

LEA APPLICATION
Individuals with Disabilities Education Act

The following LEA policies and procedures adhere to the requirements under the Individual with Disabilities Education Act, Part B (IDEA-B), to establish eligibility under the provisions at 34 CFR §300.180 meeting the conditions under §§300.220--300.250, and thereby consistent with the State's IDEA-B, policies and procedures under 34 CFR §§300.121-300.156.¹

LEA NAME: _____

Address: _____

LEA Contact Person: _____

Telephone #: _____

Email address: _____

DATE MAILED: _____

¹ The attached models use Times New Roman, block form with 12 point font. Other formats will change pagination.

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SECTION I

FREE APPROPRIATE PUBLIC EDUCATION and EXCEPTION TO FAPE FOR CERTAIN AGES (§300.121 AND §300.122)

It is the LEA's policy that all children with disabilities aged 3 years to 21 years of age residing in the LEA, have the right to a free appropriate public education (FAPE), including children with disabilities who have been suspended or expelled from school. There is an age-related exception under the provision of 34 CFR §300.300(b)(5)(i). Under the School Code (24 P.S. §13-1301) . . . *Every child, being a resident of any school district, between the ages of six and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act. Notwithstanding any other provision of law to the contrary, a child who attains the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his district free of charge until the end of the school term.* Therefore, the LEA will make FAPE available to a child with a disability through the school term in which the student reaches his/her 21st birthday, unless he/she has graduated.

With regard to age when FAPE is first available, an eligible child with a disability residing in the LEA receives a free appropriate public education no later than the child's third birthday under an IEP through Act 212 of 1990. If a child's third birthday occurs during the summer, the child's IEP team determines the date when services under the IEP will begin.

For children with disabilities who have been suspended or expelled from school, the LEA does not need provide services during periods of removal under §300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals (1) provides services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is (a) under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519(a) or (b) for behavior that is not a manifestation of the child's disability, consistent with §300.524, and (2) provides services consistent with §300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is for (a) drug or weapons offenses under §300.520(a)(2), or (b) based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement consistent with §300.521.

LEA personnel, in consultation with the child's special education teacher, determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with §300.524.

Children advancing from grade to grade. The LEA makes available a free appropriate public education to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. The determination that a child is eligible for special education and related services is made on an individual basis by the group responsible within the child's LEA for making those determinations.

SECTION II

CHILD FIND (§300.125)

It is the LEA's policy that all children with disabilities residing in the LEA, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. The LEA annually reports special education and related services to the State, through the Statewide data system, which children are being served and what services are being provided. This applies to all children with disabilities, including highly mobile children (such as migrant and homeless children), and children who are suspected of being eligible under IDEA, even though they are advancing from grade to grade.

A practical method has been developed and implemented to determine which children are currently receiving needed special education and related services is reported in accordance to the LEA's special education plan submitted to the Department of Education in accordance with 22 PA Code §14.104.

All data and information collected and used under the child find requirements of this section are subject to the confidentiality requirements of 34 CFR §§300.560-300.577.

SECTION III

PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY (§300.126)

The LEA conducts a full and individual initial evaluation, in accordance with this section before the initial provision of special education and related services to a child with a disability under Part B of IDEA. The LEA will, at a minimum, adhere to the following:

1. Tests and other evaluation materials used to assess a child under IDEA are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.
2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability under IDEA and the content of the child's IEP.
4. Any standardized tests that are given to a child 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.
5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the tests, or the method of test administration) is included in the evaluation report.
6. 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.
7. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the tests purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
8. No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
9. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
10. In evaluating each child with a disability under this section, the evaluation is 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.
11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
12. Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the child.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under IDEA, a group that includes the individuals described under §300.344, and other qualified professionals, as appropriate,

reviews existing evaluation data on the child, including (1) evaluations and information provided by the parents of the child, (2) current classroom-based assessments and observations, and (3) observations by teachers and related services providers. On the basis of that review, and input from the child's parents, the LEA identifies what additional data, if any, are needed to determine whether the child has a particular category of disability, or in the case of a reevaluation of the child, whether the child continues to have such a disability; the present levels of performance and educational needs of the child; whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

The group described above may conduct its review without a meeting; however, if a meeting is held, the parent will be invited to participate.

The LEA administers tests and other evaluation materials as may be needed to produce the data it determines is still required. If LEA determines that no additional data are needed to determine whether the child continues to be a child with a disability, the LEA notifies the parents of that determination and the reasons for it and of the right of the parents to request an assessment to determine whether, for purposes of services under 34 CFR Part 300, the child continues to be a child with a disability. The LEA need not conduct the assessment unless requested to do so by the child's parents.

Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child will determine whether the child is a child with a disability under IDEA and will provide a copy of the evaluation report and the documentation of determination of eligibility to the parent. The child will not be determined to be eligible under IDEA if the determinant factor for that eligibility determination is lack of instruction in reading or math, or limited English proficiency and the child does not otherwise meet the eligibility criteria under IDEA.

