

ATTACHMENT TO SECTION IV
(State Administration)
of Part B Annual State Application: FFY 2021

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The following list identifies rules, regulations, and policies that are State-imposed (not required by the IDEA or Federal regulations).

The Delaware Department of Education (“DDOE”) adopted into state regulation most of the federal regulations implementing Part B of the IDEA. Any rule or regulation that is state-imposed (rather than a federal requirement) is italicized throughout DDOE’s regulations at 14 DE Admin Code §§ 922 through 929.

State Rule, Regulation, and/or Practice	Brief Description
14 DE Admin Code § 922	<p style="text-align: center;">Exhibit B</p> <p style="text-align: center;">922 Children with Disabilities Subpart A, Purposes and Definitions</p> <p>Non-regulatory note: Some sections of this regulation are shown in <i>italics</i>. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2) <u>U.S.C. §1407(a)(2)</u>). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.</p> <p>1.0 Purposes</p> <p>1.1 <i>Regulations 922 to 929 (14 DE Admin. Code 922 to 929) implement, complement and supplement the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 et seq.), its implementing regulations (34 CFR part 300), and 14 Del.C. Ch. 31 (with the exception of Subchapter IV). They are designed and intended to insure ensure compliance with state and federal laws concerning the education of children with disabilities. To the extent these regulations conflict with the federal regulations implementing Part B of the Individuals with Disabilities Education Act, the federal regulations shall prevail. Further, the purposes of these regulations are:</i></p> <p>1.1.1 To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to</p>

meet their unique needs and prepare them for further education, employment, and independent living;

- 1.1.2 To ensure that the rights of children with disabilities and their parents are protected;
- 1.1.3 To assist local educational agencies, educational service agencies, and *public* agencies to provide for the education of all children with disabilities; and
- 1.1.4 To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d); **14 Del.C. §3110**)

10 DE Reg. 1816 (06/01/07)

2.0 Applicability of These Regulations to State and Local Agencies

2.1 These regulations apply to the State of Delaware as a recipient of payments under Part B of the Individuals with Disabilities Education Act, as amended.

2.2 Public agencies within the State of Delaware. The provisions of these regulations apply to all political subdivisions of the State of Delaware that are involved in the education of children with disabilities, including:

2.2.1 The Delaware Department of Education.

2.2.2 Local educational agencies (“LEAs”), educational service agencies (“ESAs”), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

2.2.3 *Any other State agency or school involved in the education of children with disabilities, including but not limited to, the Delaware School for the Deaf, the Delaware Autism Program, the Department of Services for Children, Youth and Their Families, and its divisions, programs, or schools, and the Department of Health and Social Services, and its divisions, units, or programs.*

2.2.4 *Any juvenile or adult correctional facility involved in the education of children with disabilities, including but not limited to, facilities operated by the Department of Services for Children, Youth and Their Families and its divisions, and the Department of Corrections (through “the Prison Education Program”) and are binding on each public agency in Delaware that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.*

2.2.5 Private Schools and Facilities: Each public agency in the State of Delaware is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of **14 DE Admin. Code 923.48.0**.

(Authority: 20 U.S.C. 1412; **14 Del.C. §3110**)

10 DE Reg. 1816 (06/01/07)

3.0 Definitions Applicable to Regulations 922 to 929:

“Act” means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a); **14 Del.C. §3110**)

“Adverse Effect on Educational Performance” means a significant and consistent negative influence of the disability on the student’s educational performance, as evidenced by their skills in the academic, developmental, or functional domains (e.g. literacy, mathematics, adaptive skills, mobility, pre-vocational and vocational skills, behavior, social/emotional adaptation, self-help skills, and communication).

(Authority: **14 Del.C. §3110**)

“Assistive Technology Device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1); **14 Del.C. §3110**)

“Assistive Technology Service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

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

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

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

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

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); **14 Del.C. §3110**)

“Charter School” means ~~given~~ the same as the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C.7221i(1); **14 Del.C. §§3110 and 505(a)**)

“Child” or “Student” means a person between *birth and August 31st of the school year after the person turns 21.*

(Authority: 20 U.S.C. § 1412(a)(1); **14 Del.C. §3110**)

“Child with a Disability” means a child or student evaluated in accordance with **14 DE Admin. Code 925.4.0 through 925.12.0** ~~as having intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment~~

(including blindness), a serious emotional disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, 925.6.0 and determined to be eligible for one (1) or more of the following educational classifications: Autism, Developmental Delay, Deaf-Blind (also referred to as "Dual Sensory Impairment"), Emotional Disability, Hearing Impairment (also referred to as "deaf" or "hard of hearing"), Specific Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, Speech/Language Impairment, Traumatic Brain Injury, and Visual Impairment Including Blindness, and who, by reason thereof, needs special education and related services.

~~Except as further provided in this paragraph, A child will not be considered a child with a disability under these regulations if it is determined, through an appropriate evaluation under 14 DE Admin. Code 925.4.0 through 925.12.0~~ 925.6.0, that a child has one of the disabilities identified in the definitions of disability terms below, is eligible for an educational classification, but only needs a related service and not special education ~~the child is not a child with a disability under these regulations~~. If, consistent with the definition of Special Education in this section, the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

~~Child with a disability for children aged three (3) through nine (9), subject to the conditions described in 14 DE Admin. Code 923.11.0, includes a child who is experiencing developmental delays, as defined in the eligibility requirements for 14 DE Admin. Code 925, measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.~~

(Authority: 20 U.S.C. 1401; 14 Del.C. §3110)

Definitions of Disability Terms: ~~The specific disability terms used in this definition of a child with a disability are defined as follows:~~

~~"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.~~

~~Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in this section.~~

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

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

~~“Emotional Disability” means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined in this section. *The term “emotional disturbance” is sometimes used as a substitute for the term “emotional disability” and shall be considered an equivalent term for purposes of these regulations.*~~

~~“Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. *The term “hard of hearing” is sometimes used as a substitute for the term “hearing impairment” and shall be considered an equivalent term for purposes of these regulations.*~~

~~“Intellectual Disability” means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. *The terms “mental retardation” or “mental disability” are sometimes used as substitutes for the term “intellectual disability” and shall be considered equivalent terms for purposes of these regulations.*~~

~~“Multiple Disabilities” means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.~~

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

~~“Other Health Impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette~~

syndrome, and adversely affects a child's educational performance.

“Specific Learning Disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation.

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

“Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

“Visual Impairment Including Blindness” means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30); **14 Del.C. 3110**)

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

(Authority: 20 U.S.C. 1414(a)(1)(D); **14 Del.C. §3110**)

“Core Academic Subjects” means English, reading or language arts, mathematics, science, world languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4); **14 Del.C. §3110**)

“Day” means calendar day unless otherwise indicated as business day or school day.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Business Day” means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“School Day” means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Department of Education” or **“DOE”** means the Delaware Department of Education.

“Educational Classification” means one (1) of the 12 disability categories under which children may be eligible for special education and related services in Delaware.

(Authority: 14 Del.C. §3110)

“Educational Service Agency” or **“ESA”** means a regional public ~~multi-service~~ multi-service agency authorized by the State of Delaware to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State of Delaware. The term includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5); 14 Del.C. §3110)

“Elementary School” means a nonprofit institutional day or residential school (including a public elementary charter school) that provides elementary education, as determined under Delaware law.

(Authority: 20 U.S.C. 1401(6); 14 Del.C. §3110)

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

(Authority: 20 U.S.C. 1401(7); 14 Del.C. §3110)

“ESEA” means the Elementary and Secondary Education Act of 1965 (20 U.S.C. §7801). It was reauthorized in 2015 as the Every Student Succeeds Act (ESSA).

“ESSA” means the Every Student Succeeds Act, which is the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §6300 et seq.

“Evaluation” means procedures used in accordance with **14 DE Admin. Code 925.4.0 through 925.12.0-925.6.0** to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c); **14 Del.C. §3110**)

“Evaluation Summary Report” or “ESR” means a report that documents the IEP team’s review of data and discussion of the eligibility determination. A template can be provided by the Delaware Department of Education.

(Authority: 20 U.S.C. 1414(b)(4); **14 Del.C. §3110**)

“Excess Costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting amounts received under Part B of the Act; under Part A of Title I of the ESEA; under Parts A and B of Title III of the ESEA; and any State or local funds expended for programs that would qualify for assistance under any of the foregoing federal programs, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8); **14 Del.C. §3110**)

“Free Appropriate Public Education” or “FAPE” means special education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the DOE, including the requirements of these regulations; include an appropriate preschool, elementary school, or secondary school education in Delaware; and are provided in conformity with an individualized education program (IEP) that meets the requirements of **14 DE Admin. Code 925.20 925.7.0 through 925.24.0 925.11.0**; **provide significant learning to the child with a disability; and confer meaningful benefit on the child with disability gauged to the child with a disability’s potential.**

(Authority: 20 U.S.C. 1401(9); **14 Del.C. §3110**)

“Highly Qualified Special Education Teachers” means:

~~1.0 Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term “highly qualified” has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also include the requirements described in 2.0 of this definition, and the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs 3.0 and 4.0 of this definition.~~

~~2.0 Requirements for special education teachers in general. When used with respect to any public elementary school or secondary school special education teacher teaching in Delaware, highly qualified requires that the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in Delaware as a special education teacher, (except that when used with respect to any teacher teaching in a public charter school, “highly qualified” means that the teacher meets the certification or licensing requirements set forth in Delaware’s charter school law (**14 Del.C. Ch. 5**)). In addition, the teacher must not have had special education certification or licensure~~

~~requirements waived on an emergency, temporary, or provisional basis and must hold at least a bachelor's degree.~~

~~2.1 A teacher will be considered to meet the standard in 2.0 of this definition if the teacher is participating in an alternative route to special education certification program under **14 Del.C. Ch. 12, Subch. VI.**~~

~~2.2 Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the requirements in 2.0 of this definition or the teacher holds at least a bachelor's degree and meets the requirements in 2.1 of this definition.~~

~~3.0 Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), "highly qualified" means the teacher, whether new or not new to the profession, must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards.~~

~~4.0 Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, "highly qualified" means that the teacher must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); or, in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or, in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).~~

~~5.0 Rule of construction: Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular DOE or LEA employee to be highly qualified, or to prevent a parent from filing a complaint~~

~~under 14 DE Admin. Code 923.51.0 through 923.53.0 about staff qualifications with the DOE.~~

~~6.0 Applicability of definition to ESEA; and clarification of new special education teacher. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. For purposes of 4.0 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.~~

~~7.0 Private school teachers not covered. The requirements in this definition do not apply to private school teachers hired or contracted by local education agencies to provide equitable services to parentally placed private school children with disabilities under 14 DE Admin. Code 923.38.~~

~~(Authority: 20 U.S.C. 1401(10); 14 Del.C. §3110)~~

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

(Authority: 20 U.S.C. 1401(11); 14 Del.C. §3110)

“Include” or “Such As” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Authority: (Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Individualized Education Program” or **“IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with **14 DE Admin. Code 925.20.0 925.7.0 through 925.24.0 925.11.0.**

(Authority: 20 U.S.C. 1401(14); 14 Del.C. §3110)

“Individualized Education Program Team” or **“IEP Team”** means a group of individuals ~~described in 14 DE Admin. Code 925.21.0~~ that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B); 14 Del.C. §3110)

“Institution of Higher Education” has the meaning given means the same as the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); ~~an~~ and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

(Authority: 20 U.S.C. 1401(17); 14 Del.C. §3110)

~~**“Limited English Proficient”** has the meaning given the term in section 9101(25) of the ESEA.~~

“Limited English Proficient” or **“English Learner”** means an individual who meets the following four requirements: (1) aged 3 through 21 years old; (2) who is enrolled or preparing to enroll in an elementary school or secondary school; (3) who was not born in the United States or whose native language is a language other than English, who is a Native American or Alaska Native, or a native resident of the outlying areas, and who comes from an environment where a language other than English has had a significant

impact on the individual's level of English language proficiency, or who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (4) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

(Authority: 20 U.S.C. 1401(18); **14 Del.C. §3110**)

“**Local Educational Agency**” or “**LEA**” means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(Authority: 20 U.S.C. 1401(19); **14 Del.C. §3110**)

“**Multi-Tiered System of Support**” or “**MTSS**” means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision-making to meet the academic and nonacademic needs of all students. High quality core academic instruction and nonacademic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

“**Native Language**” means, when used with respect to an individual who is limited English proficient, the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except that when used in reference to direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, “native language” means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C.1401(20); **14 Del.C. §3110**)

“**Parent**” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver’s School Authorization executed in compliance with **14 Del.C. §202(f)(1)** is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with **14 DE Admin. Code 926.19.0** or section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, ~~must~~ shall be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions

for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); **14 Del.C. §3110**)

"Parent Training and Information Center" means a center assisted under sections 671 or 672 of the Act, *and includes the Parent Information Center of Delaware, Inc.*

(Authority: 20 U.S.C. 1401(25); **14 Del.C. §3110**)

"Personally Identifiable" means information that contains 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.

