regular and special education and related services which:

1. are provided at public expense, under public supervision and direction, and without charge to the parent;
2. meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
3. include preschool, elementary school, secondary school education; and,
4. are provided in conformity with the individualized education program (IEP).

Existing state law establishes the policy of requiring that local education agencies (LEAs) and State operated educational programs make provisions for a free and appropriate public education sufficient to meet the needs of all children requiring special education. The law defines children requiring special education as persons under twenty-one years of age, including children under five years of age, who have a disability in obtaining an education because of a head injury, autism, behavioral disorder, or physical, mental, communication, or learning disability, as defined by the rules of the department of education. If a child requiring special education reaches the age of twenty-one during an academic year, the child may elect to receive special education services until the end of the academic year.

All references in this policy or any other policy to special education continuing "to age twenty-one" shall be construed to include children who elect to finish the school year in which they turn twenty-one and to include children for whom additional special education is ordered pursuant to the terms of Iowa Code § 256B.8.

Current State law mandates the availability of a free appropriate public education for all children with disabilities from birth to 21 years of age, including children requiring special education who have been suspended or expelled from school.

Individuals who have been convicted as adults and are incarcerated in adult prisons are not entitled to FAPE if prior to their incarceration they were not identified as eligible individuals and or did not have IEPs. This exception does not apply to incarcerated youth, ages 18 to 21, who had an IEP in their most recent educational placement but had left school or who identified as eligible individuals but did not have an IEP in the most recent educational setting. There are special factors related to services for incarcerated youth outlined in Iowa Rules of Special Education.

Services are provided to any individual with exceptional needs even if he or she is passing from grade to grade if the instruction or service is needed to benefit from instructional programs. The determination that such a child is eligible for services must be made on an individual basis by a group of individuals from the child's LEA and area education agency (AEA).

Public agencies in Iowa are not required to provide FAPE to the following children and youth.

1. Youth with disabilities who reach the age of 21.
2. Students who have graduated from high school with a regular high school diploma. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice. However, students who have not graduated with a regular diploma continue to be eligible in Iowa to receive FAPE if they are under the age of entitlement.

The delivery of required special education and related services to children with disabilities involves the SEA, AEAs and LEAs, and other public agencies in this State with responsibilities for the delivery of educational services to children with disabilities. The educational programs provided children with disabilities by all agencies are under the general supervision and conform to educational standards established by the Department of Education.

The State of Iowa has established rules and regulations governing the delivery of special education and related services to children with disabilities in the school systems of the State. These rules establish basic requirements for the establishment and maintenance of appropriate instructional and support service programs. They also address FAPE for children suspended or expelled from school. Additionally, standards relating to the licensure of all instructional and support service personnel have been established and approved by the Iowa Board of Educational Examiners. The SEA has the primary responsibility for auditing compliance by all agencies with the provisions of the aforementioned rules and standards.

Privately operated schools and privately operated residential schools providing educational services for children with disabilities are subject to program approval by the SEA and must comply with all applicable rules and standards relating to the delivery of educational services.

The amendments to the IDEA regulations that became effective on December 31, 2008, are the policy of the State of Iowa.

It is the policy of the State of Iowa that, should federal statute or regulation be amended to add a mandatory provision not contained in these policies or add a new prohibition of an activity required or permitted by these policies, these policies shall be construed to be consistent with the new federal statute or regulation, pending amendment of these policies.

II. FULL EDUCATIONAL OPPORTUNITY GOAL

The State Board of Education hereby reaffirms the goal of providing a full educational opportunity to all children with disabilities, ages birth through 21, within the state of Iowa.

The Iowa Rules of Special Education require agencies to provide a full continuum of placements and services to students requiring special education.

To facilitate implementation of the goal, the Iowa Department of Education gathers information from local school districts and other agencies providing services for children with disabilities. This information includes:

- a) number, age, disability, and location of children with disabilities receiving special education services;
- b) number, age, disability, and location of children with disabilities not receiving special education services;
- c) number of personnel employed by public agencies to provide special education services;
- d) number of children with disabilities exiting the educational system; and,
- e) federal, state, and local funds expended for special education and related services.

The state has established an information management system in collaboration with the area education agencies to monitor the implementation of the goal.



III. CHILD FIND

It is the policy of the State of Iowa that all children with disabilities in the age range from birth to 21 years of age residing in this state who are in need of special education and related services are identified, located, and evaluated. A comprehensive child identification system exists in the state that makes it possible to ascertain the number of children with disabilities who are receiving special education and related services. These provisions apply to all Iowa children, including children attending private schools and children who are homeless or wards of the state.

The AEAs and LEAs shall be responsible for ensuring:

1. requesting parental consent for a comprehensive initial evaluation for all children suspected of being eligible individuals under the IDEA.
2. testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services will be selected and administered so as not to be racially or culturally discriminatory.
3. materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.
4. no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

For purposes of this policy, a child is suspected of having a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual.

Existing state legislation governing the provision of, and financial support for, special education instructional and support service programs requires the State Education Agency (SEA) in Iowa to assume responsibility for coordinating the planning and implementation of child find policies and procedures.

The delivery of special education instructional and support services to children with disabilities in Iowa is a cooperative endeavor involving state, area education agencies (AEAs), local education agencies (LEAs) and local public and private agencies. The primary responsibility for providing such educational services is assigned to the public educational agencies of Iowa through statutes mandating the education of children with disabilities. Specific statutory requirements relating to the delivery of special education services make it imperative that the Iowa Department of Education, Bureau of Student and Family Support Services, be the principal agency administering the child find system. Responsibilities of AEAs and LEAs are set forth in the Iowa Administrative Code.

AEAs and LEAs may identify students with disabilities using either a categorical or noncategorical model. In such circumstances where a student with a disability is identified as an

“eligible individual,” each AEA shall develop their own procedures for such identification. The critical passage of Iowa’s administrative rules reads:

Each AEA shall develop written policies pertinent to the provision of special education and related services, and shall make such policies available to the Department upon request. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.

The present system for monitoring the number of children with disabilities within each category is a computerized system used to determine which children are receiving special education and related services. The Department annually reviews information from Iowa’s information management system to determine the effectiveness of policies and procedures related to child find. If anomalies or disproportionality issues appear in the data or if other information suggests needed corrections or modifications to child find or eligibility determinations, the Department initiates corrective action. The Iowa Department of Education acknowledges that the collection of data to meet child find requirements is subject to the confidentiality requirements of IDEA and other state and federal law.

The Iowa Code requires AEAs to be accredited by the state. The accreditation process outlined in Code requires AEAs to be monitored on a cycle. AEAs are required to have a plan in place that outlines the agency’s actions to meet the child find standards identified by the State. The plan and the monitoring activities enable the Department of Education to evaluate the effectiveness of the identification process.

In addition, the State of Iowa and AEAs will monitor annually the local school district child find activities through the state’s monitoring process.

Iowa’s child find system is an ongoing program involving LEAs, AEAs, and the SEA. Initial identification/referral activities are conducted with the Iowa Department of Human Services, the Iowa Department of Public Health, public and private preschool facilities, local hospitals, public and private family and pediatric physicians, and a variety of parent support groups that function within the geographic boundaries of each AEA. These agencies receive periodic updates that describe referral procedures to assist in the child find process. According to the Iowa Code, upon request the Iowa Department of Public Health shall furnish information obtained in from birth certificates relative to the name, address, and address in of any case of developmental disability and the child specialty clinics will provide the same type of information. The Department of Human Services provides for the evaluation and identification of students with disabilities in each of their facilities. In addition, the Department of Human Services refers students who are suspected of being students with disabilities to the area education agencies. These activities go on throughout the entire year.