The LEA evaluates a child with a disability in accordance with §§330.532 and 300.533 before determining that the child is no longer a child with a disability. The evaluation is not required before the termination of a student's eligibility under 34 CFR Part 300 due to graduation with a regular high school diploma or exceeding the age eligibility under §1301 of the School Code of 1949 (24 P.S. §13-1301).

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under IDEA, and the educational needs of the child, the LEA (1) draws upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and (2) ensures that information obtained from all of these sources is documented and carefully considered. If a determination is made that a child has a disability and needs special education and related services, an IEP will be developed for the child in accordance with §§300.340-300.350.

Reevaluation. It is the policy of the LEA that the IEP of each child with a disability is reviewed in accordance with §§300.340-300.350 and that a reevaluation of each child, in accordance with this section, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

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SECTION IV

CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION (§300.127)

The LEA gives notice that is adequate to fully inform parents about the requirements of this section including (1) a description of the extent that the notice is given in the native languages of the various population groups residing in the LEA; (2) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the LEA intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; and (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, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity.

Access rights. The LEA permits parents to inspect and review any education records relating to their child that is collected, maintained, or used by the LEA under 34 CFR Part 300. The LEA complies with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under this section includes (1) the right to a response from the LEA to reasonable requests for explanations and interpretations of the records; (2) the right to request that the LEA 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; and (3) the right to have a representative of the parent inspect and review the records. An LEA may presume that the parent has authority to inspect and review records relating to his or her child unless the LEA 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 access. The LEA keeps 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), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on more than one child. 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.

List of types and locations of information. The LEA provides parents on request a list of the types and locations of education records collected, maintained, or used by the LEA.

Fees. The LEA 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. The LEA does not charge a fee to search for or to retrieve information under 34 CFR Part 300.

Amendment of records at parent's request. A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request that the information maintained by the LEA, be amended. The LEA decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the LEA decides to refuse to amend the information in accordance with the request, it informs the parent of the refusal and advises the parent of the right to a hearing under §300.568.

Opportunity for a hearing. The LEA, on request from the parent, provides 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.

Result of hearing. If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent in writing. If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it informs 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 LEA. Any explanation placed in the records of the child under this section (1) is maintained by the LEA as part of the records of the child as long as the record or contested portion is maintained by the LEA; and (2) if the records of the child or the contested portion is disclosed by the LEA to any party, the explanation is also disclosed to the party.

Hearing procedures. A hearing held under §300.568 is conducted according to the procedures under 34 CFR 99.22.

Consent. Except as to disclosures addressed in §300.529(b) for which parental consent is not required by 34 CFR Part 99, parental consent is obtained before personally identifiable information is (1) disclosed to anyone other than officials of participating agencies collecting or using the information under 34 CFR Part 300, subject to this section; or (2) used for any purpose other than meeting a requirement of 34 CFR Part 300. The LEA will not release information from education records to participating agencies without parental consent unless authorized to do so under part 99. If a parent does not consent to release of information to the educational agency, which information has been determined to be necessary to evaluate the student under Part 300, the educational agency may, after unsuccessful attempts to obtain consent from the parent, seek permission to evaluate the student and if necessary gain a decision from a hearing officer when consent is not forthcoming from the parent.

The LEA protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding PA's IDEA-B policies and procedures under §300.127 and 34 CFR Part 99. Each LEA shall maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to personally identifiable information.

Destruction of information. The LEA informs 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 is 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.

Children's rights. The LEA provides 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 age of majority in Pennsylvania is 21 years, thus IDEA rights of parents do not transfer to students at age 18. Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

Disciplinary information. The LEA includes in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the child transfers from one school to another, the transmission of any of the child's records includes both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

SECTION V

INDIVIDUALIZED EDUCATION PROGRAMS (§300.128)

Responsibility for IEPs. It is the LEA's policy (1) that except as provided in §§300.450-300.462, an IEP is developed and implemented for each child with a disability served by the LEA; and (2) that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the LEA.

When IEPs must be in effect. At the beginning of each school year, an IEP is in effect for each child with a disability residing within the LEA.

Implementation of IEPs. It is the LEA's policy that (1) an IEP is in effect before special education and related services are provided to an eligible child under this part; and is implemented as soon as possible following the IEP meeting; (2) the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and (3) each teacher and provider described above is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

IEP for children aged 3 through 5. In the case of a child with a disability aged 3 through 5, an IEP will be implemented as soon as possible but no later than 14 days after the completion of the IEP.

Effective date for new requirements. All IEPs developed, reviewed, or revised on or after July 1, 1998 meets the requirements of §§300.340-300.350.

IEP meetings. The LEA initiates and conducts meeting(s) for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

Initial IEPs; provision of services. Within a reasonable period of time following the LEA's receipt of parent consent to an initial evaluation of a child, the child is evaluated, and if determined eligible under this part, special education and related services are made available to the child in accordance with an IEP. In meeting the requirements of this section, a meeting to develop an IEP for the child is conducted within 30 days of a determination that the child needs special education and related services.