(Authority: 20 U.S.C. 1415(a); **14 Del.C. §3110**)

"Public Agency" means the Department of Education, LEAs, ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11); **14 Del.C. §3110**)

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

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the preceding paragraph) that are determined by the IEP ~~Team~~ team to be necessary for the child to receive FAPE; or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in **14 DE Admin. Code 923.13.2**.

Definitions of Related Services Terms: The specific related services terms used in this definition are defined as follows:

"Audiology" includes the identification of children with hearing loss, and determination of the range, nature, and degree of hearing loss, including referral for

medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

“Counseling Services” includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

“Early identification and Assessment of Disabilities in Children” means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

“Interpreting Services” means the following when used with respect to children who are deaf or hard of hearing: Oral transliteration services; cued language transliteration services; sign language transliteration and interpreting services and transcription services such as communication access real time translation (CART), C Print, and Type Well; and special interpreting services for children who are ~~deaf-blind~~ deaf-blind.

“Medical Services” includes services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

“Occupational Therapy” means services provided by a qualified occupational therapist; therapist and includes: improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

“Orientation and Mobility Services” means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:

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

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

To understand and use remaining vision and distance low vision aids; and

Other concepts, techniques, and tools.

“Parent Counseling and Training” means assisting parents in understanding the special needs of their child, providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to

support the implementation of their child's IEP.

“Physical Therapy” means services provided by a qualified physical therapist.

“Psychological Services” includes administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

“Recreation” includes assessment of leisure function, therapeutic recreation services recreation programs in schools and community agencies and leisure education.

“Rehabilitation Counseling Services” means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

“School Health Services” and **“School Nurse Services”** means health services designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

“Scientifically Based Research” means the same as the term defined in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi); 14 Del.C. §3110)

“Secondary School” means a nonprofit institutional day or residential school, (including a public secondary charter school) that provides secondary education, as determined under Delaware law, except that it does not include any education beyond grade twelve (12).

(Authority: 20 U.S.C. 1401(27); 14 Del.C. §3110)

“Secretary” means the Secretary of Education of the Delaware Department of Education unless otherwise indicated in the text of these regulations.

(Authority: 14 Del.C. §3110)

“Services Plan” means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 14 DE Admin. Code 923.32.0, and is developed and implemented in accordance with 14 DE Admin. Code 923.37.0 through 923.39.0.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 Del.C. §3110)

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

“Special Education” ~~means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. Special education includes each of the following, if the services otherwise meet the requirements of this definition: Speech-language pathology services, travel training and vocational education.~~

“Speech Language Pathology Services” includes identifying children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding ~~speech and language~~ communicative impairments.

“Transportation” includes travel to and from school and between schools, travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26); **14 Del.C. §3110**)

~~“Scientifically Based Research” has the meaning given the term in section 9101(37) of the ESEA.~~

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi); **14 Del.C. §3110**)

~~“Secondary School” means a nonprofit institutional day or residential school, (including a public secondary charter school) that provides secondary education, as determined under Delaware law, except that it does not include any education beyond grade twelve (12).~~

(Authority: 20 U.S.C. 1401(27); **14 Del.C. §3110**)

~~“Services Plan” means a written statement that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with **14 DE Admin. Code 923.32.0**, and is developed and implemented in accordance with **14 DE Admin. Code 923.37.0 through 923.39.0**.~~

(Authority: 20 U.S.C. 1412(a)(10)(A); **14 Del.C. §3110**)

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Education unless otherwise indicated in the text of these regulations.

(Authority: **14 Del.C. §3110**)

“Special Education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education.

Special education includes each of the following, if the services otherwise meet the requirements of the preceding paragraph: Speech language pathology services, travel training and vocational education.

Definitions of Special Education Terms: The specific terms used in the definition of special education are defined as follows:

“At No Cost” means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

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

“Specially Designed Instruction” means adapting, as appropriate to the needs of an eligible child under these regulations, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

“State” means the State of Delaware.

(Authority: 20 U.S.C. 1401(31); **14 Del.C. §3110**)

“State Educational Agency” or **“SEA”** means the Delaware Department of Education.

(Authority: 20 U.S.C. 1401(32); **14 Del.C. §3110**)

“Student” or **“Child”** means a person between birth and August 31st of the school year after the person turns 21.

(Authority: 20 U.S.C. § 1412(a)(1))

“Supplementary Aids and Services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with **14 DE Admin. Code 923.14** through 923.16.0.

(Authority: 20 U.S.C. 1401(33); **14 Del.C. §3110**)

“These Regulations” means **14 DE Admin. Code 922 through 929. Children with Disabilities, Subparts A through I unless the context clearly indicates otherwise.**

(Authority: 14 Del.C. §3110)

“Transition Services” means a coordinated set of activities for a child with a disability that is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.

Transition services include instruction, related services, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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

(Authority: 20 U.S.C. 1401(34); 14 Del.C. §3110)

“Travel Training” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

“Universal Design” means the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35); 14 Del.C. §3110)

“Vocational Education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29); 14 Del.C. §3110)

“State” means the State of Delaware.

(Authority: 20 U.S.C. 1401(31); 14 Del.C. §3110)

“State Educational Agency” or “SEA” means the Delaware Department of Education.

(Authority: 20 U.S.C. 1401(32); 14 Del.C. §3110)

~~“Supplementary Aids and Services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 14 DE Admin. Code 923.14 through 923.16.0.~~

(Authority: 20 U.S.C. 1401(33); 14 Del.C. §3110)

~~“These Regulations” means 14 DE Admin. Code 922 through 929, Children with Disabilities, Sub Parts A through I (14 DE Admin. Code 922 to 929) unless the context clearly indicates otherwise.~~

	<p>(Authority: 14 Del.C. §3110)</p> <p>“Transition Services” means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.</p> <p>Transition services include instruction, related services, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.</p> <p>Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.</p> <p>(Authority: 20 U.S.C. 1401(34); 14 Del.C. §3110)</p> <p>“Universal Design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.</p> <p>(Authority: 20 U.S.C. 1401(35); 14 Del.C. §3110)</p> <p>“Ward of the State” means a child who, as determined by the state where the child resides, is a foster child, a ward of the state; or in the custody of a public child welfare agency, including, but not limited to, the Delaware Department of Services for Children, Youth, and Their Families.</p> <p>(Authority: 20 U.S.C. 1401(36); 14 Del.C. §3110)</p> <p>10 DE Reg. 1816 (06/01/07) 14 DE Reg. 1053 (04/01/11) 15 DE Reg. 339 (09/01/11) 20 DE Reg. 116 (08/01/16) 24 DE Reg. 11 (07/01/21) (Implementation Date)</p>
<p>14 DE Admin Code § 923.5.1.2.3</p>	<p><u>Parent Councils</u></p> <p>Each school district and charter school enrolling any child with a disability shall, on an annual basis, contact the parents of each such child to attempt to facilitate the creation and maintenance of a Parent Council for the parents of students with disabilities.</p> <p>Parent Councils will advocate generally for students with disabilities and provide person-to-person support with individual parents and children. Each school district and charter school shall collaborate and coordinate with existing parent groups and other information and support groups to facilitate creation, maintenance, and effectiveness of the Parent Councils.</p>

<p>14 DE Admin Code § 923.7.3</p>	<p><u>Transportation</u></p> <p>When special transportation needs are identified in an IEP, transportation must be deemed a related service, and provided at the expense of the public agency, including the costs of travel to and from school and between schools, and any required specialized equipment. Transportation incidental to the educational program of a child with a disability shall not be at the expense of the public agency. Travel arrangements shall be made in consultation with the public agency's transportation representative when unusual requirements are necessary for a child with a disability. (Authority: 34 C.F.R. § 300.107)</p>
<p>14 DE Admin Code § 923.9.0</p>	<p><u>Full Educational Opportunity; Length of School Day; Compulsory School Attendance</u></p> <p>State regulations require each public agency to ensure full educational opportunity is offered to its eligible children with disabilities. The minimum length of the school day for a child with a disability in K-12 must be the same as it is for non-disabled children. The minimum length of the school day for children with disabilities in pre-K must approximate that of non-disabled pre-K children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for at least 5 hours a week of instruction. State regulations further specify compulsory school attendance requirements in accordance with state law apply to children with disabilities. (Authority: 34 C.F.R. § 300.109)</p>
<p>14 DE Admin Code § 923.10.0</p>	<p><u>Vocational and Career Technical Programs and Services</u></p> <p>State regulations require each public agency to ensure children with disabilities have available to them a variety of educational programs and services available to non-disabled children in the area served by the agency, including arts, music, industrial arts, consumer, and homemaking education, and vocational and career technical programs and services. Each public agency must provide assurances to the DOE it will assist in fulfilling the transitional service requirement of the state regulations, and ensure the provision of a vocational and career technical programs in the least restrictive environment to ensure equal access by children with disabilities. (Authority: 34 C.F.R. § 300.110)</p>
<p>14 DE Admin Code § 923.11.0</p>	<p><u>Child Find</u></p> <p>State regulations outline procedures to ensure all children in need of special education are identified, located, and evaluated. State regulations also establish practices and procedures for identifying children in need of general education interventions consistent with response to intervention procedures.</p>
<p>14 DE Admin Code § 923.14.4</p>	<p><u>Interagency Agreements</u></p> <p>When a child's IEP team determines that the child's needs cannot be met appropriately in the LEA of residence or other public agency, inter-LEA or interagency programs shall be considered within least restrictive environment requirements. When special education and related services for children with disabilities are provided in whole, or in part, by an LEA or LEAs, other than the LEA of residence, a written interagency agreement must be developed between or among the LEAs and meet the criteria outlined in state regulations.</p>

<p>14 DE Admin Code § 923.49.5</p>	<p><u>General Supervision and Procedural Safeguards</u></p> <p>In addition to any other authority under the state regulations or State law, the DDOE may use any of the following mechanisms to identify and correct noncompliance and to document and exercise its general supervisory responsibilities: interagency agreements; compliance monitoring; dispute resolution systems; general project coordination and contracting; specific program evaluations; personnel systems; public dissemination of information; and financial aid and administrative audits and reporting. The DDOE may use any reasonable method to collect, analyze and verify information to monitor compliance with Part B and state regulations. Monitoring methods may include, but are not limited to, use of offsite review, on site review, letters of inquiry, and follow up and verification of specific activities. Potential noncompliance may be identified from any generally reliable source of information. The DDOE shall document its monitoring activity through correspondence and reports. The DDOE shall notify a public agency in writing when it identifies noncompliance and the notice shall describe each corrective action which shall be taken, including a reasonable time frame for submission of a corrective action plan, and require that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency shall take to remedy the identified areas of noncompliance. All noncompliance shall be corrected within one year from when the DDOE identifies the noncompliance. The DDOE shall have the authority to enforce legal obligations under the regulations and to compel correction of deficiencies in program operations and other identified noncompliance by any mechanism available under State or federal law. The DDOE shall distribute the regulations, required and model forms, guidance, and letters of general notification to all public and private agencies providing services to children with disabilities and determine the method of dissemination.</p>
<p>14 DE Admin Code § 923.53.2.3.6</p>	<p><u>Administrative Complaints</u></p> <p>When filing an administrative complaint, state regulations request the complainant to include a description of the attempts made to resolve the issue(s) prior to filing the complaint, if any.</p>
<p>14 DE Admin Code § 924.1.0</p>	<p><u>Condition of Assistance</u></p> <p>Each public agency providing services to children with disabilities must use any forms or procedures as from time to time are specifically developed or promulgated by the DDOE.</p>
<p>14 DE Admin Code § 924.29.0 14 DE Admin Code § 252</p>	<p><u>Discipline Record</u></p> <p>State regulations establish procedures for maintaining the school discipline records of a child with a disability. (Authority: 34 C.F.R. § 300.229)</p>