The Iowa Department of Education is the lead agency in Iowa for Part C of IDEA. The Department works with a contractor to provide a comprehensive statewide informal referral service.

IV. INDIVIDUALIZED EDUCATION PROGRAM

It is the policy of the State of Iowa to require the development of individualized education programs (IEPs) for children requiring special education and related services. All public and private agencies that provide special education are governed by policies, rules, statutes and procedures for the establishment, review, and revision of IEPs for all children requiring special education and for the maintenance of IEP records.

The Iowa Department of Education is not currently providing direct services to any child. However, should it become necessary for the State Education Agency (SEA) to provide services, the services will be provided in accordance with the IDEA's requirements.

An IEP or individualized family service plan (IFSP) is a written statement for each individual with a disability, developed in accordance with Iowa's administrative rules of special education, that describes the special education and support and related services that the individual will receive. No public special education or related services may be provided until an IEP or IFSP has been written and agreed upon by the IEP or IFSP team.

A document containing all of the elements required by Part C and Part B shall be provided to parents of infants and toddlers with disabilities ages birth through 2. At the age of 3, students with disabilities have an IEP.

All IEPs and IFSPs must be implemented as soon as possible following the determination that a student requires special education. A meeting to develop an IEP must be held within 30 days of a determination of need and an IEP shall be in effect for every eligible individual at the beginning of the school year. In addition to holding all agencies responsible for conducting meetings, Iowa Rules of Special Education require that IEP meetings be held within a reasonable time, and that the IEP team review the IEP not less than annually. The IEP must be accessible to all who have responsibility for its implementation. Each local education agency (LEA) must have a policy to ensure that there is a procedure in place for each provider to have access to the IEP.

Public agencies ensure that the IEP team for each child with a disability includes:

1. the parents of the child;
2. not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)
3. not less than one special education teacher of the child, or if appropriate, at least one special education provider of the child;
4. a representative of the public agency who is qualified to provide or supervise the provisions 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 public agency;
5. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 2 through 6 of this paragraph;
6. at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate – The

determination of the knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team; and

7. if appropriate, the child.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative (IEP team participant #4 above) if they satisfy the criteria specified for that role.

An IEP team member may be excused from attending an IEP meeting if the parents and public agency agree that the individual's attendance is not necessary because that member's curriculum area or related service is not being discussed. This agreement must be in writing.

An IEP team member may be excused from attending an IEP meeting that involves a modification to or discussion of the member's curriculum area or related service if the parent (in writing) and public agency agree to the excusal and the excused member submits written input prior to the meeting.

The public agency, at the request of the parent, must invite the Part C service coordinator or other representatives of the Part C program to the IEP meeting for a child transitioning from Part C to Part B services.

The public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's transition services. If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. The public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services. It is the policy of the state of Iowa that consent shall be obtained before sharing personally identifiable information with agencies providing or funding transition services.

Iowa Rules of Special Education require that notification regarding IEP meetings be provided to parents. That notification must contain the purpose (including transition), time and location of the meeting, and who will be in attendance. If parents cannot attend, the Iowa Rules of Special Education describe procedures for documenting attempts to involve the parent. AEAs and LEAs will take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. Parents will receive a copy of the IEP. In addition, the State of Iowa and area education agencies (AEAs) disseminate information to increase parent participation, offer training for parents, and provide support personnel to accompany parents to meetings.

Each public agency responsible for special education and related services assures that in the development of the IEP all relevant considerations are made to address the needs of the student

with a disability. In developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, the academic, behavioral, developmental, and functional needs of the child, and as appropriate, the results of the child's performance on any general State or district-wide assessment programs. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider all factors described below.

- In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- 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;
- Consider the racial and ethnic factors that may be contributing to the needs of the child – both prior to and during the determination and development of the IEP;
- In the case of a child who is blind or visually impaired, provide for instruction in Braille reading and writing and the use of Braille unless the IEP team determines, after a functional vision evaluation and 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. No child will be denied Braille instruction solely because the child has some vision remaining. The instruction in Braille shall be sufficient to enable the child to communicate effectively and efficiently at a level commensurate with his sighted peers of comparable grade level and intellectual functioning.
- 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
- Consider whether the child requires assistive technology devices and services.

The IEP team shall consider a child's IFSP when developing an appropriate program for a child transferring from the Part C program to the Part B program.

The IEP must contain a statement of the child's academic achievement and functional performance, a statement of measurable annual goals, including academic and functional goals, and a statement of the special education and related services and supplementary aids and services to be provided. These services will be based on peer-reviewed research to the extent practicable. For children with disabilities taking alternate assessments aligned to alternate achievement standards a description of short-term objectives must be included. The IEP must also include an explanation of the extent to which an individual will not participate in the general education curriculum, in the general education environment, and in the activities described in Iowa Rule 281—41.320(1)(e). Finally, the projected date for the start, frequency, location, duration and monitoring of services must be included in all IEPs.

The IEP must include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of a child on State and district-wide assessments, and if the IEP team determines that the child shall take an alternate

assessment, a statement of why the child cannot participate in the regular state or districtwide assessment and why the particular alternate assessment selected is appropriate for the child.

The IEP must include a statement of how the child's progress toward annual goals will be measured and when periodic reports on progress will be provided (such as quarterly or other periodic reports concurrent with regular report cards). The IEP shall comply with any standards set by the Department about progress monitoring.

Beginning not later than the IEP in effect when the child turns 14 and annually thereafter, the IEP must include a statement of appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the child in reaching those goals. The IEP must include a statement that the child has been informed of rights transferring at the age of majority at least one year before rights transfer. Special rules concerning IEPs for students with disabilities convicted as adults and incarcerated are included in the Iowa Rules of Special Education.

If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objective and, if necessary, revising the student's IEP.

The State of Iowa provides each public agency with an IEP form that meets all the above requirements. If an agency chooses to use any other form or make changes to the state form, it must be approved by the state. The state also provides guidance to public agencies by providing technical assistance guides regarding IEP development and requirements.

Changes to the IEP, after the annual meeting, can occur without a meeting, if the parents and LEA agree and develop a written document to amend or modify the IEP. Amendments to IEPs can be made by the entire IEP team or by just the parent and LEA and the IEP can be amended, rather than completely redrafted, unless the parent requests a revised copy with the amendments incorporated.

LEAs should encourage the consolidation of reevaluation meetings and other IEP meetings.

Nothing is to be construed to require that IEPs (a) include more than what is explicitly provided for in 20 U.S.C. section 1414 or (b) include information under a component of an IEP that is already included elsewhere in the IEP.

- For children transferring school districts within the same state, the new LEA provides FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA either adopts the prior IEP or develops a new IEP.
- For children transferring from one State to another, the new LEA provide FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA conducts an evaluation, and if needed, develops a new IEP.

- For a child who is transferring into a district, the new LEAs must take reasonable steps to promptly obtain the child's records and the 'old' district take reasonable steps to promptly respond to those requests.

The public agency, when it makes a placement in a private school, assures that a representative of the private school facility attends the IEP meeting. If the representative cannot attend, other methods will be used to ensure participation by the private school or facility, such as individual or conference telephone calls. IEPs for individuals in private schools must be revised and reviewed according to the Iowa rules. The Iowa Rules of Special Education specify that responsibility for compliance remains with the public agency.

The Iowa Rules of Special Education do not hold any agency, teacher, or other person accountable if an individual does not achieve the growth projected in the IEP, "so long as the individual's IEP was reasonably calculated to confer education benefit and was implemented."