Review and revision of IEPs. The IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to (1) address any lack of expected progress toward the annual goals described in §300.347(a), and in the general curriculum, if appropriate; (2) the results of any reevaluation conducted under §300.536; (3) information about the child provided to, or by, the parents, as described in §300.533(a)(1); (4) the child's anticipated needs; or (5) other matters. .

The IEP team for each child with a disability includes (1) the parents of the child; (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) at least one special education teacher of the child, or if appropriate, at least one special education provider of the child; (4) a representative of the LEA who (a) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with

disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the LEA; (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section; (6) At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and(7) If appropriate, the child.

Transition services participants. The LEA invites 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 needs. If the student does not attend the IEP meeting, the LEA takes other steps to ensure that the student's preferences and interests are considered. In implementing these requirements, the LEA also invites 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 LEA takes other steps to obtain participation of the other agency in the planning of any transition services.

Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described above is made by the party (parents or public agency) who invited the individual to be a member of the IEP.

Designating a LEA representative. The LEA may designate another LEA member of the IEP team to also serve as the LEA representative, if the person (a) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the LEA.

Parent participation. LEA responsibility. The LEA takes steps to gain one or both of the parents of a child with a disability presence at each IEP meeting or that the parents are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.

Information provided to parents. The notice used to invite parents to an IEP meeting indicates the purpose, time, and location of the meeting and who will be in attendance and informs the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child. For a student with a disability beginning at age 14, or younger, if appropriate, the notice indicates that a purpose of the meeting is the development of a statement of the transition services needs of the student and indicates that the LEA will invite the student.

For a student with a disability beginning at age 16, or younger, if appropriate, the notice indicates that a purpose of the meeting is the consideration of needed transition services for the student, indicates that the agency will invite the student, and identifies any other agency that will be invited to send a representative.

Other methods to ensure parent participation. If neither parent can attend the IEP meeting, the LEA uses other methods to ensure parent participation, including individual or conference telephone calls.

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

Use of interpreters or other action, as appropriate. The LEA takes whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Parent copy of child's IEP. The LEA gives the parent a copy of the child's IEP at no cost to the parent.

Development, review, and revision of IEP. Development of IEP. In developing each child's IEP, the IEP team, considers 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, as appropriate, the results of the child's performance on any general State or district-wide assessment programs.

Consideration of special factors. The IEP team also shall: (1) 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; (2) 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; (3) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; (4) 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 (5) Consider whether the child requires assistive technology devices and services.

Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team considers the special factors described above.

Statement in IEP. If, in considering the special factors described above, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team includes a statement to that effect in the child's IEP.

Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, to the extent appropriate, participates in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the child and supplementary aids and services, program modifications or supports for school personnel that will be provided for the child.

Content of IEP. The IEP for each child with a disability must include the following:

1. A statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children) or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and meeting each of the child's other educational needs that result from the child's disability.
3. A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.
4. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described for preschool children.
5. Except for students with a disability who are convicted as adults under State law and incarcerated in adult prisons, a statement of any individual modifications in the administration of State or LEA-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and if the IEP team determines that the child will not participate in a particular State or LEA-wide assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the child; and how the child will be assessed.
6. The projected date for the beginning of the services and modifications described above, and the anticipated frequency, location, and duration of those services and modifications.
7. A statement of how the child's progress toward the annual goals described above will be measured how the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Transition services. Except in the case of students with a disability who are convicted and in adult prisons when the student's release from prison, considering their sentence and eligibility for early release, will be subsequent to when the student reaches 21 years of age, the IEP includes, for each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

Except in the case of students with a disability who are convicted and in adult prisons when the student's release from prison, considering their sentence and eligibility for early release, will be subsequent to when the student reaches 21 years of age, the IEP must include, for each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

Agency responsibilities for transition services. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA reconvenes the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

Private school placements by the LEA. Developing IEPs. Before the LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA initiates and conducts a meeting to develop an IEP for the child in accordance with the requirements of §300.345 and §300.347. The LEA ensures that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA uses other methods to ensure participation by the private school or facility, including the use of individual or conference telephone calls.

Reviewing and revising IEPs. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA. If the private school or facility initiates and conducts these meetings, the LEA ensures that the parents and an LEA representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.

IEP accountability. With regard to the **Provision of services**, the LEA provides special education and related services to a child with a disability in accordance with the child's IEP and makes a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

Accountability. The LEA does not hold that any representative, teacher, or other person of the LEA be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives if the requirements of the provisions under **IEP accountability**.

Parent rights. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required above are not being made. Children with disabilities and their parents must be afforded procedural safeguards.