<p>14 DE Admin Code § 924.9.1.2</p>	<p><u>Charter School Designee</u></p> <p>No later than September 1 of each school year each charter school shall identify at least one professional staff member who holds a current certification in any area of special education in Delaware. Training shall be completed by September 30 of the current school year. The designee shall complete annual training approved by DOE regarding the legal responsibilities of charter schools with respect to preparation of Individual Education Programs for students with disabilities and resources available to charter schools to assist in preparation of such programs.</p> <p>Each charter school shall notify DOE of any changes in staff appointed as designee(s) within seven (7) business days of the staff change.</p> <p>The initial and refresher training shall be the annual training in special education regulations, policies, procedures, and procedural safeguards as outlined in IDEA and Delaware Administrative Code as it relates to special education. DOE shall annually publish date(s) for this training.</p>
<p>14 DE Admin Code §925</p>	<p style="text-align: center;">Exhibit B</p> <p style="text-align: center;">925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs</p> <p>Non-regulatory note: Some sections of this regulation are shown in <i>italics</i>. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2) <u>U.S.C. §1407(a)(2)</u>). The <i>italicized portions</i> of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.</p> <p>1.0 Parental Consent</p> <p>1.1 Parental consent for initial evaluation: The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability shall, after providing notice consistent with 14 DE Admin. Code 926.3.0 and 926.4.0, obtain informed written consent from the parent of the child before conducting the evaluation.</p> <p>1.1.1 Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.</p> <p>1.1.2 The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p> <p>1.1.3 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:</p> <p>1.1.3.1 Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; the rights of the parents of the child have been terminated in accordance with State law; or the rights of the parent</p>

to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

1.1.4 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under subsection 1.1, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in **14 DE Admin. Code 926** (including the mediation procedures or the due process procedures, if appropriate).

1.1.4.1 The public agency does not violate its obligation under **14 DE Admin. Code 923.11.0** and **14 DE Admin. Code 925.2.0 through 925.12.0** if it declines to pursue the evaluation.

1.2 Parental consent for services: A public agency that is responsible for making FAPE available to a child with a disability shall obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. If any Delaware agency obtains consent for the initial provision of special education and related services under the child's first IEP, and the child transfers to, or subsequently receives services from, another Delaware public agency, the receiving agency shall not be required to obtain parental consent for the provision of special education and related services.

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

1.2.2 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services under subsection 1.2, the public agency:

1.2.2.1 May not use the procedures in **14 DE Admin. Code 926** including the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;

1.2.2.2 Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

1.2.2.3 Is not required to convene an IEP ~~Team~~ team meeting or develop an IEP for the child.

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

1.2.3.1 May not continue to provide special education and related services to the child, but ~~must~~ shall provide prior written notice in accordance with **14 DE Admin. Code 926.3.0** before ceasing the provision of special education and related services;

1.2.3.2 May not use the procedures in **14 DE Admin. Code 926** (including the mediation procedures) or the due process procedures in order to obtain

- agreement or a ruling that the services may be provided to the child;
- 1.2.3.3 Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- 1.2.3.4 Is not required to convene an IEP ~~Team~~ team meeting or develop an IEP for the child for further provision of special education and related services.
- 1.3 Parental consent for ~~reevaluations~~ re-evaluations: Subject to subsection 1.3.1, each public agency shall obtain informed parental consent, in accordance with subsection 1.1 prior to conducting any ~~reevaluation~~ re-evaluation of a child with a disability.
- 1.3.1 If the parent refuses to consent to the ~~reevaluation~~ re-evaluation, the public agency ~~may, but is not required to,~~ may pursue the ~~reevaluation~~ re-evaluation by using the consent override procedures described in subsection 1.1.4.
- 1.3.2 The public agency does not violate its obligation under **14 DE Admin. Code 923.11.0 and 2.0 through 12.0 and 925.3.0 through 6.0** if it declines to pursue the evaluation or ~~reevaluation~~ re-evaluation.
- 1.3.3 The informed parental consent described in subsection 1.3 need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent; and the child's parent has failed to respond.
- 1.4 Other consent requirements: Parental consent is not required before reviewing existing data as part of an evaluation or a ~~reevaluation~~; re-evaluation; 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.
- 1.5 Each public agency shall establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
- 1.6 A public agency may not use a parent's refusal to consent to one (1) service or activity under this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by these regulations.
- 1.7 If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the ~~reevaluation~~; re-evaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures in subsections 1.1.4 and 1.3; and
- 1.7.1 The public agency is not required to consider the child as eligible for services under **14 DE Admin. Code 923.32.0** through 923.44.0.
- 1.8 To meet the reasonable efforts requirement of this section, the public agency shall document its attempts to obtain parental consent using the procedures in ~~22.6~~ subsection 9.6.

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); **14 Del.C. §3110**)

14 DE Reg. 1060 (04/01/11)

20 DE Reg. 172 (09/01/16)

2.0 Initial Evaluations

- 2.1 Initial Evaluations General: Each public agency shall conduct a full and individual initial

evaluation in accordance with Sections 5.0 and 6.0 before the initial provision of special education and related services to a child with a disability under these regulations. *The initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.*

- 2.2 Request for initial evaluation: Consistent with the consent requirements in Section 1.0, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- 2.3 Procedures for initial evaluation: *Within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving written parental consent, the initial evaluation shall be conducted; and the child's eligibility for special education and related services ~~must~~ shall be determined at a meeting convened for that purpose.*
 - 2.3.1 The initial evaluation shall consist of procedures to determine if the child is a child with a disability as defined in 14 **DE Admin. Code** 922.3.0; and to determine the educational needs of the child.
- 2.4 Exception: The time frame described in subsection 2.3 ~~of this section~~ does not apply to a public agency if:
 - 2.4.1 The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - 2.4.2 A child enrolls in a school of another public agency after the relevant time frame in subsection 2.3 has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability.
- 2.5 The exception in subsection 2.4.2 applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.
- 2.6 Screening for instructional purposes is not evaluation: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a); **14 Del.C. §3110**)

14 DE Reg. 1060 (04/01/11)

3.0 Reevaluations ~~Re-evaluations~~

- 3.1 General: A public agency shall ensure that a ~~reevaluation~~ re-evaluation of each child with a disability is conducted in accordance with 14 **DE Admin. Code** 925.4.0 through 925.12.0 if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a ~~reevaluation; re-evaluation;~~ or if the child's parent or teacher requests a ~~reevaluation. re-evaluation.~~
- 3.2 Limitation: A ~~reevaluation~~ re-evaluation conducted under subsection 3.1 may occur not more than once a year, unless the parent and the public agency agree otherwise; and shall occur at least once every three (3) years, unless the parent and the public agency agree that a ~~reevaluation~~ re-evaluation is unnecessary.

3.3 A public agency shall initiate a re-evaluation when varied and multiple data sources indicate that a child's performance has improved such that the child may no longer require special education and related services.
(Authority: 20 U.S.C. 1414(a)(2); **14 Del.C. §3110**)

4.0 Evaluation Procedures

4.1 Notice: The public agency shall provide notice to the parents of a child with a disability, in accordance with 14 **DE Admin. Code** 926.3.0, that describes any evaluation procedures the agency proposes to conduct.

~~4.2 Conduct of evaluation: In conducting the evaluation, the public agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability as defined under 14 **DE Admin. Code** 922.3.0, and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); and~~

~~4.2.1 Not use any single measure or assessment 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; and~~

4.2 Conduct of evaluation: In conducting the evaluation, the public agency shall:

4.2.1 Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability as defined under 14 **DE Admin. Code** 922.3.0, and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); and

~~4.2.2 Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.~~

4.2.2 Include an observation in the child's learning environment; and

4.2.3 Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; but

4.2.4 May not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.

4.3 Other evaluation procedures: Each public agency shall ensure that:

4.3.1 Assessments and other evaluation materials used to assess a child under these regulations:

4.3.1.1 Are selected and administered so as not to be discriminatory on a racial or cultural basis;

4.3.1.2 Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on

what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

4.3.1.3 Are used for the purposes for which the assessments or measures are valid and reliable;

4.3.1.4 Are administered by trained and knowledgeable personnel, including but not limited to, a qualified evaluation specialist who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which ~~he or she~~ the personnel is providing student evaluation services; and

4.3.1.5 Are administered in accordance with any instructions provided by the producer of the assessments.

4.3.2 Each public agency shall ensure that assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

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

4.3.4 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;

4.3.5 Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with subsection 2.4, to ensure prompt completion of full evaluations.

4.3.6 In evaluating each child with a disability under Sections 4.0 through 6.0, 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~~ child's educational classifications.

4.3.7 Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B); **14 Del.C.** §3110)

14 DE Reg. 1060 (04/01/11)

5.0 Additional Requirements for Evaluations and Reevaluations Re-evaluations

5.1 Review of existing evaluation data: As part of an initial evaluation (if appropriate) and as part of any ~~reevaluation~~ re-evaluation under these regulations, the IEP ~~Team~~ team and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including:

5.1.1 Evaluations and information provided by the parents of the child;

- 5.1.2 Current ~~classroom-based~~ classroom-based, local, or State assessments, and ~~classroom-based~~ classroom-based observations; and
- 5.1.3 Observations by teachers and related services providers; and
- 5.1.4 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - 5.1.4.1 Whether the child is a child with a disability, as defined in 14 DE Admin. Code 922.3.0, and the educational needs of the child; or
 - 5.1.4.2 In case of a ~~reevaluation~~ re-evaluation of a child, whether the child continues to ~~have such~~ be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; or
 - 5.1.4.3 In the case of a ~~reevaluation~~ re-evaluation 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 education curriculum.
- 5.2 Conduct of review: The group described in subsection 5.1 may conduct its review without a meeting.
- 5.3 Source of data: The public agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection 5.1 ~~of this section~~.
- 5.4 Requirements if additional data are not needed: If the IEP ~~Team~~ team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency shall notify the child's parents of that determination and the reasons for the determination; and notify the parents of their right to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
 - 5.4.1 The public agency is not required to conduct the assessment described in subsection 5.4 unless requested to do so by the child's parents.
- 5.5 Evaluations before change in eligibility: Except as provided in subsection 5.5.1, a public agency shall evaluate a child with a disability in accordance with Sections 4.0 through 42-06.0 before determining that the child is no longer a child with a disability.
 - 5.5.1 The evaluation described in subsection 5.5 is not required before the termination of a child's eligibility under these regulations due to the child's graduation from secondary school with a regular diploma, or due to the child reaching ~~his or her~~ their 21st ~~birthday~~ birthdate.
 - 5.5.2 For a child whose eligibility terminates under circumstances described in subsection 5.5.1, a public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c); **14 Del.C. §3110**)

6.0 Determination of Eligibility

- 6.1 General: Upon completion of the administration of assessments and other evaluation measures, ~~a group of qualified professionals and the parent of the child~~ the child's IEP team shall determine whether the child is a child with a disability, as defined in **14 DE Admin. Code 922.3.0**, in accordance with ~~6.2 and subsection 6.3~~, and shall determine the educational needs of the ~~child~~ and the child. The IEP team shall document its eligibility determination in an evaluation summary report. The public agency shall provide a copy of the evaluation summary report and the documentation of determination of and other reports created to determine eligibility at no cost to the parent. ~~The evaluation report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.~~
- 6.2 Special rule for eligibility determination: A child shall not be determined to be a child with a disability under ~~these regulations~~ **14 DE Admin. Code 922.3.0** if the determinant factor for that determination is:
- 6.2.1 Lack of appropriate instruction in reading, including ~~the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA));~~ meaning lack of instruction in the essential components of reading instruction which are phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies; or
- 6.2.2 Lack of appropriate instruction in math; or
- 6.2.3 Limited English proficiency; and
- 6.2.4 If the child does not otherwise meet the eligibility criteria to be determined a child with a disability as defined in **14 DE Admin. Code 922.3.0**.
- 6.3 Procedures for determining eligibility and educational need: *Eligibility decisions may include historical information to the extent relevant to the child's current needs.* In interpreting evaluation data for the purpose of determining if a child is a child with a disability under **14 DE Admin. Code 922.3.0**, and the educational needs of the child, each public agency shall:
- 6.3.1 Draw upon information from a variety of sources, including, as appropriate, aptitude and achievement tests, ~~information acquired from response to intervention~~ information acquired from proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)) processes, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.
- 6.3.2 ~~If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child in accordance with 20.0 through 24.0.~~
- 6.4 ~~If, prior to the effective date of 6.11, a child has been identified as a child with a learning~~

disability or a mild intellectual disability, and is receiving special education services from a Delaware public agency as a result of that identification, the child shall continue to be eligible for services in Delaware as a child with a learning disability or mild intellectual disability student until the child's reevaluation as required in 3.0. Reevaluation of such students shall apply the eligibility requirements of 6.11 and 7.0 through 12.0 as appropriate to the child's grade level as of the date of the reevaluation.