Parents retain rights to ask for revisions or invoke due process procedures. To monitor the implementation of individual education programs, the SEA and AEAs utilize monitoring and evaluation procedures. The monitoring and evaluation procedures include a comprehensive data review of the agency's policies, procedures, and documentation that assures compliance with all State and Federal statutes and regulations relating to the development and implementation of IEPs for children with disabilities served by the agency.

V. LEAST RESTRICTIVE ENVIRONMENT

It is the policy of the state of Iowa, 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 not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

It is also the policy of the State of Iowa to annually examine placement/least restrictive environment information for students with disabilities. These data are disaggregated by race/ethnicity to ensure that students regardless of races/ethnicity are being educated, to the maximum extent appropriate, with children who are not disabled.

The State of Iowa requires local education agencies (LEAs) and state operated educational programs to provide or make provision, as an integral part of public education, for a free and appropriate public education sufficient to meet the needs of all children requiring special education. This is not to be construed as encouraging separate facilities or segregated programs designed to meet the needs of children requiring special education when the children can benefit from all or part of the education program as offered by the local school district. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services.

Special classes, separate schooling or other removal of children requiring special education from the regular educational environment, shall occur when, and to the extent that the nature or severity of the educational disability is such that education in regular classes, even with the use of supplementary aids and services cannot be accomplished satisfactorily. For those children who cannot adapt to the regular educational or home living conditions, the Department of Human Services shall provide residential or detention facilities and AEA shall provide special education programs and services. The AEAs shall cooperate with the Iowa Board of Regents to provide the services required.

Iowa's Rules of Special Education further interpret and define the least restrictive environment as follows:

Each agency shall ensure that, to the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education and that special classes, separate schooling or removal of children requiring special education from the general education environment occurs only if the nature or severity of the individual's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

When developing an eligible individual's IEP, the IEP team shall consider the following

questions regarding the provision of special education and related services:

- a) What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?
- b) Why can't these accommodations, modifications and adaptations be provided within the general education environment?
- c) What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?
- d) How will providing special education services and activities in the general education environment impact this individual?
- e) How will providing special education services and activities in the general education environment impact other students?

Iowa Department of Education policy assures that agencies providing special education and related services make a continuum of alternative placements and services available to meet the needs of children with disabilities. To the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so as to maintain the individual in the general education environment.

The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities naturally occur for children of similar age without disabilities.

Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA, but in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement.

An agency must use the following development process for creating a system for delivering instructional services. The delivery system shall meet the continuum of services and placements requirement and shall provide for the following:

1. The provision of accommodations and modifications to the general education environment and program, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.
2. The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.
3. The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.
4. The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

The delivery system shall be described in writing and shall include the following components:

1. A description of how services will be organized and how services will be provided to eligible individuals.
2. A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.
3. A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.
4. A description of the process used to develop the system, including the composition of the group responsible for its development.
5. A description of the process that will be used to evaluate the effectiveness of the system.
6. A description of how the delivery system will meet the targets identified in the state's performance plan.
7. A description of how the delivery system will address needs identified by the state in any determination.

The following procedures shall be followed by the agency:

1. The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative is selected by the director.
2. The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.
3. Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.
4. The LEA board shall approve the system prior to implementation.

Special education may be provided to eligible individuals on an itinerant basis. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center.

Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. Home and hospital instructional services shall be provided ordinarily by LEAs. Home and hospital support services shall be provided ordinarily by AEAs. The provision of services in a home or hospital setting shall satisfy the following:

- a) The service and the location of the service shall be specified in the individual's IEP.
- b) The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

- c) Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

Supplementary aids and services to support least restrictive environment requirements must be provided as needed for students receiving special education services. These may include intensive short-term specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation; materials; and specialized or modified instructionally related equipment for use in the school.

Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEA; jointly by two or more LEAs; by the AEA; jointly by two or more AEAs; by the state directly; or by approved private providers.

The State of Iowa assures that:

1. The services of each child requiring special education are individually determined.
2. The services are reviewed on an annual basis.
3. The services are based on the child's individualized education program.
4. The services are provided in the school that he/she would normally attend if not disabled unless the child's individual education program requires some alternative arrangements.
5. That the services in the individualized education program will not produce a harmful effect on the child or reduce the quality of services required to meet his/her special education needs.
6. The services are provided in age-appropriate regular classrooms and the individual is not removed from general education settings solely because of needed modifications to the general education curriculum.

The State of Iowa also assures that requirements of least restrictive environment are met in preschool programs for children with disabilities. The Department of Education provides technical assistance and staff development activities on the topic of preschool integration.

The State of Iowa assures that in providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic services and activities, each child with a disability participates with children who do not have disabilities to the maximum extent appropriate to the needs of that child.

The State of Iowa requires written documentation for the review and satisfactory answers to following questions on IEPs of all students in separate facilities that solely serve eligible individuals:

1. What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?
2. What supplementary aids and services are needed to support the eligible individual in the special education program?
3. Why is it not possible to provide these aids and services in an integrated setting?

4. What is the continuum of placements and services available to the eligible individual?

The State of Iowa assures that all personnel in private and public agencies responsible for implementing and supporting the requirements LRE (a) are fully informed about their responsibilities for implementing LRE, and (b) are provided with technical assistance and training necessary to assist them in this effort.

The State of Iowa monitors compliance with requirements of least restrictive environment in several ways. The State of Iowa conducts monitoring on a rotation in a certain number of AEAs each year. Interviews with school personnel and student file reviews provide information to document compliance with least restrictive environment requirements. The State of Iowa assures that each annual program plan will include procedures that ensure that students are educated in the least restrictive environment. Each AEA and LEA must provide the state the number of children with disabilities in the agency, within each disability category, who are participating in regular education programs and the number who are in separate classes or separate school facilities and otherwise removed from the regular education environment.

If there is evidence that a public agency makes placements that are not consistent with the least restrictive environment, the Iowa Department of Education will review the public agency's justification for its actions and will assist in planning and implementing any necessary corrective action.

In the case of a determination of significant racial or ethnic disproportionality with respect to placement, the Department shall require an LEA to review and, if appropriate revise its policies, procedures, and practices. The Department shall require any revisions of those policies to be made available to the public, and shall further require the LEA to reserve the maximum amount to provide coordinated early intervening services, as required in 34 C.F.R. section 300.646. (This policy shall also apply to findings of significant disproportionality in identification or discipline,)



VI. PROCEDURAL SAFEGUARDS

Establishment of Procedures

The State of Iowa has established and maintained procedures in accordance with IDEA 2004 to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

Types of Procedures

The procedures include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the Iowa Department of Education, the local educational agency, the area education agency (AEA) or any other agency that is involved in the education or care of the child. In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements; and, in the case of an unaccompanied homeless youth, the local educational agency shall appoint a surrogate.

The State of Iowa shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate. The AEA is responsible for appointing surrogate parents.

(3) Written prior notice to the parents of the child, in accordance with the requirements, whenever the local educational agency proposes to initiate or change; or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with IDEA 2004.

(6) An opportunity for any party to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline shall apply.

(7) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with the requirements (which shall remain confidential)

to the other party, and forward a copy of such notice to the Iowa Director of Education that shall include--

- the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- 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;
- a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem;
- a proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements.

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with (6) and (7), respectively. Iowa provides a model form in its procedural safeguards brochure for parents and on the department website.

Notification Requirements

The content of prior written notice shall include--

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.

The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the administrative law judge (ALJ) and the other party in writing that the receiving party believes the notice has not met the requirements of IDEA 2004.

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

- an explanation of why the agency proposed or refused to take the action raised in the complaint;

- a description of other options that the IEP Team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- a description of the factors that are relevant to the agency's proposal or refusal.