SECTION VI

PROCEDURAL SAFEGUARDS (§300.129)

Definition: The LEA adopts the following definitions:

1. Consent means that 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 other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
2. Evaluation means procedures used in accordance with this section to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
3. Personally identifiable means that information includes the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Opportunity to examine records; parent participation in meetings. The parents of a child with a disability is afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child, and participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

Parent participation in meetings. The LEA provides notice consistent with that described in **INDIVIDUALIZED EDUCATION PROGRAMS (§300.128)** above, to ensure that parents of children with disabilities have the opportunity to participate in meetings described in this section. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Parent involvement in placement decisions. Parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. In implementing these requirements, the LEA uses procedures consistent with the procedures described under "parent participation" in the section **INDIVIDUALIZED EDUCATION PROGRAMS (§300.128)**. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA uses other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA maintains a record of its attempt to ensure parent involvement, including information that is consistent with the requirements of the IEP section. The LEA makes reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions

relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

Independent educational evaluation. The parents of a child with a disability have the right under 34 CFR Part 300 to obtain an independent educational evaluation of the child, subject to the provisions outlined below. The LEA provides to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the LEA criteria applicable for independent educational evaluations as set forth below. For the purposes of this part, “independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the LEA and “public expense” means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA. If a parent requests an independent educational evaluation at public expense, the LEA, without unnecessary delay, either initiates a hearing under procedures described below to show that its evaluation is appropriate, ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet the LEA criteria. If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at LEA expense.

If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent is not required and the LEA does not unreasonably delay either providing the independent educational evaluation at LEA expense or initiating a due process hearing to defend the LEA's evaluation.

Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation is considered by the LEA, if it meets the LEA's criteria, in any decision made with respect to the provision of FAPE to the child, and may be presented as evidence at a hearing under this subpart regarding that child.

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

LEA criteria. If an independent educational evaluation is at LEA expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, is the same as the criteria that the LEA uses when the LEA initiates an evaluation, to the extent the criteria are consistent with the parent’s right to an independent educational evaluation. Except for the criteria described in this section, the LEA does not impose conditions or timelines related to obtaining an independent educational evaluation at LEA expense.

Prior notice by the LEA; content of notice. Notice. Written notice that meets the requirements of this section is given to the parents of a child with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

If the notice described above relates to an action proposed by the LEA that also requires parental consent under §300.505, the LEA may give notice at the same time it requests parent consent.

Content of notice. The notice required in this section includes the following.

1. A description of the action proposed or refused.
2. An explanation of why the LEA proposes or refuses to take the action.
3. A description of any other options that the LEA considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action.
5. A description of any other factors which are relevant to the LEA's proposal or refusal.
6. 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.
7. Sources for parents to contact to obtain assistance in understanding the provisions of 34 CFR Part 300.

Notice in understandable language. The notice is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA takes steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that these requirements of are met.

Procedural safeguards notice. A copy of the procedural safeguards available to the parents of a child with a disability is given to the parents, at a minimum, upon initial referral for evaluation, upon each notification of an IEP meeting, upon reevaluation of the child; and upon receipt of a request for due process under **PROCEDURAL SAFEGUARDS (§300.129)**

Contents. The procedural safeguards notice includes a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577 of IDEA, and the State complaint procedures available under §§300.660-300.662 of IDEA relating to (1) Independent educational evaluation; (2) Prior written notice; (3) Parental consent; (4) Access to educational records; (5) opportunity to present complaints to initiate due process hearings; (6) The child's placement during pendency of due process proceedings; (7) Procedures for students who are subject to placement in an interim alternative educational setting; (8) Requirements for unilateral placement by parents of children in private schools at public expense; (9) Mediation; (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals; (12) Civil actions; (13) Attorneys' fees; and (14) The State complaint procedures under §§300.660--300.662, including a description of how to file a complaint and the timelines under those procedures.

Parental consent. Subject to requirements of this section described below, informed parent consent is obtained by the LEA, before conducting an initial evaluation or reevaluation and initial provision of special education and related services to a child with a disability. Consent for initial evaluation is not construed as consent for initial placement. Parental consent is not required before reviewing existing

data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by using the due process procedures, pre-hearing conference or the mediation procedures if appropriate. The LEA may not request an impartial due process hearing when written parental consent is not obtained, for instances where the parent withholds consent for the initial provision of program and services.

Failure to respond to request for reevaluation. It is the LEA's policy that informed parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. To meet the reasonable measures requirement in this section, the LEA uses procedures consistent with those in the IEP section -- **Parent participation. LEA responsibility** and **Other methods to ensure parent participation.** -- of this document.

Limitation. The LEA does not use a parent's refusal to consent to one service or activity described above to deny the parent or child any other service, benefit, or activity of the LEA.

Mediation. The LEA adheres to the procedures established for mediation under §300.506, consistent with the provisions of 22 Pa. Code §14.102(a)(2)(xx) to allow parties to resolve disputes involving the identification, evaluation and educational placement of the child and/or the provision of FAPE to the child through a mediation process which, at a minimum, are available whenever a hearing is requested under **PROCEDURAL SAFEGUARDS (§300.129)**. If a meeting is held by the LEA with the parent to encourage the use of mediation, the LEA will comply with 34 CFR §300.506(d); the 'disinterested party' would explain the benefits of the mediation process, and encourage the parents to use the process.