6.4 If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child in accordance with Sections 7.0 through 11.0.

(Authority: 20 U.S.C. 1414(b)(4) and (5); **14 Del.C. §3110**)

6.5 Other Eligibility requirements and exit criteria: Educational Classifications in General and Exit Criteria

6.5.1 There are twelve (12) distinct educational classifications: Autism, Developmental Delay, Deaf-Blind (also referred to as "Dual Sensory Impairment"), Emotional Disability, Hearing Impairment (also referred to as "deaf" or "hard of hearing"), Specific Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, Speech/Language Impairment, Traumatic Brain Injury, and Visual Impairment Including Blindness. Eligibility criteria, disability-specific evaluation procedures, re-evaluation procedures, documentation and additional IEP team members necessary for each educational classification are delineated in subsections 6.6 through 6.18.

~~6.5.16.5.2~~ 6.5.2 A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under **14 Del.C. Ch. 17**, when the child's IEP team has determined that the child meets the eligibility criteria of at least one (1) of the ~~disability~~ educational classifications in this section, and by reason thereof, needs special education and related services.

~~6.5.26.5.3~~ 6.5.3 A child's IEP team may determine that a child is eligible for special education and related services under more than one ~~disability~~ (1) educational classification. The ~~disability~~ educational classification selected by the IEP team shall not be a relevant factor in determining whether the child received FAPE, provided that the child's IEP is based on the child's educational needs.

~~6.5.36.5.4~~ 6.5.4 When an IEP team determines that a child is eligible for special education and related services under more than one ~~disability~~ (1) educational classification, the child's primary disability classification shall be recorded first on the IEP.

~~6.5.46.5.5~~ 6.5.5 Exit Criteria: A child's eligibility for special education and related services shall terminate when:

~~6.5.4.16.5.5.1~~ 6.5.5.1 ~~the~~ The child reaches ~~his or her~~ their 21st ~~birthday~~ birthdate. *A child with a disability who reaches his or her their 21st ~~birthday~~ birthdate after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or*

~~6.5.4.26.5.5.2~~ 6.5.5.2 ~~the~~ The child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not

include a GED; or

~~6.5.4.36.5.5.3~~ 6.5.5.3 ~~the~~ The IEP team determines the child is no longer a child with a disability in need of special education and related services. In making such determination, the team shall consider: eligibility criteria; data based and documented measures of educational progress; and other relevant information.

~~6.6~~ 6.6 ~~Eligibility Criteria for Autism. The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder, Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.~~

~~6.6.1~~ 6.6.1 ~~In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:~~

~~6.6.1.1~~ 6.6.1.1 ~~All students with an educational classification of autism demonstrate a significant, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:~~

~~6.6.1.1.1~~ 6.6.1.1.1 ~~Use of multiple nonverbal behaviors to regulate social interactions;~~

~~6.6.1.1.2~~ 6.6.1.1.2 ~~Development of peer relationships;~~

~~6.6.1.1.3~~ 6.6.1.1.3 ~~Spontaneous seeking to share enjoyment, interests, or achievements with other people, including parent(s) and caregivers; or~~

~~6.6.1.1.4~~ 6.6.1.1.4 ~~Social or emotional reciprocity.~~

~~6.6.1.2~~ 6.6.1.2 ~~All students with an educational classification of autism also demonstrate at least one feature from either 6.6.1.2.1 or 6.6.1.2.2.~~

~~6.6.1.2.1~~ 6.6.1.2.1 ~~A qualitative impairment in communication, as manifested by:~~

~~6.6.1.2.1.1~~ 6.6.1.2.1.1 ~~A lack of, or delay in, spoken language and failure to compensate through gesture;~~

~~6.6.1.2.1.2~~ 6.6.1.2.1.2 ~~Relative failure to initiate or sustain a conversation with others;~~

~~6.6.1.2.1.3~~ 6.6.1.2.1.3 ~~Stereotyped, idiosyncratic, or repetitive speech; or~~

~~6.6.1.2.1.4~~ 6.6.1.2.1.4 ~~A lack of varied, spontaneous make believe play or social imitative play.~~

~~6.6.1.2.2~~ 6.6.1.2.2 ~~Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:~~

~~6.6.1.2.2.1~~ 6.6.1.2.2.1 ~~Encompassing preoccupation or circumscribed and restricted patterns of interest;~~

~~6.6.1.2.2.2~~ 6.6.1.2.2.2 ~~Apparently compulsive adherence to specific, nonfunctional routines and rituals;~~

~~6.6.1.2.2.3~~ 6.6.1.2.2.3 ~~Stereotyped and repetitive motor mannerisms; or~~

~~6.6.1.2.2.4~~ 6.6.1.2.2.4 ~~Persistent preoccupation with parts and sensory qualities of objects.~~

~~6.6.1.3~~ 6.6.1.3 ~~All students with an educational classification of autism have impairments that:~~

	<p>6.6.1.3.1 — Are inconsistent with the student's overall developmental and functional level; and</p> <p>6.6.1.3.2 — Result in an educationally significant impairment in important areas of functioning; and</p> <p>6.6.1.3.3 — Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and</p> <p>6.6.1.3.4 — Are not primarily accounted for by an emotional disorder.</p> <p>6.6.2 — An educational classification of autism is established:</p> <p>6.6.2.1 — Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;</p> <p>6.6.2.2 — By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 6.6.2.1; and</p> <p>6.6.2.3 — Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.</p> <p>6.6.3 — Age of Eligibility: The age of eligibility for children with autism shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.</p> <p>6.7 — Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.</p> <p>6.7.1 — In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:</p> <p>6.7.1.1 — Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or</p> <p>6.7.1.2 — Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or</p> <p>6.7.1.3 — Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his or her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.</p> <p>6.7.2 — Multiple sources and methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:</p>
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- 6.7.2.1 — Developmental and medical history;
- 6.7.2.2 — Interview with the child's parent or primary caregiver;
- 6.7.2.3 — Behavioral observations;
- 6.7.2.4 — Standardized norm-referenced instruments; and
- 6.7.2.5 — Other assessments which could be used for intervention planning, such as dynamic or criterion-referenced assessments, behavior rating scales, or language samples.

6.7.3 — The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

6.7.4 — Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

6.8 — Eligibility Criteria for Deaf-Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

6.8.1 — A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

6.8.2 — An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.8.3 — Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

6.8.4 — Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.

6.9 — Eligibility Criteria for Emotional Disability: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disability and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

6.9.1 — The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

6.9.2 — Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

6.9.2.1 — Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other

~~students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or~~

~~6.9.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression, or is unable to enter into age appropriate relationships with peers, teachers and others; and~~

~~6.9.3 The age of eligibility for children identified under this definition shall be from the 4th birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~

~~6.10 Eligibility Criteria for Hearing Impairment: A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and~~

~~6.10.1 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.~~

~~6.10.2 The age of eligibility of children identified under this definition shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~

~~6.11 Eligibility Criteria for Learning Disability:~~

~~6.11.1 Elimination of discrepancy model: Public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the learning disability category.~~

~~6.11.2 Existence of a learning disability: Subject to the requirements of 6.11.3, public agencies shall use the standards and procedures in 7.0 through 11.0 to determine whether a child is eligible for special education and related services under the learning disability category.~~

~~6.11.3 Phase in of response to intervention procedures:~~

~~6.11.3.1 Elementary school children: No later than the beginning of the 2008-2009 school year, public agencies shall use the standards and procedures in 7.0 through 12.0, including the response to intervention process, to determine whether a child in elementary school (as elementary school is defined by the public agency) is eligible for special education and related services under the learning disability category in reading. In the case of mathematics, implementation shall be on a timeline and schedule as defined by the DOE.~~

~~6.11.3.2 Other students: Public agencies shall use the standards and procedures in 7.0 to 12.0, including the response to intervention process for other students on a timeline and schedule as defined by DOE, to determine whether a student is eligible for special education and related services under the learning disability category.~~

~~6.11.4 Use of response to intervention procedures for 2007-2008: During the 2007-2008~~

~~school year, public agencies are permitted to use the response to intervention procedures in 12.0 to determine whether a child is eligible for special education and related services as a result of a learning disability. Local education agencies implementing response to intervention procedures during the 2007-2008 school year may do so in all or some of its schools, and at all or some grade levels.~~

~~6.11.5 The age of eligibility for students identified under this definition shall be from the fourth birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~

~~6.12 Eligibility Criteria for intellectual Disability: Eligibility Criteria for intellectual Disability: In order for the IEP team to determine eligibility for special education services under the intellectual Disability category, the following is required:~~

~~6.12.1 A level of intellectual functioning, as indicated below:~~

~~6.12.1.1 Mild Intellectual Disability: IQ 50 to 70 +/- 5 points;~~

~~6.12.1.2 Moderate Intellectual Disability: IQ 35 to 50 +/- 5 points;~~

~~6.12.1.3 Severe Intellectual Disability: IQ below 35; and Significant limitations in two or more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.~~

~~6.12.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.~~

~~6.12.3 Additional requirements for eligibility for Mild Intellectual Disability: In addition to the other requirements of 6.12, eligibility for special education services under the Mild Intellectual Disability category shall require written documentation that the child's response to scientific, research based intervention was assessed in accordance with 12.0.~~

~~6.12.3.1 This requirement shall apply no later than the beginning of the 2008-2009 school year for children in elementary school (as elementary school is defined by the public agency). In the case of mathematics for elementary school and all other students, implementation shall be on a timeline and schedule as defined by the DOE.~~

~~6.12.3.2 During the 2007-2008 school year, public agencies are permitted, but not required, to assess the child's response to scientific, research based intervention in determining a child's eligibility for special education services under the Mild Intellectual Disability category.~~

~~6.12.4 Age of Eligibility: The age of eligibility for children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first. Children identified as Mild Intellectual Disability shall be from the fourth birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first. These children may be served at age 3, as having a Developmental Delay.~~

- ~~6.13 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:~~
- ~~6.13.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.~~
- ~~6.13.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:~~
- ~~6.13.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or~~
- ~~6.13.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and body use necessary for performing educational activities.~~
- ~~6.13.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:~~
- ~~6.13.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);~~
- ~~6.13.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and~~
- ~~6.13.3.3 Prior program or school records (if available), and, when determined necessary, a speech and language evaluation, adaptive behavior scale, vision or hearing screening, social history or psychological evaluation.~~
- ~~6.13.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.~~
- ~~6.13.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty one (21), whichever occurs first.~~
- ~~6.14 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:~~
- ~~6.14.1 Documentation from a qualified physician that a child has a chronic or acute health problem.~~
- ~~6.14.2 For ADD and ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:~~
- ~~6.14.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;~~
- ~~6.14.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;~~
- ~~6.14.2.1.2 Often has difficulty sustaining attention in tasks or play activities;~~