A response filed by a local educational agency shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate. Except as provided, the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint. The party providing an ALJ notification shall provide the notification within 15 days of receiving the complaint. Within 5 days of receipt of the required notification, the ALJ shall make a determination on the face of the notice of whether the notification meets the requirements and shall immediately notify the parties in writing of such determination.

A party may amend its due process complaint notice only if

- the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held; or
- the ALJ grants permission, except that the ALJ may only grant such permission at any time not later than 5 days before a due process hearing occurs.

The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under the due process hearing section below.

Procedural Safeguards Notice

The State of Iowa provides a parental rights brochure to each AEA to print and disseminate. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents upon initial referral or parental request for evaluation; upon the first occurrence of the filing of a complaint; and upon request by a parent. A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner relating to--

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including--
 - (i) the time period in which to make a complaint;
 - (ii) the opportunity for the agency to resolve the complaint; and
 - (iii) the availability of mediation;
- (F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

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

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (Iowa offers a one-tiered system);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

Mediation

The State of Iowa ensures that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a due process complaint, to resolve such disputes through a mediation process. Iowa calls mediation without requesting a due process hearing a "preappeal conference." The procedures shall ensure that the mediation process is voluntary on the part of the parties; is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this part; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The State of Iowa may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the State or an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

Iowa maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The State of Iowa shall bear the cost of the mediation process, including the costs of meetings with a disinterested party to encourage the use, and explain the benefits of mediation. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; is signed by both the parent and a representative of the agency who has the authority to bind such agency; and is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

Impartial Due Process Hearing

Whenever a due process hearing complaint has been received, the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State of Iowa. Prior to the opportunity for an impartial due process hearing the local educational agency shall convene a Resolution Session meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint within 15 days of receiving notice of the parents' complaint; which shall include a representative of the agency who has decisionmaking authority on behalf of such agency; which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process.

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.

In the case that a resolution is reached to resolve the complaint at a Resolution Session meeting the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind such agency; and enforceable in any State court of competent jurisdiction or in a district court of the United States. If the parties execute an agreement, a party may void such agreement within 3 business days of the agreement's execution.

Not less than 5 business days prior to a hearing conducted, 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. An ALJ may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

An ALJ conducting a hearing shall, at a minimum not be an employee of the Iowa Department of Education or the local educational agency involved in the education or care of the child; or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts; possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

The party requesting the due process hearing, the appellant, shall not be allowed to raise issues at the due process hearing that were not raised in the notice unless the other party agrees otherwise. A parent or agency shall request an impartial due process hearing within 2 years of the date the

parent or agency knew or should have known about the alleged action that forms the basis of the complaint. The timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

A decision made by an ALJ shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, an ALJ may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

- impeded the child's right to a free appropriate public education;
- significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- caused a deprivation of educational benefits.

This shall not be construed to preclude an ALJ from ordering a local educational agency to comply with procedural requirements under this section. Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State of Iowa.

Safeguards

Any party to a hearing or an appeal shall be accorded--

- (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and
- (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions shall be made available to the public consistent with the requirements relating to the confidentiality of data, information, and records); and shall be transmitted to the special education advisory panel.

Administrative Procedures

A decision made in a due process hearing or a hearing involving placement in an alternative educational setting shall be final, except that any party involved in such hearing may appeal such decision. Any party aggrieved by the findings and decision made regarding a due process hearing or hearing involving placement in alternative educational setting, and any party aggrieved by the findings and decision, shall have the right to bring a civil action with respect to the complaint presented, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy. The party bringing the action shall have 90 days from the date of the decision of the ALJ to bring such an action. Iowa has no explicit time limitation in statute for such actions. However, a party is strongly urged to consult legal counsel on this point.

Maintenance of Current Educational Placement

Except for placement during appeals involving placement in alternative educational setting, during the pendency of any proceedings conducted according to IDEA, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

Placement in Interim Alternative Educational Setting

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in state eligibility requirements (612(a)(1)) although it may be provided in an interim alternative educational setting.

A child with a disability who is removed from the child's current placement (referring to the interim alternative educational setting, irrespective of whether the behavior is determined to be a manifestation of the child's disability) or referring to above paragraph shall continue to receive educational services, as provided in section 612(a)(1), 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 receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Except as described in the first paragraph above, within 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 local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall 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 if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP. If the local educational agency, the parent, and relevant members of the IEP Team determine that either is applicable, the conduct shall be determined to be a manifestation of the child's disability.

If the local educational 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 shall--

- conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
- in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- 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 State or local educational agency; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section. The interim alternative educational setting shall be determined by the IEP Team.

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

An ALJ shall hear, and make a determination regarding, an appeal requested when disagreeing with any decision regarding placement, or the manifestation determination or the district believes maintaining the current placement would substantially likely result in injury to the child or others.

In making the determination the ALJ may order a change in placement of a child with a disability. In such situations, the ALJ may return a child with a disability to the placement from which the child was removed; or order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

When an appeal has been requested by either the parent or the local educational agency the child shall remain in the interim alternative educational setting pending the decision of the ALJ or until the expiration of the time period provided for (found in second paragraph above), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

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

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

If a local educational 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 disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

Nothing shall be construed to prohibit an 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. An 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 the agency reports the crime.

Definitions include:

- **Controlled Substance.** The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- **Illegal Drug.** The term '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.
- **Weapon.** The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.
- **Serious Bodily Injury.** The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Rule of Construction

Nothing shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the pertinent procedures shall be exhausted to the same extent as would be required had the action been brought under this part.

Transfer of Parental Rights at Age of Majority

When a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

- (A) the agency shall provide any notice required by this section to both the individual and the parents;
- (B) all other rights accorded to parents under this part transfer to the child;
- (C) the agency shall notify the individual and the parents of the transfer of rights; and
- (D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under Part B.

In Iowa the age of majority is reached on three occasions:

- on the minor's 18th birthday,
- on the date of a minor's marriage, or
- upon being "tried, convicted and sentenced as an adult and committed to the custody of the director of the department of corrections...."

Electronic Mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

Separate Complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Consent

It is the policy of the State of Iowa to comply with the Individuals with Disabilities Education Act provisions on consent, including revocation of consent.

Consent Defined. Iowa rules define consent and its revocation as follows:

"Consent" is obtained when all of the following conditions are satisfied:

- a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

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

If a parent of a child revokes consent, in writing, for the 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.

Consent Required. Consistent with state and federal statutes and regulations, it is the policy of the state of Iowa that consent is required for initial evaluations and reevaluations, for initial

provision of special education services, and for release of personally identifiable information about a child when consent is required by FERPA or by the IDEA, and for access to Medicaid for payment.

Specific Provisions on Consent for Evaluation and Services. Consistent with the 2008 IDEA regulation amendments, and the Iowa Department of Education's declaratory ruling on the subject, the following is the policy of the state of Iowa.

•*Parental consent for initial evaluation.*

The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules), obtain informed consent from the parent of the child before conducting the evaluation. Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services. The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the 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:

- (1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with state law; or
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in the Part B regulations and this policy, including mediation procedures or due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent. The public agency does not violate its obligation under rules relating to child find and initial evaluations if it declines to pursue the evaluation under this paragraph.

•*Parental consent for 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. 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. If the 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 public agency:

- (1) May not use the procedural safeguards in Part B regulations and this policy, including mediation procedures or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- (2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
- (3) Is not required to convene an IEP team meeting or develop an IEP for the child.

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:

- (1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- (2) May not use the procedural safeguards in Part B regulations or this policy, including mediation procedures or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- (3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (4) Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

•*Parental consent for reevaluations.*

Subject to the exception below, each public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described above. The public agency does not violate its obligation under child find or evaluation rules if it declines to pursue the evaluation or reevaluation.