Requirements. The procedures meet the following requirements:

1. The mediation process is voluntary on the part of the parties; is not used by the LEA to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. A list of individuals is maintained who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
3. The cost of the mediation process, including the costs of meetings described below to encourage mediation is borne by the PA Department of Education.
4. Each session in the mediation process is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.
5. An agreement reached by the parties to the dispute in the mediation process is set forth in a written mediation agreement.
6. Discussions that occur during the mediation process are confidential and may not be used by the LEA as evidence in any subsequent due process hearings or civil proceedings, and the LEA consents, if asked as part of the mediation process, to sign a confidentiality pledge prior to the commencement of the process.

Impartial due process hearing; parent notice. The LEA may initiate a hearing relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child, except when the parent is withholding written consent for the initial placement. When a hearing is initiated, the LEA informs the parents of the availability of mediation described above. The LEA informs the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the LEA initiates a hearing under this section.

LEA responsible for conducting hearing. The hearing is conducted by the LEA directly responsible for the education of the child through the services of the Office for Dispute Resolution, under the provisions at 22 Pa. Code §14.162(p)(1). With regard to a child who is preschool aged (i.e., a child who is less than 'age of beginners' and at least 3 years of age), the Department is the agency responsible for the hearing which is conducted through the early intervention agency under the regulations of the State Board of Education under the provisions of 22 Pa. Code §14.162(p)(3).

Parent notice to the LEA. The LEA requires the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the LEA when the parent requests a hearing under this section.

Content of parent notice. The notice required above must include the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

Model form to assist parents. The LEA adopts for use the PA Department of Education developed model form to assist parents in filing a request for due process that includes the information required above.

Right to due process hearing. The LEA does not deny or delay a parent's right to a due process hearing for failure to provide the above model notice.

Impartial hearing officer. A hearing is not conducted by a person who is an LEA employee that is involved in the education or care of the child or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the LEA solely because he or she is paid by the LEA to serve as a hearing officer. The LEA keeps a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

Hearing rights. It is the LEA's policy that any party to a hearing conducted under this section, or an appeal conducted under this section, has the following rights.

1. May be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing.

4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing.
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

Additional disclosure of information. It is the LEA's policy, that at least 5 business days prior to a hearing conducted under this section, each party shall disclose to 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. A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings. Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

Findings and decision to advisory panel and general public. After deleting any personally identifiable information, the Office for Dispute Resolution transmits, on behalf of the LEA, the findings and decisions to the State advisory panel and makes those findings and decisions available to the public.

Finality of decision; appeal; impartial review. **Finality of decision.** It is the LEA's policy, that a decision made in a hearing conducted under this section is final, except that any party involved in the hearing may appeal the decision for state level review to the PA Department of Education.

Appeal of decisions; impartial review. It is the LEA's policy that any party aggrieved by the findings and decision in the hearing may appeal to PA Department of Education.

Timelines and convenience of hearings and reviews. The LEA, through the Office for Dispute Resolution, provides that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. Each hearing involving oral arguments is conducted at a time and place that is reasonably convenient to the parents and child involved.

Attorneys' fees. In any action or proceeding brought under section 615 of IDEA (Individuals with Disabilities Education Act), the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. It is the LEA's policy that funds under Part B of IDEA (Individuals with Disabilities Education Act) are not used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of IDEA (Individuals with Disabilities Education Act) and the procedural safeguards described in this document. The LEA may use funds under Part B of the Act for conducting an action or proceeding under section 615 of IDEA (Individuals with Disabilities Education Act).

Child's status during proceedings. Except when a child is placed in an appropriate interim alternative educational setting because the child carried to or possessed a weapon at school, on school premises, or at a school function, or the child knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function, during the pendency of any administrative or judicial proceeding regarding a due process complaint, unless the LEA and the parents of the child agree otherwise, the child involved in the complaint remains in his or her current educational placement.

If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, is placed in the public school until the completion of all the proceedings. If the decision of a PDE review official - appellate hearing officer - in an administrative appeal regarding a school aged student, agrees with the child's parents that a change of placement is appropriate, that placement is treated as an agreement between the LEA and the parents.

Surrogate parents. To ensure that the rights of a child are protected, if no parent can be identified, the LEA, if after reasonable efforts, cannot discover the whereabouts of a parent, or the child is a ward of the State under the laws of PA, assigns an individual to act as a surrogate parent for the child.

Criteria for selection of surrogates. The LEA trains individuals to serve as surrogate parents to ensure their knowledge and skills will provide adequate representation of the child. Except as provided below, the LEA selects a person as a surrogate who is not an employee of the Department of Education, the LEA, or any other agency that is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. The LEA may select, on a case-by-case basis, an individual to serve as a surrogate parent, including an individual who is a foster parent who is an employee of a nonpublic agency that only provides non-educational care for the child.

Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Responsibilities. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

Change of placement for disciplinary removals. For purposes of removals of a child with a disability from the child's current educational placement, it is the LEA's policy that a change of placement occurs if the removal is for more than 10 consecutive school days or the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. It is the LEA's policy that disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

Authority of school personnel. The LEA may order, to the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under the paragraph above).