- ~~6.14.2.1.3~~ Often does not seem to listen when spoken to directly;
- ~~6.14.2.1.4~~ Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);
- ~~6.14.2.1.5~~ Often has difficulty organizing tasks and activities;
- ~~6.14.2.1.6~~ Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);
- ~~6.14.2.1.7~~ Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);
- ~~6.14.2.1.8~~ Is often easily distracted by extraneous stimuli;
- ~~6.14.2.1.9~~ Is often forgetful in daily activities; or
- ~~6.14.2.2~~ Six (or more) of the following symptoms of hyperactivity impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:
 - ~~6.14.2.2.1~~ Often fidgets with hands or feet and squirms in seat;
 - ~~6.14.2.2.2~~ Often leaves seat in classroom or in other situations in which remaining seated is expected;
 - ~~6.14.2.2.3~~ Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);
 - ~~6.14.2.2.4~~ Often has difficulty laying or engaging in leisure activities quietly;
 - ~~6.14.2.2.5~~ Is often “on the go” or often acts as if “driven by a motor”;
 - ~~6.14.2.2.6~~ Often talks excessively;
 - ~~6.14.2.2.7~~ Often blurts out answers before questions have been completed;
 - ~~6.14.2.2.8~~ Often has difficulty waiting turn;
 - ~~6.14.2.2.9~~ Often interrupts or intrudes into conversations or games; and
- ~~6.14.2.3~~ Some hyperactive impulsive or inattentive symptoms that caused impairment were present before seven years of age;
- ~~6.14.2.4~~ A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;
- ~~6.14.2.5~~ Clear evidence of clinically significant impairment in social, academic or occupational functioning; and
- ~~6.14.2.6~~ The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).
- ~~6.14.3~~ Determination by the IEP team of eligibility for services shall be based upon data obtained from:
 - ~~6.14.3.1~~ Written documentation from the formative intervention process used with the student under **14 DE Admin. Code 923.11.9** (relating to referral to instructional support team). The documentation shall include a clear statement

of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

~~6.14.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical or psychological records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re-evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in 4.11.2.~~

~~6.14.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.~~

~~6.14.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~

~~6.15 Eligibility Criteria for Speech and/or Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.~~

~~6.15.1 The age of eligibility for children identified under this definition shall be from the fifth birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first, except where speech and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.~~

~~6.16 Eligibility Criteria for Traumatic Brain Injury. A qualified physician shall document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.~~

~~6.16.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.~~

~~6.16.2 The age of eligibility for children under this definition shall be from the third birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~

~~6.17 Eligibility Criteria for Visual Impairment including Blindness:~~

~~6.17.1 Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.~~

~~6.17.2 This eligibility determination requires a thorough and rigorous evaluation with a data-based media assessment which is based on a range of learning modalities and includes a functional visual assessment.~~

~~6.17.3 The age of eligibility for children identified under this section shall be from birth until the~~

receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty one (21), whichever occurs first.

(Authority: 34 C.F.R. § 300.8(c)(13))

6.6 Autism

6.6.1 Eligibility Criteria: Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction. It is generally, but may not be, evident before the age of 3. A child is eligible for special education and related services under the Autism educational classification when the child's IEP team finds that the child displays, or displayed by ~~[history, history:] persistent impairments in social communication and social interaction, across multiple contexts; and restricted, repetitive patterns of behavior, characteristics and interests or activities that are not age or developmentally appropriate. The displayed impairments or patterns must result in a significant impairment in important areas of functioning and be persistent across multiple contexts, including a variety of people, tasks and settings. Additionally, one (1) or more of the displayed impairments or patterns must have an adverse effect on the child's educational performance as that term is defined in 14 DE Admin. Code 922.3.0.~~

6.6.1.1 Persistent impairments in social communication and social interaction, across multiple contexts manifest as one (1) or more of the following deficits, currently or by history:

6.6.1.1 Persistent impairments in social communication and social interaction, across multiple contexts, which manifest as:]

6.6.1.1.1 Deficits in social-emotional reciprocity;

6.6.1.1.2 Deficits in non-verbal communicative behaviors used for social interaction;
or

6.6.1.1.3 Deficits in developing, maintaining, and understanding ~~[relationships, relationships; and]~~

6.6.1.2 Restricted, repetitive patterns of behavior, characteristics, interests, or activities, that are not age or developmentally appropriate, ~~[which] manifest [as as: one (1) or more of the following currently or by history:]~~

6.6.1.2.1 Stereotyped or repetitive motor movements, use of objects or speech;

6.6.1.2.2 Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior;

6.6.1.2.3 Highly restricted, fixated interests that are abnormal in intensity or focus;
or

6.6.1.2.4 Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the ~~[environment, environment; and]~~

6.6.1.2.5 The displayed impairments or patterns must result in a significant impairment in important areas of functioning and be persistent across multiple contexts, including a variety of people, tasks and settings; and

6.6.1.2.6 One (1) or more of the displayed impairments or patterns must have an

adverse effect on the child's educational performance as that term is defined in 14 DE Admin. Code 922.3.0.]

6.6.2 Age of Eligibility: A child is eligible for special education and related services under the Autism educational classification from birth until the student's receipt of a regular high school diploma *or the end of the school year in which the student attains the age of 21, whichever occurs first.*

6.6.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Autism if the child meets the criteria in subsection 6.6.1 and the adverse effects on the child's educational performance cannot primarily be explained by an emotional disability, *intellectual disability, developmental delay,* or factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.6.4 Disability-Specific Evaluation Procedures: *In addition to the evaluation procedures required by 14 DE Admin. Code 925.4.0 through 925.5.0, in order to determine a child's eligibility for special education and related services under the Autism educational classification, the child's IEP team shall obtain data from the following sources:*

6.6.4.1 *Specialized, validated assessment tools that provide specific evidence of the features of the educational classification of Autism described above; and*

6.6.4.2 *Observations of the child across structured and unstructured contexts.*

6.6.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in **14 DE Admin. Code 925.3.0** through 925.5.0 and **925.6.6.**

6.6.6 Documentation: *The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under an Autism educational classification shall be provided by individuals who have specific training in the assessment of students with the educational classification of Autism. This means individuals with training in the administration of the assessment procedures referenced in subsection 6.6.4 and interpretation of the data obtained from procedures used such as, a licensed psychologist, certified school psychologist, or licensed and certified speech-language pathologist.*

6.6.7 Additional IEP team Members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0,** a certified school psychologist and a licensed and certified speech-language pathologist are required to be members of the IEP team for the purpose of determining eligibility.

6.7 Developmental Delay

6.7.1 Eligibility Criteria: A child is eligible for special education and related services under the Developmental Delay classification if the child's IEP team finds that the child *exhibits a significant delay or, in the alternative, atypical development in one (1) or more of the following developmental domains: cognition, communication (expressive or receptive), physical (gross motor or fine motor), social, emotional, or adaptive behavior; and that the presence of one (1) or more documented characteristics of the significant delay or atypical development has an adverse effect on educational performance as defined in*

14 DE Admin. Code 922.3.0.

6.7.1.1 A significant delay shall be shown by:

6.7.1.1.1 Standardized composite test scores of 1.5 or more standard deviations below the mean in two (2) or more of the following developmental domains: cognition, communication (expressive or receptive), physical (gross motor or fine motor), social or emotional, and adaptive behavior; or

6.7.1.1.2 Standardized composite test scores of 2.0 or more standard deviations below the mean in any one (1) of the developmental domains: cognition, communication/expressive or receptive; physical (gross motor or fine motor); social or emotional, and adaptive behaviors.

6.7.1.2 If a child does not exhibit a significant delay, atypical development may be determined by the professional judgment of the IEP team and documented in the evaluation summary report. This judgment is based on multiple sources of information, showing a significant atypical quality or pattern of development or behavior occurring in multiple settings over an extended period of time.

6.7.2 Age of Eligibility: A child is eligible for special education and related services under the Developmental Delay educational classification from the child's 3rd birthdate until the child's 9th birthdate.

6.7.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Developmental Delay if the child meets the criteria in subsection 6.7.1 and the adverse effects on the child's educational performance cannot primarily be explained by a significant visual or hearing impairment, cultural factors, or factors listed under the special rule for eligibility in **14 DE Admin. Code 925.6.2.**

6.7.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, in order to determine a child's eligibility for special education and related services under the Developmental Delay educational classification, the child's IEP team shall obtain the following data:

6.7.4.1 Developmental history;

6.7.4.2 Medical history;

6.7.4.3 Interview with the child's parent or guardian;

6.7.4.4 Behavioral observations of the child in their daily environment, which may include the child's home with a parent or caregiver, or an education or care setting, which includes peers who are typically developing;

6.7.4.5 Standardized norm-referenced instruments or other instruments, such as criterion referenced measures; and

6.7.4.6 Other assessments, which could be used for intervention planning, such as dynamic assessments, behavior rating scales, or language samples.

6.7.5 Re-evaluation procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in **14 DE Admin. Code 925.3.0** through 925.5.0, and **925.6.7.**

6.7.6 Documentation: The IEP team shall document its eligibility determination in an

evaluation summary report. Documentation required to determine eligibility under a Developmental Delay educational classification shall be provided by a qualified professional such as, a licensed psychologist or certified school psychologist.

6.7.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.

6.8 Deaf-Blind also be referred to as “Dual Sensory Impairment”

6.8.1 Eligibility Criteria: A child is eligible for special education and related services under the Deaf-Blind educational classification when the child’s IEP team finds that the child has concomitant hearing and visual impairments, the combination of which has an adverse effect on educational performance as defined in **14 DE Admin. Code 922.3.0** such that the concomitant impairments cause such severe communication and other developmental and educational needs that the child cannot be accommodated in special education programs or related services solely for children with deafness or children with blindness.

6.8.1.1 Applicable hearing impairments include:

6.8.1.1.1 A permanent conductive, sensorineural, or mixed hearing loss [that is of] 20 dB HL or greater at two (2) or more frequencies between 500-6000 Hz, either unilaterally or bilaterally; or

6.8.1.1.2 A fluctuating hearing loss [of more greater] than 20 dB HL [or greater] at two (2) or more frequencies between 500-6000 Hz, either unilaterally or bilaterally and persists for more than 6 months; or

(10) The Department consider including a team member from the statewide

6.8.1.1.3 Auditory Neuropathy Spectrum Disorder (ANS), which is defined as the presence of at least partial outer hair cell function and an absent or grossly abnormal ABR (Auditory Brainstem Response). A behavioral audiogram cannot be used to diagnose ANSD; or

6.8.1.1.4 A hearing impairment that does not meet the criteria in subsections 6.8.1.1.1 through 6.8.1.1.3.

6.8.1.2 Applicable visual impairments include:

6.8.1.2.1 Partial sight, including but not limited to macular holes, oscillopsia, and central vision loss; or blindness; or neurological conditions (not perceptual impairments); or a progressive loss of vision; and corrected visual acuity of 20/50 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 40 degrees; or

6.8.1.2.2 A cortical vision impairment; or

6.8.1.2.3 A functional vision loss where field and acuity deficits alone do not meet the criteria in subsections 6.8.1.2.1 or 6.8.1.2.2.

6.8.2 Age of Eligibility: A child is eligible for special education and related services under the Deaf-Blind educational classification from birth until the child’s receipt of a regular high school diploma or the end of the school year in which the student attains the age of 21, whichever occurs first.