Exception. The informed parental consent described need not be obtained if the public agency can demonstrate that (1) it made reasonable efforts to obtain such consent; and (2) the child's parent has failed to respond.

•*Other consent requirements.*

Parental consent is not required before:

- (1) A review of existing data as part of an evaluation or a reevaluation; or
- (2) Administration of 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.

In addition to the parental consent requirements described above, the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

A public agency may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

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 the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described above; and the public agency is not required to consider the child as eligible for services under Part B rules and the State's policy for parentally-placed nonpublic school students with disabilities.

To meet the reasonable efforts requirements in this policy, the public agency must document its attempts to obtain parental consent using the procedures used for documenting the holding of an IEP team meeting without a parent in attendance.

IDEA State Complaints

The Iowa Department of Education has a policy of investigating written state complaints alleging violations of the IDEA, consistent with the rules for such state complaints in the Code of Federal Regulations.

VII. Evaluation

The child identification system in Iowa is an ongoing program involving local education agencies (LEAs), area education agencies (AEAs), and the State Education Agency (SEA). Its principle function is to facilitate the identification, evaluation and placement of children with disabilities in an educational program that is appropriate to their needs. Iowa's system contains the following components: initial identification/referral, evaluation, service delivery, and reevaluation. In addition to education agencies and depending on the age of the child served, identification activities may be conducted with the Iowa Department of Human Services, the Iowa Department of Public Health, public and private preschool facilities, local hospitals, public and private family and pediatric physicians, and a variety of parent support groups which function within the geographic boundaries of each AEA. These agencies receive periodic updates, which describe referral procedures to assist in the child identification process. These activities continue throughout each year.

Iowa policy defines roles and responsibilities of AEAs and LEAs in providing for the ongoing proper identification, evaluation and placement of children and young adults requiring special education. Iowa's AEAs and LEAs must provide policies and procedures they use to evaluate and determine eligibility for special education services.

Each public agency in Iowa with special education responsibilities assures that a full and individual initial evaluation is provided to each child suspected of having a disability before the initial provision of special education and related services. A public agency must seek consent for an evaluation whenever it suspects a child of having a disability, regardless of the child's status in "prereferral" or general education interventions or activities. A public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an individual eligible for special education.

Each public agency in Iowa assures, at a minimum, that the following requirements are met:

1. The assessment procedures, tests and other evaluation materials used in the identification process are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not clearly feasible to so provide or administer. Materials and procedures used to assess an individual with limited English proficiency are selected and administered to ensure that they measure the extent to which the individual has a disability and needs special education, rather than measuring the individual's English language skills. The tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory.
2. A variety of assessment tools and strategies are used to gather relevant functional, and developmental, and academic information about the individual, including information provided by the parent, that may assist in determining whether the individual is an eligible individual and in determining the content of the IEP. The tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. Additionally, if an assessment was not conducted under standard

conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report. The tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. The tests and other evaluation materials are selected and administered so as best to ensure that if a procedure or test is administered to an individual with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level or whatever other factors the procedure or test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (unless those skills are the factors that the procedure or test purports to measure).

3. No single procedure is used as the sole criterion for determining whether the individual is an eligible individual and for determining an appropriate educational program for the individual. An initial evaluation of the individual's educational needs shall be completed before any action is taken with respect to the initial provision of special education and related services. Written parental consent as required in the Iowa Rules of Special Education shall be obtained prior to conducting the evaluation. The purpose of the evaluation is to determine whether the child has a condition that requires special education and support services and related services.
4. Iowa's rules provide for general education interventions provides teams with far more needs-based information than previous systems. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances where the public agency suspects that a child receiving general education interventions may be a child with a disability, the AEA and LEA shall conduct a full initial evaluation. Documentation of the rationale for such action shall be included in the individual's educational record. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.
5. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.
6. General education interventions shall include consultation with special education personnel. General education interventions shall be the primary responsibility of a public agency's general education program. General education interventions shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.
7. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.
8. An evaluation shall include collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status,

adaptive behavior and motor abilities. Evaluations are sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified (if any).

9. The tests and other evaluation materials used in the full and individual evaluation are technically sound and assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
10. The assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the individual.
11. 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.
12. During the evaluation process, the public agencies shall comply with any progress monitoring standards established by the Department.

As part of an initial full and individual evaluation and as part of any reevaluation, the IEP team and, as appropriate, other qualified professionals, shall:

- a) Review existing evaluation data on the individual including evaluations and information provided by the parents of the individual, current classroom-based assessments and observations, observations by teachers and related services providers and the results of general education interventions.
- b) On the basis of the review and input from the individual's parents, identify what additional data, if any, are needed to determine:
 - (1) Whether the individual has a disability and the educational needs of the child or, in case of a reevaluation, whether the individual continues to have a disability.
 - (2) The present levels of academic achievement and related developmental needs of the child.
 - (3) Whether the individual needs special education and related services or, in the case of a reevaluation, whether the individual continues to need special education and related services.
 - (4) Whether any additions or modifications to the special education and related services are needed to enable the individual to meet the measurable annual goals set out in the IEP of the individual and to participate, as appropriate, in the general curriculum or, in the case of preschool children, appropriate activities.

The group that conducts the review may conduct its review and make decisions without a meeting. Team members shall administer tests and other evaluation materials and use assessment tools and strategies as needed to produce the data identified above.

A parent of a child, an AEA, or a LEA may initiate a request for an initial evaluation to determine if the child is a child with a disability. This initial evaluation shall be completed to determine whether a child is a child with a disability within 60 calendar days of the public agency receiving parental consent for the evaluation, unless otherwise provided by law. The appropriate educational needs of the child will also be identified during this evaluation.

In cases of a reevaluation, if the group determines that no additional data are needed to determine whether the individual continues to have a disability, the agency shall notify the individual's parents of the team's determination and the reasons for it, and of the right of the parents to

request an assessment to determine whether, for purposes of services described in these rules, the individual continues to have a disability. The agency is not required to conduct this assessment unless requested to do so by the individual's parents.

In making this determination, the evaluation team shall draw upon information from a variety of sources including parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. 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.

Upon completing the full and individual initial evaluation, the IEP team and other qualified professionals as appropriate shall determine whether the individual is an individual with a disability and whether the educational interventions that the individual requires constitute the provision of special education and related services. A copy of the evaluation report and the documentation of determination of eligibility shall be provided to the parent. The AEA and LEA shall seek to obtain informed consent from the parent before providing special education and related services to the child. An individual shall not be determined to be an eligible individual if the determinant factor for the decision is a lack of appropriate instruction in reading, including the essential components of reading instruction, a lack of instruction in math, or limited English proficiency.

Each agency shall assure that the IEP of each eligible individual is reviewed and that a reevaluation of each eligible individual is conducted every three years or more frequently if conditions warrant, if an eligible individual's parent or teacher requests an evaluation, or before determining that the individual is no longer eligible. A reevaluation of an eligible individual is not required before the termination of eligibility due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under these rules.

It is the policy of the state of Iowa that specific provisions on evaluation of students suspected of having specific learning disabilities are as set forth in its special education rules. See Iowa Admin. Code rr. 281—41.307 to 41.311.

Specific rules on consent, including consent for evaluations, reevaluations, and provision of initial services, are contained in the State's "Procedural Safeguards" policy and incorporated herein by this reference.

VIII. CONFIDENTIALITY

It is the policy of the State of Iowa that personally identifiable information maintained by the State Education Agency (SEA), area education agencies (AEAs), and local education agencies (LEAs) for students with disabilities is confidential and protected by FERPA's requirements.

Before any major identification, location, or evaluation activity, the LEA and AEA publish the notice or announcement in newspapers or other media, or both with circulation adequate to notify parents throughout the AEA or LEA of the activity. The Iowa Department of Education publishes an annual notice to parents in the principal newspaper of Iowa.