After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the LEA provides services to the extent required to provide FAPE and a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if the child carries or possesses a

weapon to school or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency, or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement described above, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described above, the LEA convenes an IEP meeting to develop an assessment plan.

If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior. As soon as practicable after developing the assessment plan, and completing the assessments required by the plan, the LEA convenes an IEP meeting to develop appropriate behavioral interventions to address that behavior and implements those interventions.

If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

For purposes of this section, the following definitions apply: (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (2) Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code, means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Authority of hearing officer. An LEA hearing officer may order a change in the educational placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing, determines that the LEA has demonstrated by substantial evidence that maintaining the current educational placement of the child is substantially likely to result in injury to the child or to others; considers the appropriateness of the child's current placement; considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current educational placement, including the use of supplementary aids and services; and determines that the interim alternative educational setting that is proposed by the LEA personnel who have consulted with the child's special education teacher, meets the following requirements:

1. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP.
2. Includes services and modifications to address the behavior that are designed to prevent the behavior from recurring.

As used in this section, the term "substantial evidence" means beyond a preponderance of the evidence.

Determination of setting. The interim alternative educational setting is determined by the IEP team and other qualified personnel in a meeting.

Additional requirements. Any interim alternative educational setting in which a child is placed is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP, include services and modifications to address the behavior that are designed to prevent the behavior from recurring.

Manifestation determination review. If an action is contemplated regarding behavior or involving a removal that constitutes a change of placement for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children, not later than the date on which the decision to take that action is made, the parents are notified of that decision and provided the procedural safeguards notice, and immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review is conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

Individuals to carry out review. A manifestation determination review is conducted by the IEP team and other qualified personnel in a meeting.

Conduct of review. In carrying out a manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel:

1. First, consider in terms of the behavior subject to disciplinary action, all relevant information, including evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child, observations of the child, and the child's IEP and placement; and
2. Then determine that in relationship to the behavior subject to disciplinary action:
 - a. The child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 - b. The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 - c. The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

Decision. If the IEP team and other qualified personnel determine that any of the standards above were not met, the behavior must be considered a manifestation of the child's disability.

Meeting. The manifestation review determination may be conducted at the same IEP meeting that is convened to consider the need for a functional behavioral assessment/review or development of a behavior plan.

Deficiencies in IEP or placement. If, in the manifestation review determination, the LEA identifies deficiencies in the child's IEP or placement or in their implementation, it takes immediate steps to remedy those deficiencies.

Determination that behavior was not manifestation of disability. If the result of the manifestation review determines that the behavior of the child with a disability was not 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 in which they would be applied to children without disabilities, except that the IEP team must determine what services may be necessary to ensure FAPE.

Additional requirement. If the LEA initiates disciplinary procedures applicable to all children, the LEA transmits the special education and disciplinary records of the child with a disability for consideration by the person or persons making the final determination regarding the disciplinary action.

Child's status during due process proceedings. Except as provided in the section **Child's status during proceedings.**, regarding interim alternative placements, the child remains in his/her current educational placement during any proceedings if a parent requests a hearing to challenge a determination, made through the manifestation review, that the behavior of the child was not a manifestation of the child's disability.

Parent appeal. If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under these disciplinary provisions, the parent may request a hearing. The LEA arranges for an expedited hearing if a hearing is requested by a parent.

Review of decision. In reviewing a decision with respect to the manifestation determination, the LEA hearing officer shall determine whether the LEA has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of this section. In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer shall apply the standards under **Authority of Hearing Officer** above.

Placement during appeals. If a parent requests a hearing or an appeal regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child remains in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent and the LEA agree otherwise.

Current placement. If a child is placed in an interim alternative educational setting and the LEA proposes to change the child's placement after expiration of the placement in interim alternative educational setting, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided under **Expedited hearing.**

Expedited hearing. If the LEA maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing. The procedures in this paragraph may be repeated, as necessary.

Protections for children not yet eligible for special education and related services. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with the next paragraph of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of knowledge. The LEA deems itself to have knowledge that a child is a child with a disability if the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the LEA that the child is in need of special education and related services; the behavior or performance of the child demonstrates the need for these services; the parent of the child has requested an evaluation of the child under IDEA; or the teacher of the child, or other personnel of the LEA, has expressed concern about the behavior or performance of the child to the director of special education of the LEA or to other personnel in accordance with the LEA's established child find or special education referral system.

Exception. A LEA would not be deemed to have knowledge under this section if, as a result of receiving the information specified under **Basis of knowledge.**, the LEA either conducted an evaluation and determined that the child was not a child with a disability under 34 CFR Part 300 or determined that an evaluation was not necessary; and provided notice to the child's parents of the LEA's determination.

Conditions that apply if no basis of knowledge. If the LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors.

Limitations. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by the LEA, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA provides special education and related services.

Expedited due process hearings. Expedited due process hearings meet the requirements of the hearing section of this document. In the case of an expedited due process hearing, a written decision will be mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions. This timeline is the same for hearings requested by parents or the LEA.