6.8.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Deaf-Blind if the child meets the criteria in subsection 6.8.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.8.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, in order to determine a child's eligibility for special education and related services under the Deaf-Blind educational classification, *the child's IEP team shall obtain the following:*

6.8.4.1 *Documentation of the visual and hearing impairments by a qualified medical professional as defined in **14 DE Admin. Code 925.6.8.6;** and*

6.8.4.2 *An audiological evaluation that is no more than six (6) months old, unless otherwise specified by the licensed audiologist.*

6.8.5 Re-evaluation Procedures

6.8.5.1 For purposes of continued eligibility determination, the IEP team shall follow the procedures in **14 DE Admin. Code 925.3.0** through 925.5.0 and 925.6.8; and

6.8.5.2 *Make every effort to obtain updated documentation related to the student's visual impairment; and*

6.8.5.3 *Obtain an audiological evaluation that is no more than one (1) year old, unless otherwise specified by the licensed audiologist.*

6.8.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under a Deaf-Blind educational classification shall be provided as follows:

6.8.6.1 *Documentation of the child's hearing impairment shall be provided by a qualified medical professional who can certify the existence of a hearing impairment with or without amplification such as, a licensed audiologist.*

6.8.6.2 *Documentation of the child's visual impairment shall be provided by a qualified medical professional, such as a licensed ophthalmologist, optometrist, or neurologist, who can certify the existence of a visual impairment. If visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, a functional vision evaluation can be completed by a teacher of the visually impaired or deaf-blind teacher and used to document functional vision loss to qualify for services.*

6.8.7 Additional IEP team Members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a licensed audiologist or a teacher of students who are deaf or hard of hearing, a certified school psychologist, a team member from the statewide programs for Deaf-Blind, and a licensed and certified speech-language pathologist are required to be members of the IEP Team for the purpose of determining eligibility.

6.9 Emotional Disability

6.9.1 Eligibility Criteria: A child is eligible for special education and related services under the Emotional Disability educational classification if the child's IEP team finds that the child

exhibits an identified pattern of behavior that has existed over a long period of time and to a marked degree as defined in subsection 6.9.1.1 or has a psychiatric disorder, such as schizophrenia; and that pattern of behavior or psychiatric disorder adversely affects the child's educational performance as defined in **14 DE Admin. Code 922.3.0**.

6.9.1.1 Patterns of behavior in subsection 6.9.1 shall be characterized by one (1) or more of the following:

6.9.1.1.1 Situationally inappropriate behavior for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other children of similar age under similar circumstances. That is, the child's characteristic behaviors are sufficiently distinct from those of the child's peer groups; or

6.9.1.1.2 A general pervasive mood of unhappiness or depression; or

6.9.1.1.3 A tendency to develop physical symptoms or fears associated with personal or school problems; or

6.9.1.1.4 An inability to build or maintain satisfactory interpersonal relationships with peers, teachers and others.

6.9.1.2 If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))**.

6.9.2 Age of Eligibility: A child is eligible for special education and related services under the Emotional Disability educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma or the end of the school year in which the child attains the age of 21, whichever occurs first.

6.9.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Emotional Disability if the child meets the criteria in subsection 6.9.1 and the adverse effect on educational performance cannot primarily be explained by *intellectual, sensory, cultural, health factors*, or factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2**.

6.9.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, in order to determine a child's eligibility for special education and related services under the Emotional Disability educational classification, the child's IEP team shall obtain data from the following:

6.9.4.1 A review of educational records;

6.9.4.2 A social/developmental history with input from the parent or guardian that addresses developmental, familial, medical/health, and environmental factors impacting learning and behavior;

6.9.4.3 Standardized rating scales;

6.9.4.4 A child interview;

6.9.4.5 Behavioral observations by teachers and at least one (1) other member of the IEP team; and

6.9.4.6 If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).

6.9.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 DE Admin. Code 925.3.0 through 925.5.0, and 925.6.9.

6.9.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under an Emotional Disability educational classification shall be provided by a qualified professional such as a licensed psychologist or certified school psychologist.

6.9.7 Additional IEP team members: In addition to the IEP team members required by 14 DE Admin. Code 925.8.0, a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.

6.10 Hearing Impairment Classification also referred to as “deaf” or “hard of hearing”

6.10.1 Eligibility Criteria: A child is eligible for special education and related services under the Hearing Impairment educational classification if the child has a hearing impairment under subsection 6.10.1.1 and that the hearing impairment adversely affects the child’s educational performance as defined in 14 DE Admin. Code 922.3.0. Adverse effects of hearing impairments may be exhibited by one (1) or more of the examples listed in subsection 6.10.1.2.

6.10.1.1 Applicable hearing impairment shall be:

6.10.1.1.1 A permanent conductive, sensorineural or mixed hearing loss [that is of] 20 dB HL or greater at two (2) or more frequencies between 500-6000 Hz, either unilaterally or bilaterally; or

6.10.1.1.2 A fluctuating hearing loss [of more greater] than 20 dB HL [or greater] at two (2) or more frequencies between 500-6000 Hz, either unilaterally or bilaterally, and persists for more than six (6) months; or

6.10.1.1.3 Auditory Neuropathy Spectrum Disorder (ANSD), which is defined as the presence of at least partial outer hair cell function and an absent or grossly abnormal ABR (Auditory Brainstem Response). A behavioral audiogram cannot be used to diagnose ANSD.

6.10.1.2 Examples of adverse effects on educational performance for a hearing impairment:

6.10.1.2.1 Impairment in receptive or expressive language (spoken or signed) including a delay in syntax, pragmatics, semantics, or if there is a significant discrepancy between the receptive and expressive language scores or function;

6.10.1.2.2 Impairment in auditory skills or functional auditory performance including speech perception scores (in quiet or noise), which demonstrate the need

for specialized instruction in auditory skill development or assistive technology use;

6.10.1.2.3 Impairment of speech articulation, voice or fluency;

6.10.1.2.4 Lack of adequate academic achievement or sufficient progress to meet age or state-approved grade-level standards in reading, writing, or math;

6.10.1.2.5 Inconsistent performance in social and learning environments compared to typically developing peers;

6.10.1.2.6 Inconsistent performance of self-advocacy skills or use of specialized technology/resources to access instruction.

6.10.2 Age of Eligibility: A child is eligible for special education and related services under the Hearing Impairment educational classification from the child's birth until the child's receipt of a regular high school diploma or the end of the school year in which the child attains the age of 21, whichever occurs first.

6.10.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Hearing Impairment if the child meets the criteria in subsection 6.10.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.10.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, in order to determine a child's eligibility for special education and related services under the Hearing Impairment educational classification, the child's IEP team shall obtain the following:

6.10.4.1 Documentation of the hearing impairment by a qualified medical professional as defined in **14 DE Admin. Code 925.6.10.6**, and

6.10.4.2 An audiological evaluation that is no more than six (6) months old, unless otherwise specified by a licensed audiologist.

6.10.5 Re-evaluation Procedures

6.10.5.1 For purposes of continued eligibility determination, the IEP team shall follow the procedures in **14 DE Admin. Code 925.3.0** through 925.5.0, as well as 925.6.10; and

6.10.5.2 Obtain an audiological evaluation that is no more than one (1) year old, unless otherwise specified by a licensed audiologist.

6.10.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's hearing impairment shall be provided by a qualified medical professional who can certify the existence of a hearing impairment with or without amplification, such as a licensed audiologist.

6.10.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a licensed audiologist or a teacher of students who are deaf or hard of hearing, a certified school psychologist, and a licensed and certified speech-language pathologist are required to be members of the IEP team for the purpose of determining eligibility.

6.11 Specific Learning Disability

6.11.1 Eligibility Criteria: A child is eligible for special education and related services under the Specific Learning Disability educational classification if the child exhibits a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations that adversely affects the child's educational performance as defined in 14 DE Admin. Code 922.3.0, as evidenced by:

6.11.1.1 Lack of achievement: If, when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standard, the child does not achieve adequately for the child's age or to meet State approved grade level standards in one (1) or more of the following areas:

6.11.1.1.1 Oral expression:

6.11.1.1.2 Listening comprehension:

6.11.1.1.3 Written expression:

6.11.1.1.4 Basic reading skill:

6.11.1.1.5 Reading fluency skills:

6.11.1.1.6 Reading comprehension:

6.11.1.1.7 Mathematics calculation:

6.11.1.1.8 Mathematics problem solving; and

6.11.1.2 Insufficient progress: The child does not make sufficient progress to meet age or State approved grade level standards in one (1) or more of the areas identified in subsection 6.11.1.1 of this regulation, when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)); or

6.11.1.3 Pattern of strengths and weaknesses: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the child's IEP team to be relevant to the identification of a Specific Learning Disability, using appropriate assessments, consistent with 14 DE Admin. Code 925.4.0 and 925.5.0.

6.11.1.4 Elimination of Discrepancy Model: Public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the Specific Learning Disability classification.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31912, July 11, 2017]

34 CFR 300.307

34 CFR 300.309

6.11.2 Age of Eligibility: A child is eligible for special education and related services under the Specific Learning Disability educational classification from the child's 5th birthdate until the child's receipt of a regular high school diploma or the end of the school year in

which the child attains the age of 21, whichever occurs first.

6.11.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Specific Learning Disability if the child meets the criteria in subsection 6.8.1, and the adverse effect on educational performance cannot primarily be explained by:

6.11.3.1 A visual, hearing or motor disability;

6.11.3.2 Intellectual Disability;

6.11.3.3 Emotional Disability;

6.11.3.4 Cultural factors;

6.11.3.5 Environmental or economic disadvantage;

6.11.3.6 Limited English proficiency; or

6.11.3.7 Any of the other factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.11.3.7.1 To ensure that underachievement in a child suspected of having a Specific Learning Disability is not due to lack of appropriate instruction in reading or math, the child's IEP team shall consider, as part of the evaluation described in 34 CFR 300.304 through 300.306:

6.11.3.7.2 Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

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

6.11.3.8 The public agency shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and shall adhere to the timeframes described in 34 CFR 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1).

6.11.3.8.1 If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection 6.11.3.7; and

6.11.3.8.2 Whenever a child is referred for an evaluation.

[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31912, July 11, 2017]

34 CFR 300.309

6.11.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through **925.5.0**, in order to determine a child's eligibility for special education and related services under the Specific Learning Disability educational classification, the child's IEP team shall obtain data from the following:

6.11.4.1 Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by

qualified personnel within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20));

6.11.4.2 Observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty, including:

6.11.4.2.1 Observation in routine classroom instruction and monitoring of the child's performance done before the child was referred for an evaluation or at least one (1) member of the IEP team may conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained; or

6.11.4.2.2 In the case of a child less than school age or out of school, an IEP team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110) 34 CFR 300.310

6.11.4.3 Evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)) or evidence of a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development (see subsection 6.11.1.3):

6.11.4.4 Assessments of intellectual functioning are not required to determine eligibility for special education and related services under the Specific Learning Disability educational classification, but may be used for students suspected of having an intellectual disability or where a problem-solving team as defined in proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)) or the child's IEP team and the parent determine such tests are relevant in selecting appropriate instructional or behavioral interventions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

6.11.5 Re-evaluation procedures: For purposes of continued eligibility determination, the IEP team shall follow the procedures in 14 DE Admin. Code 925.3.0 through 925.5.0, as well as 925.6.11.

6.11.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required to determine eligibility under a Specific Learning Disability classification shall be provided by a qualified professional such as a certified school psychologist, and in cases in which a child may be eligible in the areas of oral expression or listening comprehension, a licensed and certified speech-language pathologist. For a child suspected of having a Specific Learning Disability, the documentation of the determination of eligibility, as required in 34 CFR 300.306(a)(2), shall contain a statement of:

6.11.6.1 Whether the child has a Specific Learning Disability;

6.11.6.2 The basis for making the determination, including an assurance that the determination has been made in accordance with 34 CFR 300.306(c)(1);

6.11.6.3 The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

6.11.6.4 The educationally relevant medical findings, if any;

6.11.6.5 Whether:

6.11.6.5.1 The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with 34 CFR 300.309(a)(1); and

6.11.6.5.2 The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR 300.309(a)(2)(i); or

6.11.6.5.3 The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(ii);

6.11.6.6 The determination of the child's IEP team concerning the effects of a visual, hearing, motor disability, or an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

6.11.6.7 If the child has participated in a process that assesses the child's response to scientific, research-based intervention within a *multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))*;

6.11.6.7.1 The instructional strategies used and the student-centered data collected; and

6.11.6.7.2 The documentation that the child's parents were notified about:

6.11.6.7.2.1 The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

6.11.6.7.2.2 Strategies for increasing the child's rate of learning; and

6.11.6.7.2.3 The parents' right to request an evaluation.

6.11.6.8 Each IEP team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the IEP team member shall submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31913, July 11, 2017]

34 CFR 300.311

6.11.7 Additional IEP team members: In addition to the IEP team members required by 14 DE

Admin. Code 925.8.0. a general education teacher and a certified school psychologist are required to be members of the IEP team for the purpose of determining eligibility. In cases in which a child may be eligible in the areas of oral expression or listening comprehension, a licensed and certified speech-language pathologist shall also be a member of the IEP team.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

34 CFR 300.308

6.12 Intellectual Disability

6.12.1 Eligibility Criteria: A child is eligible for special education and related services under the Intellectual Disability educational classification if the child has significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects the child's educational performance as referred to in 14 DE Admin. Code 922.3.0. A child may be eligible under the Intellectual Disability educational classification in one (1) of the following subcategories: mild, moderate or severe.