The State of Iowa, area education agencies, and local school districts give notice that is adequate to fully inform parents about the requirements of confidentiality including:

1. A description of the extent that the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
4. A description of all of the rights of parents and children regarding this information,

The following procedures have been established to protect the confidentiality of child identification data that is collected by this state from AEAs and LEAs. The Iowa Department of Education and Area Education Agencies' Information Management System (IMS) is a cooperative effort designed to meet the data management needs of the DE and AEAs. The IMS maintains data that is accurate, current and reflective of the quality and quantity of special education services provided. In addition to meeting data reporting requirements, the IMS also is designed to provide information needed to enhance service delivery and program improvement. The Chief of the Bureau of Student and Family Support Services is responsible for the confidential maintenance and management of all data relating to children with disabilities that are collected by the Iowa Department of Education.

1. The Chief has the authority to designate a person or persons to serve as custodian of all data collected and to designate those persons who will legitimately have access to such data. Permission for the release of any information held in this data bank must be obtained from the Bureau Chief. Any data released by the designated person will not contain individually identifiable information, and would usually consist only of summary reports presenting usable totals.
2. All child identification data received by the SEA from AEAs and LEAs is in coded form. The local educational level official or designated person codes the data. This official is the AEA Director of Special Education who by law is assigned responsibility for assuring the appropriate educational placement of children with disabilities. The format of the coding

system and its utilization are known only by the responsible officers at the LEA who prepare and submit the coded data to the SEA.

3. To ensure the confidentiality of the identity of each student, an alphanumeric code has been developed that obscures any personally identifiable data or information. It allows individual students to be distinguished only by ID code number at the state level. Names of individual children can only be obtained from the local educational agency and not from data submitted to the SEA. This alphanumeric system allows the collection of adequate data on an individual basis without jeopardizing the confidentiality of a student's record. It does, however, permit the SEA to collect sufficient data on a statewide basis to ensure efficient program administration and monitoring.
4. Other data pertaining to a student that are collected include the resident LEA, the LEA sponsoring the instructional program in which the student is enrolled, and the type of disability.
5. The disposition and destruction of data source documents is under the direct supervision of the assigned data custodian. All such documents are destroyed through a shredding process.

Right to Inspect Records.

Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing relating to the identification, evaluation, placement or provision of FAPE and, in no case, more than 45 days after the request has been made.

The right to inspect and review education records includes –

- a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;
- c) The right to have a representative of the parent inspect and review the records.

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

Record of Inspection.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency). The record shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Record location.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

Amending records.

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 participating agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the child under this section must (1) be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Disclosure.

Except for disclosures authorized under FERPA regulations, parental consent must be obtained before personally identifiable information is

1. disclosed to anyone other than officials of participating agencies collecting or using the information; or,
2. used for any purpose other than meeting a requirement of federal regulations.

An educational agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so. Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between

officials in the LEA where the private school is located and officials in the LEA of the parent's residence. If a parent refuses to give permission required by this policy, the participating agency shall attempt to seek resolution.

Responsibility for protecting confidentiality.

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. To assure protection:

1. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
2. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures.
3. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Data destruction.

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Transfer of rights at age of majority.

The State of Iowa shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. The rights of parents regarding education records are transferred to the student at age 18. If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, the rights regarding educational records must also be transferred to the student. However, the public agency must provide notice regarding the transfer to the student and the parents.

Monitoring procedures for confidentiality.

The Iowa Department of Education through the process of monitoring assures that each participating district/agency receiving and/or eligible for funds from federal sources has all such policies and procedures, as described herein, in effect. In the event a district/agency fails to comply with the provisions of this part, the Department of Education may initiate actions to withhold the payment of federal funds available to the district/ agency under IDEA and/or the payment of state funds available to support the special education services.

Consent.

Provisions on consent are fully contained in the State's policies on "Procedural Safeguards" and are incorporated herein by this reference.

IX. TRANSITION OF CHILDREN FROM PART C TO PART B PROGRAMS

It is the policy of the State of Iowa that children receiving services through Iowa's Early ACCESS Program for Infants and Toddlers with Disabilities (IDEA Part C) experience a smooth and effective transition to Part B or other community services. In keeping with Iowa's history of providing a seamless system for children eligible for special education from birth, the State of Iowa has created a rich network of services for children from birth through five years of age.

The agencies responsible for providing Part C's early intervention services for children from birth to three consist of the Iowa Department of Education (DE) and regional grantees/area education agencies (AEAs), in collaboration with the Iowa Department of Human Services, Iowa Department of Public Health, and Child Health Specialty Clinics. The delivery of Part B special education instructional and support services to children with disabilities is a cooperative endeavor involving AEAs, local education agencies (LEAs) and local public and private agencies through statutes mandating the education of children with disabilities. Children birth to age three who are determined eligible for special education services have an Individualized Family Service Plan (IFSP) and receive special education services through the AEA or LEA under Part C regulations.

In accordance with Iowa policy, IFSP Teams convene a transition planning conference among the family, IFSP service coordinator, AEA special education representatives, and other appropriate providers at least 90 calendar days and up to 9 months prior to the child's third birthday. The purpose for the transition conference is to establish a written transition plan in order to ensure timely planning of steps and services required under IDEA to support children's transition from Part C to Part B special education or other community services.

Each agency shall establish policies and procedures to meet the transition requirements of IDEA, Iowa Administrative Rules for Early ACCESS and Iowa Administrative Rules of Special Education. For children transitioning from Part C to Part B, Part B special education teams given written parental consent must have completed a full and initial individual evaluation, determined eligibility for special education and developed and implemented an individualized education program (IEP) by the children's third birthday. Eligibility criteria for receiving special education services are described in other policies and are incorporated herein by this reference.

The State of Iowa regularly provides technical assistance to families, multiple agencies, Early ACCESS and early childhood special education personnel to facilitate smooth transitions.



XI. METHODS OF ENSURING SERVICES

It is the policy of the State of Iowa that interagency agreements are in effect between noneducational public agencies and the State Education Agency (SEA) to ensure that FAPE is provided to students and children receiving special education services. The interagency agreements include:

1. An identification of, or a method for defining, the financial responsibility of each agency for providing services and to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the local education agency (LEA).
2. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
3. Procedures for solving interagency disputes (including procedures under which LEAs may initiate proceedings) under agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

The Iowa Department of Education and the Iowa Department of Human Services enter into an interagency agreement that delineates responsibilities for the administration of the Iowa Medical Assistance Program (IAMAP), a program for Medicaid reimbursement. Each of the area education agencies (AEAs) and the Department of Human Services also sign agreements to implement IAMAP.

The Department of Corrections, the Department of Education and the AEAs sign an interagency agreement to provide special education services to student inmates requiring special education services incarcerated in Iowa's adult correction facilities.

Where disputes arise between two agencies regarding the financial or programmatic responsibility for special education, the final determination will be made by the State Board of Education. An AEA or LEA may appeal a decision to the State Board of Education. The decision of the state board is final. The Iowa Code also provides for binding arbitration between state agencies. Iowa Code § 679A.19. Interagency agreements shall be made in compliance with the provisions of Iowa Code chapter 28E (Joint Exercise of Governmental Power).

The Individuals with Disabilities Education Act and state laws and rules for the implementation of this Act shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the cost of a free appropriate public education to be provided children with disabilities in the State.