Referral to and action by law enforcement and judicial authorities. The LEA, when reporting a crime committed by a child with a disability, transmits copies of the special education and disciplinary records of the child for consideration by the appropriate authorities to whom it reports the crime. The

LEA, when reporting a crime under this provision transmits copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

SECTION VII

LEAST RESTRICTIVE ENVIRONMENT (LRE) (§300.130)

General LRE Requirements.

It is the LEA's policy that for children with disabilities, including children in public or private institutions or other care facilities, for whom a free appropriate public education is owed by the LEA, to the maximum extent appropriate, are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Continuum of alternative placements. The LEA provides for a continuum of alternative placements to meet the needs of children with disabilities for special education and related services. The continuum includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and the LEA makes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, the LEA placement decision, is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the LRE provisions of this section. The child's placement: (1) is determined at least annually; (2) is based on the child's IEP; and (3) is as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. The IEP team for students with a disability who are convicted and in adult prisons, may modify the student's educational placement if it is demonstrated that a bona fide security or compelling penological interest cannot otherwise be accommodated.

Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interests groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available, each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

SECTION VIII

TRANSITION OF CHILDREN FROM PART C TO PRESCHOOL PROGRAM (§300.132)

When an eligible young child turns 3 years of age, it is the LEA's policy that the Individual Family Services Plan, where one exist, is converted to an IEP by an IEP team, in accordance with Chapter 14 and this application (see “Individualized Education Program” above), and such that the IEP is effect as of the child's third birthday. A representative of the *early intervention agency*, as defined under §14.101, will participate in the transition planning conference.

SECTION IX

CHILDREN IN PRIVATE SCHOOLS (§300.133)

Part 1 – Children with Disabilities Placed by Local Educational Agency

The policies under Part 1 pertain to children with disabilities who are placed by this LEA in order to receive a free appropriate public education.

Each child with a disability placed in or referred to a private school by this LEA:

- (a) Is provided special education and related services in conformance with an IEP that meets Part B of the Act at no cost to the parents;
- (b) Is provided an education that meets the standards that apply to education provided by this LEA, and
- (c) Is provided all the rights of the child with a disability who is served by this LEA.

Except when a placement will result in reduplication of distribution, the Intermediate Unit (IU) will distribute the following standards to the private school and facility when the student with a disability is placed or referred by an *Agency* (under §14.101) located within the IU's geographical area:

- 22 Pa. Code Chapter 4 - *Academic Standards and Assessment*
- 22 Pa. Code Chapter 14 - *Special Education Services and Programs*
- 22 Pa. Code Chapter 711 - *Charter School Services and Programs for Children with Disabilities.*

Part 2 - Children with Disabilities Enrolled by their Parents in Private Schools when FAPE is at issue.

The policies under Part 2 pertain to children with disabilities enrolled by their parents in private schools because the parent and this LEA disagree regarding the availability of a program appropriate for the child.

- (a) Children with disabilities enrolled by their parents in private schools when FAPE is at issue shall be included in the population whose needs are addressed under Part 3 below.
- (b) A dispute regarding the availability of a program appropriate for a child and the question of financial responsibility raised by the parent under this Part, shall be subject to due process.

Part 3 – Children with Disabilities Enrolled by Their Parents in Private Schools

The policies under this Part pertain to children with disabilities enrolled by their parents in private school or facilities other than children with disabilities covered under Part 1.

- (a) Child Find.

With regard to “Child Find” duties under §300.125, the school district, as established under Public School Code §952, will meet the duties owed to school aged students and the intermediate unit will meet these duties for children who are less than school age, except where the intermediate unit is not the holder of the Mutually Agreed-upon Written Arrangement. This LEA will consult with appropriate representatives of private schools on how to carry out “Child Find” activities.

(b) Provision of Services.

- (1) This LEA shall provide private school children with disabilities with special education and related services in accordance with §§300.454-300.456 consistent with their number and location.
- (2) The LEA assures that a Services Plan (SP) shall be developed for each private school child with a disability who has been designated to receive special education and/or related services.

(c) Expenditures.

- (1) This local educational agency will spend on providing special education and related services to private school children with disabilities--
 - (i) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under §611(g) of the IDEA as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and
 - (ii) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under §619(g) of the IDEA as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.
- (2) This LEA, where required as a subgrantee of the Pennsylvania Department of Education, will:
 - (i)
 - (A) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and
 - (B) Ensure that this count of private school children with disabilities is conducted on December 1.
 - (ii) The child count will be used to determine the amount that will be spent on providing special education and/or related services to private school children with disabilities in the next subsequent fiscal year.
- (3) Expenditures for child find activities will not be considered in determining whether the LEA has met the requirements of (c) above.