6.12.1.1 Mild Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is mildly below age expectations with respect to the following:

6.12.1.1.1 Performance on an individually administered test of intelligence that falls within a range of IQ 50 to 70 +/- 5 points; and

6.12.1.1.2 Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least 1 of the following areas:

6.12.1.1.2.1 Conceptual skills;

6.12.1.1.2.2 Social adaptive skills;

6.12.1.1.2.3 Practical adaptive skills, or

6.12.1.1.3 An overall composite score on a standardized measure of adaptive behavior, and

6.12.1.1.4 Insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).

6.12.1.2 Moderate Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is moderately below age expectations with respect to the following:

6.12.1.2.1 Performance on an individually administered test of intelligence that falls within a range of IQ 35 to 50 +/- 5 points; and

6.12.1.2.2 Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least one (1) of the following areas:

6.12.1.2.2.1 Conceptual skills,

6.12.1.2.2.2 Social adaptive skills,

6.12.1.2.2.3 Practical adaptive skills, or

6.12.1.2.3 An overall composite score on a standardized measure of adaptive behavior.

6.12.1.3 Severe Intellectual Disability. The child exhibits a level of cognitive development and adaptive behavior in home, school, and community settings that is severely below age expectations with respect to the following:

6.12.1.3.1 Performance on an individually administered test of intelligence that falls within a range of IQ below 35; and

6.12.1.3.2 Significant adaptive behavior limitations, commensurate with cognitive functioning, in at least 1 of the following areas:

6.12.1.3.2.1 Conceptual skills.

6.12.1.3.2.2 Social adaptive skills.

6.12.1.3.2.3 Practical adaptive skills, or

6.12.1.3.3 An overall composite score on a standardized measure of adaptive behavior.

6.12.2 Age of Eligibility: A child is eligible for special education and related services under the Intellectual Disability educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma or the end of the school year in which the child attains the age of 21, whichever occurs first.

6.12.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Intellectual Disability if the child meets the criteria in subsection 6.12.1, and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.12.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through **925.5.0**, in order to determine a child's eligibility for special education and related services under the Intellectual Disability educational classification, the child's IEP team shall obtain data from the following:

6.12.4.1 Observations of the child including adaptive behaviors relevant to the child's age, and

6.12.4.2 For a mild intellectual disability, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))**.

6.12.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through **925.5.0**, as well as **925.6.12**.

6.12.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation required for eligibility under an Intellectual Disability educational classification shall be provided by a licensed psychologist or certified school psychologist.

6.12.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a certified school psychologist is required to be a member of the IEP team for the purpose of determining eligibility.

6.13 Orthopedic Impairment

6.13.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Orthopedic Impairment if the child has an orthopedic impairment caused by a congenital anomaly (e.g., skeletal deformities), or disease (e.g., juvenile rheumatoid arthritis, osteogenesis imperfecta), or other causes (e.g., muscular or neuromuscular disabilities, cerebral palsy, amputations, and fractures or burns that cause contractures) that adversely affects the child's educational performance as defined in **14 DE Admin. Code 922.3.0**.

6.13.2 Age of Eligibility: A child is eligible for special education and related services under the Orthopedic Impairment education classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma or the end of the school year in which the child attains the age of 21, whichever occurs first.

6.13.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Orthopedic Impairment if the child meets the criteria in subsection 6.13.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2**.

6.13.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through **925.5.0**, in order to determine a child's eligibility for special education and related services under the Orthopedic Impairment educational classification, the child's IEP team shall obtain the following:

6.13.4.1 Documentation of the orthopedic impairment by a qualified professional as described in **14 DE Admin. Code 925.6.13.6**, and

6.13.4.2 Results from physical or occupational therapy evaluations using appropriate measures, which identify educational and related service needs, as well as environmental adjustments necessary.

6.13.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through **925.5.0** and **925.6.13**; and should make every effort to obtain updated documentation related to the student's orthopedic impairment.

6.13.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's orthopedic impairment shall be provided by a qualified medical professional who can certify the existence of an orthopedic impairment.

6.13.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a certified school psychologist and at least one (1) of the following shall be members of the IEP team for the purpose of determining eligibility: a physical therapist, occupational therapist, or nurse.

6.14 Other Health Impairment

6.14.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Other Health Impairment if the child has a chronic or acute health condition such as, asthma, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or Tourette syndrome, that adversely affects the child's educational performance as defined in 14 DE Admin. Code 922.3.0.

6.14.1.1 If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).

6.14.1.2 For attention deficit hyperactivity disorder (ADHD), the child shall also exhibit:

6.14.1.2.1 Six (6) or more of the following symptoms of inattention for children up to the age of 16, or five (5) or more for adolescents 17 years or older and adults; symptoms of inattention have been present for at least six (6) months, and inappropriate for developmental level:

6.14.1.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

6.14.1.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

6.14.1.2.1.3 Often does not seem to listen when spoken to directly;

6.14.1.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (e.g. loses focus, side-tracked);

6.14.1.2.1.5 Often has difficulty organizing tasks and activities;

6.14.1.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require mental effort over a long period of time (such as school work or homework);

6.14.1.2.1.7 Often loses things necessary for tasks or activities (e.g., school materials, pencils, books, or tools, etc.);

6.14.1.2.1.8 Often easily distracted;

6.14.1.2.1.9 Often forgetful in daily activities; or

6.14.1.2.2 Six (6) or more of the following symptoms of hyperactivity impulsivity for children up to age 16, or five (5) or more for adolescents 17 and older and adults; symptoms have been present for at least six (6) months to an extent that is disruptive and inappropriate for the student's developmental level:

6.14.1.2.2.1 Often fidgets with hands or feet, or squirms in seat;

6.14.1.2.2.2 Often leaves seat in situations when remaining seated is expected;

6.14.1.2.2.3 Often runs about or climbs in situations in where it is not inappropriate (adolescents or adults, may be limited to feeling of restlessness);

6.14.1.2.2.4 Often unable to play or take part in leisure activities quietly;

6.14.1.2.2.5 Often “on the go” or often acts as if “driven by a motor”;

6.14.1.2.2.6 Often talks excessively;

6.14.1.2.2.7 Often blurts out an answer before a question has been completed;

6.14.1.2.2.8 Often has trouble waiting his turn;

6.14.1.2.2.9 Often interrupts or intrudes on others (butts into conversations or games); and

6.14.1.2.3 Several of the inattentive or hyperactive impulsive symptoms exhibited were present before 12 years of age;

6.14.1.2.4 Several symptoms are present in two (2) or more settings (such as home, school or work, with friends or relatives, in other activities); and

6.14.1.2.5 Clear evidence that the symptoms interfere with, or reduce the quality of social, school or work functioning.

6.14.2 Age of Eligibility: A child is eligible for special education and related services under the Other Health Impairment educational classification from the child’s 3rd birthdate until the child’s receipt of a regular high school diploma or the end of the school year in which the child attains the age of 21, whichever occurs first.

6.14.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child’s primary educational classification shall be Other Health Impairment if the child meets the criteria in subsection 6.14.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2**, and additionally in the case of ADHD, such adverse effect on educational performance cannot primarily be explained by another mental disorder (such as mood disorder, anxiety disorder, dissociative disorder, or personality disorder), and the symptoms do not happen only during the course of schizophrenia or another psychotic disorder.

6.14.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, the child’s IEP team shall obtain the following:

6.14.4.1 Documentation of the health impairment by a qualified professional as described in **14 DE Admin. Code 925.6.14.6**; and

6.14.4.2 If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))**.

6.14.5 Re-evaluation Procedures: For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through 925.5.0 and 925.6.14; and the IEP team should make every effort to obtain updated documentation related to the student’s health impairment.

6.14.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child’s underlying health impairment

shall be provided by a qualified medical professional such as a medical doctor, licensed nurse practitioner, or licensed physician's assistant. In cases in which a child displays behaviors consistent with ADHD, a certified school psychologist or licensed psychologist may also provide the documentation required for eligibility consideration.

6.14.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a certified school psychologist and a school nurse shall be members of the IEP team for the purpose of determining eligibility.

6.15 Speech or Language Impairment

6.15.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Speech or Language Impairment if the child has a moderate to severe impairment in communication, and that the impairment adversely affects the child's educational performance as defined in **14 DE Admin. Code 922.3.0**.

6.15.1.1 If applicable, prior to or as part of the eligibility process, the IEP team must find that the student demonstrates insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20))**.

6.15.1.2 Applicable communication impairments:

6.15.1.2.1 Speech fluency as exhibited by disfluencies such as stuttering, which includes: prolongations, repetitions, or pauses, or avoidance behaviors, or reduced perception of naturalness or secondary concomitant behaviors, such as distracting sounds, facial grimaces or other body movements; or cluttering, which includes: rapid or irregular speech rate, often with deletion or collapsing of syllables, deletion of word endings, increased frequency of revisions or interjections, pauses in communication that occur at unexpected junctures with respect to grammatical production;

6.15.1.2.2 Articulation/Connected speech intelligibility as exhibited by impairment in the production of speech sounds (including substitutions, omissions, distortions or additions of speech sounds) that are considered to be developmentally appropriate for the child's age or cultural linguistic background;

6.15.1.2.3 Receptive or expressive language as exhibited by: impairment in the form of language (phonology, morphology, syntax), content of language (vocabulary, semantics), comprehension or functional use of language (pragmatics) of a spoken, written, or other symbol system ~~that are adversely affecting the speaker's ability to communicate effectively within academic and extracurricular settings~~; or

6.15.1.2.4 Voice quality as exhibited by: voice impairment in one (1) or more processes of pitch, quality, intensity or resonance.

6.15.2 Age of Eligibility: A child is eligible for special education and related services under the Speech or Language Impairment educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma or the end of the school year in which the student attains the age of 21, whichever occurs first, except where speech

and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary educational classification.

6.15.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Speech or Language Impairment if the child meets the criteria in subsection 6.15.1, and the adverse effect on educational performance cannot primarily be explained by:

6.15.3.1 Sociocultural dialect;

6.15.3.2 Differences associated with acquisition of English as a new language;

6.15.3.3 Anxiety disorders (e.g. selective mutism);

6.15.3.4 Limited exposure to communication-building experiences;

6.15.3.5 Differences related to medical issues not directly related to the vocal mechanism; or

6.15.3.6 Other factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.15.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through 925.5.0, the child's IEP team shall obtain data from:

6.15.4.1 Language samples and communication skills assessments and additional criterion-referenced measures that assess form, content and use, as needed.

6.15.4.2 An oral peripheral examination; and

6.15.4.3 If applicable, evidence of insufficient progress when using a process based on scientific, evidence-based interventions within a multi-tiered system of support in accordance with proposed regulation **14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS) (23 DE Reg. 613 (02/01/20)).**

6.15.5 Re-evaluation Procedures:

6.15.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through 925.5.0 and 925.6.15; and

6.15.5.2 For impairments in voice or swallowing, the IEP team should make every effort to obtain updated documentation by a qualified medical professional related to the student's impairment.

6.15.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's communication disorder shall be provided by a licensed and certified speech-language pathologist. For impairments in voice or swallowing, an evaluation by a qualified medical professional is also required.

6.15.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a licensed and certified speech-language pathologist shall be a member of the IEP team for the purpose of determining eligibility. When the child's primary educational classification is Speech or Language Impairment a special education teacher or provider is not required to be a member of the IEP team.