If a child with disabilities is covered by public insurance, a public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required and as permitted under the public insurance program. The public agency must obtain parental consent the first time that access is sought and notify parents that refusal to allow

access to their public insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. The public agency may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided under these rules; but may pay the cost that the parent otherwise would be required to pay; and may not use a child's benefits under a public insurance program if that use would:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of insurance; or
4. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

A public agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined by rule to provide services required for FAPE. Each time the public agency proposes to access the parent's private insurance proceeds it must:

1. Obtain parent consent in accordance with rule; and
2. Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

The Department of Education assists in the coordination of the educational activities and services provided to children requiring special education with agencies such as the Department of Human Services and the Board of Regents.

XII. LOCAL EDUCATION AGENCY ELIGIBILITY

It is the policy of the State of Iowa that final approval relating to any Part B IDEA plan or application submitted by a public agency is granted by the Iowa Department of Education. Prior to the submission of such a plan or application for final action, the plan or application is reviewed by the Department of Education. During this review process the applicant agency is offered an opportunity to resolve any problems associated with the agency's proposal. Technical assistance is available to applicant agencies during all phases of plan/application development, so that plans or applications comply with all legal requirements.

The applicant agency shall be notified in the event that the Department of Education intends to recommend disapproval of the plan/application. If the applicant agency wishes to dispute the Department of Education's recommendation, the agency may request a hearing of the action in question.

The following are the procedures of the Iowa Department of Education in providing for a hearing in the event an application would be recommended for disapproval:

1. The applicant shall request the hearing within 30 days of the action of the State Education Agency (SEA).
2. Within 30 days after it receives a request, the SEA shall hold a hearing on the record and shall review its action.
3. No later than 10 days after the hearing, the SEA shall issue its written ruling, including findings of fact and reasons for the ruling.
4. If the SEA determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.
5. If the SEA does not rescind its final action after a review, the applicant may appeal to the Secretary of Education, U.S. Department of Education as provided under 34 CFR section 76.401(d). The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the SEA of the results of the agency's review. If supported by substantial evidence, findings of fact of the SEA are final.
6. The State of Iowa shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal this applicant is conducting under this section including records of other applicants.

When it has been determined that an agency's proposed plan/application meets all relevant state and Federal statutes, rules, and regulations, the Department of Education grants approval for the plan/application to be funded.

As a condition of initial and continued eligibility, agencies shall comply with Department standards and guidance on the appropriate and permissible uses of federal, state, and local special education funds.



XIII. PERSONNEL QUALIFICATIONS

It is the policy of the State of Iowa to ensure that personnel necessary to carry out the requirements of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Further, it is the policy of the State of Iowa to require certification, licensing, and professional recognition qualifications for all personnel employed to provide special education and related services. These requirements are in the rules of the Iowa Board of Educational Examiners.

The qualifications for related services personnel and paraprofessionals:

- are consistent with State-approved certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
- ensure that related services personnel who deliver services in their discipline or profession meet the requirements of the previous item and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- allow paraprofessionals and assistants who are appropriately trained and supervised in accordance with Iowa law to be used to assist in the provision of special education and related services under this part to children with disabilities.

The qualifications for special education teachers, as outlined below, meet the "highly qualified" requirements of the No Child Left Behind Act of 2001 and the Individuals with Disabilities Education Act of 2004. The State of Iowa ensures that each person employed as a special education teacher in the state who teaches elementary school, middle school or secondary school is highly qualified by the end of the 2005-2006 school year.

The term "highly qualified" in Iowa means for teachers to demonstrate competence in the subject areas they teach through appropriate licensure and endorsement. Additionally, a highly qualified special education teacher:

- has obtained full State certification as a special education teacher;
- has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- holds at least a bachelor's degree.

Iowa special education teachers who teach core academic subjects exclusively to children who are assessed against alternate achievement standards may either demonstrate competence in the subject area they teach by meeting the requirements outlined above as an elementary or secondary teacher, or, in the case of instruction above the elementary level, have subject matter knowledge appropriate to the level of instruction being provided. Special education teachers who teach 2 or more core academic subjects exclusively to children with disabilities may meet the requirements outlined above.

Special education teachers who are not new to the profession must meet the highly qualified requirements by the end of the 2005-06 school year. New special education teachers who teach multiple subjects and who are highly qualified in mathematics, language arts, or science, must demonstrate competence in the additional core academic subjects in which they teach not later than 2 years after the date of employment.

The State of Iowa has adopted a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

XIV. PERFORMANCE GOALS AND INDICATORS

The educational strategic plan for the state of Iowa, approved by the State Board of Education, provides a framework to improve student learning in the state for all students. In Iowa, all public schools and districts are held to the same process and criteria for making adequate yearly progress (AYP), set by state-wide goals and indicators. AYP shifts yearly goals toward 100% proficiency by the 2013-14 school year, as defined in the Elementary and Secondary Education Act.

The goals for the educational system in the state of Iowa, as stated in the 2010 strategic plan, are:

- All children will enter school ready to learn.
- All K-12 students will achieve at a high level.
- Individuals will pursue postsecondary education in order to drive economic success.

For purposes of AYP accountability, all public schools and districts are judged by performance and improvement on the Iowa Tests of Basic Skills (ITBS), the Iowa Tests of Educational Development (ITED), and alternate assessment. All public school buildings and districts are also accountable for subgroup performance as required by federal law provided the subgroup meets the minimum size requirement as determined by the state. The minimum n size is 40 for participation and 30 for performance. The AYP definition includes all students and subgroups in grades 3-8 and grade 11 in reading and mathematics.

Indicators of success reported at the state level are:

- Participation rate and Annual Measurable Objective (AMO)* in reading assessment (Grades 3-8 and 11)
- Participation rate and Annual Measurable Objective (AMO)* in mathematics assessment (Grades 3-8 and 11)
- Graduation rate
- Average Daily Attendance (ADA) Rate

*AMO results represent the performance of students who are enrolled in Iowa public schools/districts for a full academic year.

The 2008-2009 state graduation rate for all students based on a first time freshmen four-year cohort rate is 87.2%.

Graduation rate data are reported one year in arrears, to allow schools to include summer graduates in their total counts. For example, the 2009-2010 graduation rate will be used for 2010-2011 AYP decisions.

Annually, the State of Iowa will report to the Secretary of Education and the public of Iowa, the progress of the State and of the children with disabilities in the State toward meeting these goals. Based upon the assessment of the progress, the State will revise its State Improvement Plan as needed to improve its performance.



XV. PARTICIPATION IN ASSESSMENTS

It is the policy of the State of Iowa that all students with disabilities will be included in state and district assessments, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. This shall include participation in districtwide assessments not used for AYP accountability purposes.

The Iowa Department of Education has developed procedures for determining whether children with disabilities will participate in typical state and district assessments with or without accommodations, or whether a child with a disability will participate in an alternate assessment. These procedures have been disseminated to the area education agencies and local school districts through guidance documents and training. The procedures are to be used by IEP teams. The procedures to be followed during the IEP meeting are:

1. Determine which of the following statements best describes the student's appropriate assessment approach.
 - a. Can the student participate with no or only slight accommodations? The student should participate in district wide assessment.
 - b. Can the student participate with significant accommodations? The student should participate in district wide assessment with modified academic achievement standards aligned with grade level content standards.
 - c. Can the student participate only with modifications? The student should participate in alternate assessment based on alternate achievement standards and aligned with the local district's challenging academic content standards.

The Iowa Department of Education in conjunction with area education agencies (AEAs) and local education agencies (LEAs) uses universal design principles in developing and implementing these assessments.

The Iowa Department of Education, in conjunction with area education agencies (AEAs), will collect statewide data reflecting the percent of students with disabilities participating in each type of assessment.