- (d) With regard to consultation with representatives of private school children with disabilities, this local educational agency, where required as a subgrantee of the Pennsylvania Department of Education, will:
- (1) Consult in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of (c), the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide--
 - (A) Which children will receive services under (b);
 - (B) What services will be provided;
 - (C) How and where the services will be provided; and
 - (D) How the services provided will be evaluated.
 - (2) Give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to consultation requirements in (d).
 - (3) The consultation in (d) will occur, where required as a subgrantee of the Pennsylvania Department of Education, before this LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under **Part 3**, relating to Children with Disabilities Enrolled by their Parents in Private Schools.
 - (4) This LEA, if it is the agency providing the services, will make the final decisions with respect to the services to be provided to private school children with disabilities.
- (e) For each child served under **Part 3** relating to Children with Disabilities Enrolled by their Parents in Private Schools, this LEA, if it is the agency providing the services, will:
- (1) Initiate and conduct meetings to develop, review, and revise a “Services Plan” for the child, in accordance with (f) below; and
 - (2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, this LEA will use other methods to ensure participation by the private school, including individual or conference telephone calls.
- (f) Services.
- (1) The services provided to private school children with disabilities will be provided by personnel meeting the same standards as personnel providing services in the public schools.
 - (2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
 - (3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
 - (4) Services will be provided in accordance with a “Services Plan” that describes the specific special education and/or related services that this LEA will provide to the child.
 - (5) The “Services Plan” will, to the extent appropriate, meet the requirements of 34 CFR §300.347, with respect to the services provided, and be developed, reviewed, and revised consistent with 34 CFR §§300.342-300.346.

- (g) If necessary for the child to benefit from or participate in the services provided under **Part 3**, a private school child with a disability must be provided transportation--
- (1) From the child's school or the child's home to a site other than the private school; and
 - (2) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (h) The LEA does not use funds available under IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site; and the classes include students enrolled in public schools and students enrolled in private schools.
- (i) The LEA does not use funds provided under IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA uses funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.
- (j) The LEA may use funds available under IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.
- (k) The LEA may use funds available under IDEA to pay for the services of an employee of a private school to provide services under this section if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.
- (l) The LEA keeps title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under IDEA for the benefit of private school children with disabilities. The LEA may place equipment and supplies in a private school for the period of time needed for the program. The equipment and supplies placed in a private school are used only for IDEA-Part B purposes and can be removed from the private school without remodeling the private school facility. The LEA removes equipment and supplies from a private school if the equipment and supplies are no longer needed for IDEA-Part B purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA-Part B purposes. No funds under Part B of the Act are used by the LEA for repairs, minor remodeling, or construction of private school facilities.

SECTION X

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (§300.135)

With regard to the requirements of *Comprehensive System of Personnel Development*, this LEA adheres to its CSPD Plan on file at the PA Department of Education that is described within the LEA's approved Special Education Plan under 22 Pa. Code §14.104.

SECTION XI

PERSONNEL STANDARDS (§300.136)

The LEA maintains procedures for all instructional and supervisory personnel, upon the statutory authority of the School Code of 1949 and implemented consistent with State Board of Education's regulations at 22 Pa. Code Chapter 49 (Certification of Professional Personnel) consistent with §300.136. This includes provisions for the highest standard for entry level, as established by the Department of Education for instructional and administrative personnel, paraprofessional and school psychologist and all other professionals, including related personnel, as established by the Department of State, Bureau of Professional and Occupational Affairs.

SECTION XII

PERFORMANCE GOALS AND INDICATORS (§300.137)

The LEA, through its submission and approval of its special education plan to the Department of Education under the provisions of 22 Pa. Code §14.104, implements activities described in the LEA's Comprehensive System of Personnel Development plan to meet the requirements consistent with the State's policies under §300.137, regarding Performance Goals and Indicators.

SECTION XIII

PARTICIPATION IN ASSESSMENTS (§300.138)

The LEA adopts the following policies regarding Participation in Assessments:

1. Except for students with a disability who are convicted as adults under State law and incarcerated in adult prisons, children with disabilities are included in general LEA-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.
2. Implement, as appropriate, Department of Education developed guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in LEA-wide assessment programs.
3. Administer, as appropriate, alternate assessments for those children who cannot participate in LEA-wide assessment programs.
4. Not later than July 1, 2000, conduct alternate assessments for those children who cannot participate in LEA-wide assessment programs.

SECTION XIV

METHODS FOR ENSURING SERVICES (§300.142)

With regard to services required to provide FAPE to an eligible child, the LEA does not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act; does 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 pursuant to this part, but as described below, may pay the cost that the parent otherwise would be required to pay; and does not use a child's benefits under a public insurance program if that use would decrease available lifetime coverage or any other insured benefit; 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; increase premiums or lead to the discontinuation of insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

Children with disabilities who are covered by private insurance. With regard to services required to provide FAPE to an eligible child, the LEA may access a parent's private insurance proceeds only if the parent provides informed consent consistent with the informed consent requirements of this document. Each time the LEA proposes to access the parent's private insurance proceeds, it obtains parent consent as described immediately above; and informs the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

Use of Part B funds. If the LEA is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its IDEA-Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

Proceeds from public or private insurance. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If the LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in IDEA.

SECTION XV

INFORMATION FOR SEA (§300.240)

The LEA shall provide the State Educational Agency with information necessary to enable the SEA to carry out its duties under IDEA-Part B including, with respect to §§ 300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.