The State of Iowa, local education agencies (LEAs) and AEAs will make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children in accordance with the state's general accreditation standards, the following information:

1. The number of children with disabilities participating:
 - i. in regular assessments and those providing accommodations
 - ii. in alternate assessments aligned with alternate academic achievement standards
 - iii. in alternate assessments aligned with the local district's challenging academic content and achievement standards.

2. The performance results of the children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children:
 - i. on regular assessments; and
 - ii. on alternate assessments (not later than July 1, 2000).

As required in Iowa Administrative Code, Chapter 12, all public and accredited nonpublic schools shall report annually to the Department of Education. The reports to the public will include:

1. Aggregated data that include the performance of children with disabilities together with all other children; and
2. Disaggregated data on the performance of children with disabilities.

LEAs are not permitted to report to the public disaggregated data if the group is less than 10 children.

It is also the policy of the State of Iowa to annually examine participation and result (proficiency) information for students with disabilities. These data are disaggregated by race/ethnicity to ensure that students of all races/ethnicities participate in statewide and districtwide assessments and that all students regardless of race/ethnicity have improving results.

The data reported to the public by the state will be in Iowa's Annual Condition of Education report and State Report Card. These reports are published in the fall of each school year. AEAs and LEAs will report to the public as outlined in Iowa's general accreditation standards.

XVI. PROHIBITION AGAINST COMMINGLING

The Iowa Department of Education assures that IDEA Part B funds are not commingled with state funds through use of a separate accounting system that includes an audit trail of expenditures for Part B funds. The tracking of the use of both funding sources is done through unique account codes to ensure appropriate use. The use of both funding streams is reviewed by the DE on an annual basis. The Auditor of State conducts compliance audits on a regularly scheduled basis, and each public agency is audited annually by the Auditor of State or a private auditing firm. Copies of all audit reports and negative audit findings, including those related to special education, are referred to the Department.

Public agencies may use funds under Part B for 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 non-disabled children benefit from these services.



XVII. MAINTENANCE OF STATE FINANCIAL SUPPORT

The Iowa Department of Education assures that the State of Iowa will not reduce the amount of its state financial support for special education and related services for children with disabilities or otherwise made available, because of the excess costs of educating those children, below the amount of that support for the preceding year.



XVIII. PUBLIC PARTICIPATION

The State of Iowa provides the general public, including individuals with disabilities and parents of individuals with disabilities, a full opportunity to review and present comments on proposed policies and procedures.

When proposing to adopt new policies and procedures, the State of Iowa provides public notice in newspapers and other media.

The notice is provided enough in advance to allow interested parties a reasonable opportunity to participate in public hearings. Policies and procedures are made available for comment for a period of at least sixty (60) days following the notice. Public notice includes detailed information about the proposed policies and procedures and allows the general public to understand the purpose and scope of the proposal and its relation to serving eligible individuals. The notice also includes information about the availability of proposed policies and procedures for public review; the date, time and location of public hearings; a description of the procedures for submitting written comments; and the timetable for submitting policies and procedures to the Secretary for review. Public hearings are conducted at times and places that allow interested parties throughout the State a reasonable opportunity to participate. The Department of Education uses technology to facilitate public participation.

Following public hearings and before adoption of proposed policies and procedures, the State of Iowa reviews and considers all public comment and makes any necessary modifications in proposed policies and procedures. The State provides information regarding places throughout the state where the policies and procedures are available to any interested person.



XIX. STATE-LEVEL NONSUPPLANTING

The Iowa Department of Education assures the Secretary that funds paid to the state under Part B of IDEA are used to supplement the level of federal, state and local funds expended for special education and related services provided to children with disabilities under Part B of IDEA and in no case to supplant these federal, state and local funds.

Non-supplanting criteria are included in each review of plans or applications for IDEA funding, in compliance monitoring and fiscal audits of LEA's and AEA's use of federal funds.



XX. STATE ADVISORY PANEL

The State of Iowa reaffirms that Iowa has established and maintains an advisory panel for the purpose of providing policy and guidance with respect to special education and related services for children with disabilities in the State. The Director of the Iowa Department of Education appoints members of the advisory panel.

The Iowa Special Education Advisory Panel is representative of the state population and is composed of individuals involved in, or concerned with, the education of children with disabilities. Composition of the panel meets all federal requirements described in this section with a majority of the members being individuals with disabilities or parents of children with disabilities. Current membership lists are maintained and an active recruitment effort is implemented in order to meet this requirement. Terms of panel members are for three years and are staggered to assure a broad base of expertise at all times.

The advisory panel advises the Iowa Department of Education on those functions required by this section and lists those same functions in advisory panel bylaws. The annual report also reflects the mission and duties of the panel. The bylaws are amended as needed to reflect changes in federal statute.

The advisory panel meets as often as required by its bylaws, with additional meetings scheduled as necessary. Meetings are held in accord with Iowa's open meetings statute. Official minutes are kept on file with the panel secretary and are available to the public upon request. All panel meetings and agenda items are planned and announced well in advance to allow interested parties to attend. Interpreters and other necessary accommodations, e.g., enlarged print, are provided for panel members and participants when the state agency is made aware of such needs. Panel members are reimbursed for expenses such as lodging, meals, mileage, and child care, etc. By July 1 of each year, the panel prepares an annual report for the state education agency, which includes panel membership, duties and a summary of major activities and recommendations. This report is made available to the public and sent to those interested in applying for panel membership.



XXI. SUSPENSION AND EXPULSION RATES

The State of Iowa annually examines data disaggregated by race, ethnicity and disability to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local education agencies (LEAs) in the State or compared to the rates for nondisabled children within the agencies. If discrepancies are occurring, the Department of Education reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with IDEA.



XXII. ACCESS TO INSTRUCTIONAL MATERIALS

It is the policy of the State of Iowa that all students with disabilities in the age range from birth to 21 years of age residing in this state, including children and youth attending private schools, who are in need of special education and related services are provided accessible texts and instructional materials at the same time as their non-disabled peers.

The State of Iowa has adopted the National Instructional Materials Accessibility Standard (NIMAS) and agrees to coordinate with the National Instructional Materials Access Center (NIMAC), located at the American Printing House for the Blind, for the purposes of providing instructional materials and texts to students who are blind and visually impaired or other students with print disabilities (as described in the next paragraph) in a timely manner (no later than December 3, 2006, two years after the passage of IDEA 2004).

Students who are blind, have a vision impairment, have a physical disability, or who have a reading disability of a physical origin ("organic dysfunction") are entitled to services from the NIMAC and under the Chafee Amendment to the Copyright Act. The State has designated the Iowa Department for the Blind as the authorized user for accessing the NIMAC. The State may from time to time designate additional authorized users.

The State has defined "timely manner" as "delivering those accessible instructional materials at the same time as other children receive instructional materials."

If a student with a disability, who requires accessible texts and instructional materials, is not eligible for services from the NIMAC or under the Chafee Amendment, that student must still receive accessible texts and materials in a timely manner.

The production and delivery of accessible texts and instructional materials is a cooperative endeavor involving the state, area education agencies (AEAs), and local education agencies (LEAs). As part of the enactment of this policy the State of Iowa requires that LEAs, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to-

- (a) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or
- (b) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.



XXIII. PROHIBITION REGARDING MANDATORY MEDICATION

It is the policy of the State of Iowa to prohibit State and Local education agency personnel from requiring a child to obtain a prescription for a substance covered by the Federal Controlled Substances Act as a condition of:

- (a) Attending school,
- (b) Receiving an evaluation, or
- (c) Receiving services under IDEA.

School personnel and teachers are permitted to consult and share with parents and guardians their classroom-based observations regarding student:

- (a) Academic and functional performance, or
- (b) Behavior in the classroom or school, or
- (c) Need for evaluation for special education or related services.

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