6.16 Traumatic Brain Injury

6.16.1 Eligibility Criteria: A child is eligible for special education and related services under the educational classification of Traumatic Brain Injury if the child has an acquired injury to the brain caused by an external physical force, or by certain medical conditions such as stroke, encephalitis, aneurysm, anoxia or brain tumors resulting in total or partial functional disability or psychosocial impairment, or both, and that the traumatic brain injury adversely affects the child's educational performance as defined in **14 DE Admin. Code 922.3.0.**

6.16.2 Age of Eligibility: A child is eligible for special education and related services under the Traumatic Brain Injury educational classification from the child's 3rd birthdate until the child's receipt of a regular high school diploma whichever occurs first.

6.16.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Traumatic Brain Injury if the child meets the criteria in subsection 6.16.1, and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination in **14 DE Admin. Code 925.6.2.**

6.16.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through **925.5.0**, the child's IEP Team shall obtain documentation of the traumatic brain injury by a qualified medical professional as described in **14 DE Admin. Code 925.6.16.6.**

6.16.5 Re-evaluation Procedures

6.16.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through **925.5.0** and **925.6.16.1**; and

6.16.5.2 The IEP team should make every effort to obtain updated documentation related to the student's traumatic brain injury.

6.16.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's traumatic brain injury shall be provided by a qualified medical professional who can certify the existence of a traumatic brain injury.

6.16.7 Additional IEP team Members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, a certified school psychologist and a school nurse shall be members of the IEP team for the purpose of determining eligibility.

6.17 Visual Impairment Including Blindness

6.17.1 Eligibility Criteria: A child is eligible for special education and related services under the Visual Impairment including Blindness educational classification if the child has an impairment in vision that, even with correction, adversely affects the child's educational performance as defined in **14 DE Admin. Code 922.3.0.**

6.17.1.1 Applicable visual impairments are:

6.17.1.1.1 Partial sight, including macular holes, oscillopsia, and central vision loss; or blindness; or neurological conditions (not perceptual impairments); or a progressive loss of vision; and corrected visual acuity of 20/50 or less in the better eye, or a peripheral field so contracted that the widest lateral

field of vision subtends less than 40 degrees; or

6.17.1.1.2 Cortical vision impairment, or

6.17.1.1.3 A functional vision loss where field and acuity deficits alone may not meet the criteria in subsections 6.17.1.1.1 or 6.17.1.1.2.

6.17.2 Age of Eligibility: A child is eligible for special education and related services under the Visual Impairment including Blindness educational classification from birth until the child's receipt of a regular high school diploma or the end of the school year in which the student attains the age of 21, whichever occurs first.

6.17.3 Additional Criteria for Eligibility: While a child with a disability may be eligible for multiple educational classifications, the child's primary educational classification shall be Visual Impairment including Blindness if the child meets the criteria in subsection 6.17.1 and the adverse effect on educational performance cannot primarily be explained by factors listed under the special rule for eligibility determination consistent with **14 DE Admin. Code 925.6.2.**

6.17.4 Disability-Specific Evaluation Procedures: In addition to the evaluation procedures required by **14 DE Admin. Code 925.4.0** through **925.5.0**, in order to determine a child's eligibility for special education and related services under the Visual Impairment including Blindness educational classification, the child's IEP team shall obtain documentation of the visual impairment by a qualified medical professional as defined in **14 DE Admin. Code 925.6.17.6.**

6.17.5 Re-evaluation Procedures

6.17.5.1 For purposes of continued eligibility determination, the IEP team shall follow procedures in **14 DE Admin. Code 925.3.0** through **925.5.0** and **925.6.17**; and

6.17.5.2 The IEP team should make every effort to obtain updated documentation related to the student's visual impairment.

6.17.6 Documentation: The IEP team shall document its eligibility determination in an evaluation summary report. Documentation of the child's visual impairment shall be provided by a qualified medical professional such as a licensed ophthalmologist, optometrist, or neurologist.

6.17.7 Additional IEP team members: In addition to the IEP team members required by **14 DE Admin. Code 925.8.0**, an orientation and mobility specialist, teacher of students with visual impairments, and a certified school psychologist are required to be members of the IEP team for the purpose of determining eligibility.

~~6.18 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only):~~

~~6.18.1 A speech disability is defined as a communication disorder or delay involving articulation, voice quality, or speech fluency to such a degree that it interferes with a child's overall communicative performance.~~

~~6.18.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.~~

~~6.18.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized~~

norm based instrument. It is strongly recommended that the evaluation include clinical observations or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

~~6.18.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,~~

~~6.18.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,~~

~~6.18.2.1.3 Oral motor involvement which may affect the development of normal articulation,~~

~~6.18.2.1.4 Speech fluency, or~~

~~6.18.2.1.5 Voice quality~~

~~6.18.3 Results of the evaluation may indicate a significant delay in receptive and expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.~~

~~6.18.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.~~

~~(Authority: 14 Del.C. §3110)~~

11 DE Reg. 184 (08/01/07)

11 DE Reg. 1629 (06/01/08)

15 DE Reg. 352 (09/01/11)

18 DE Reg. 564 (01/01/15)

20 DE Reg. 172 (09/01/16)

21 DE Reg. 626 (02/01/18)

7.0 Learning Disabilities

~~7.1 General: Subject to the effective dates in 6.11 and the special grandfathering rule in 6.4, eligibility for special education services under the learning disability category shall be contingent on the prior delivery of appropriate instruction, and shall further consider the child's response to scientific, research based interventions delivered according to the procedures in 12.0.~~

~~7.2 Assessments of intellectual functioning are not required to determine eligibility for special education services under the learning disability category. Assessments of intellectual functioning should generally be reserved for students suspected of having an intellectual disability or where an instructional support team, or other group of qualified professionals (see 6.1), and the parent determines such tests are relevant in selecting appropriate instructional or behavioral interventions.~~

~~(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)~~

11 DE Reg. 184 (08/01/07)

11 DE Reg. 1629 (06/01/08)

15 DE Reg. 352 (09/01/11)

8.0 — Additional Group Members

~~8.1 — The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in **14 DE Admin. Code 922.3.0** shall be made by the child's parents and a team of qualified professionals, which shall include:~~

~~8.1.1 — The child's regular teacher; or~~

~~8.1.2 — If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or~~

~~8.1.3 — For a child of less than school age, an individual qualified by the DOE to teach a child of his or her age; and~~

~~8.1.4 — At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher.~~

~~(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)); **14 Del.C. §3110**)~~

9.0 — Determining the Existence of a Specific Learning Disability

~~9.1 — Subject to 6.4 and 6.11, the group described in 6.1 may determine that a child has a specific learning disability if:~~

~~9.1.1 — Lack of achievement: The child does not achieve adequately for the child's age or to meet State approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards as further described in 12.0:~~

~~9.1.1.1 — Oral expression.~~

~~9.1.1.2 — Listening comprehension.~~

~~9.1.1.3 — Written expression.~~

~~9.1.1.4 — Basic reading skill.~~

~~9.1.1.5 — Reading fluency skills.~~

~~9.1.1.6 — Reading comprehension.~~

~~9.1.1.7 — Mathematics calculation.~~

~~9.1.1.8 — Mathematics problem solving; and~~

~~9.1.2 — Insufficient progress: The child does not make sufficient progress to meet age or State approved grade level standards in one or more of the areas identified in 9.1.1 when using a process based on the child's response to scientific, research based intervention as further described in 12.0; or~~

~~9.1.3 — Pattern of strengths and weaknesses: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 4.0 and 5.0; and~~

~~9.1.4 — Rule out other conditions: The group determines that its findings under 9.1.1, 9.1.2 and 9.1.3 are not primarily the result of:~~

- 9.1.4.1 — A visual, hearing, or motor disability;
- 9.1.4.2 — Intellectual Disability;
- 9.1.4.3 — Emotional disability;
- 9.1.4.4 — Cultural factors;
- 9.1.4.5 — Environmental or economic disadvantage; or
- 9.1.4.6 — Limited English proficiency.

9.2 — To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group shall consider, as part of the evaluation described in 4.0 through 6.0:

9.2.1 — Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

9.2.2 — Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

9.3 — The public agency shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and shall adhere to the time frames described in 2.3 and 3.0 (unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 6.1):

9.3.1 — If, prior to a referral, a child has not made adequate progress after an appropriate period of time (as further provided in 12.0) when provided instruction, as described in 9.2; and

9.3.2 — Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); **14 Del.C. §3110**)

11 DE Reg. 184 (08/01/07)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

10.0 — Observation

10.1 — The public agency shall ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

10.2 — The group described in 6.1, in determining whether a child has a specific learning disability, shall decide to use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

10.3 — In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); **14 Del.C. §3110**)

11.0 — Specific Documentation for the Eligibility Determination

~~11.1 — For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 6.1, shall contain a statement of:~~

~~11.1.1 — Whether the child has a specific learning disability;~~

~~11.1.2 — The basis for making the determination, including an assurance that the determination has been made in accordance with 6.3;~~

~~11.1.3 — The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;~~

~~11.1.4 — The educationally relevant medical findings, if any;~~

~~11.1.5 — Whether,~~

~~11.1.5.1 — The child does not achieve adequately for the child's age or to meet State approved grade level standards consistent with 9.1.1; and~~

~~11.1.5.2 — The child does not make sufficient progress to meet age or State approved grade level standards consistent with 9.1.2; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade level standards or intellectual development consistent with 9.1.3;~~

~~11.1.6 — The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and~~

~~11.1.7 — If the child has participated in a process that assesses the child's response to scientific, research-based intervention:~~

~~11.1.7.1 — The instructional strategies used and the student centered data collected; and~~

~~11.1.7.2 — The documentation that the child's parents were notified about:~~

~~11.1.7.2.1 — The DOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;~~

~~11.1.7.2.2 — Strategies for increasing the child's rate of learning; and~~

~~11.1.7.2.3 — The parents' right to request an evaluation.~~

~~11.2 — Each group member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member shall submit a separate statement presenting the member's conclusions.~~

~~(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)~~

~~14 DE Reg. 1060 (04/01/11)~~

~~15 DE Reg. 352 (09/01/11)~~

~~20 DE Reg. 172 (09/01/16)~~

12.0 — Response to Intervention Procedures

~~12.1 — Each public agency shall establish and implement procedures to determine whether a child~~

~~responds to scientific, research-based interventions (RTI) for reading and mathematics.~~

~~12.1.1 Agencies may also establish and implement procedures to determine whether a child responds to scientific, research-based interventions in oral expression, listening comprehension, and written expression.~~

~~12.2 Public agencies shall use rubrics approved by DOE to evaluate and select programs of instruction, and Tier 2 and Tier 3, interventions for reading and mathematics.~~

~~12.3 Instructional screening instruments used as part of RTI procedures shall be norm referenced or curriculum based and progress monitoring instruments used as part of RTI procedures shall be curriculum based.~~

~~12.4 RTI procedures, including the same frequency and intensity of instruction, and small group settings available to all students, shall apply to children with disabilities who already receive special education and related services. RTI procedures shall not be required for students who participate in Alternate Assessment based on Alternate Achievement standards (AA-AAS).~~

~~12.4.1 IEP teams of children with disabilities may specialize the instruction and method of delivering interventions under RTI procedures.~~

~~12.4.2 IEP teams may also determine that a child with a disability requires more intensity or frequency of instruction, or smaller group settings than would otherwise be provided under RTI procedures.~~

~~12.5 RTI procedures shall include the tiers and types and duration of services and interventions described in 12.6 through 12.10.~~

~~12.6 Tier 1: Core Classroom Instruction: Tier 1 services shall be designed to be delivered in a general education setting, by a general education teacher. Instruction shall be delivered with fidelity as part of a scientifically based core curriculum and matched to student need.~~

~~12.6.1 Universal Tier 1 instructional screenings for reading and mathematics at the elementary level shall be conducted at least 3 times each regular school year at routine and fairly spaced intervals. For students at risk of academic failure, the first screening shall be conducted within 2 weeks of the beginning of the regular school year, or within 2 weeks of the child's entry into school. Tier 1 instructional screenings for reading and mathematics at the secondary level shall be conducted for students at risk of academic failure at least three (3) times each regular school year at routine and fairly spaced intervals. The first screening shall be conducted with two (2) weeks of the beginning of the regular school year, or within two (2) weeks of the child's entry into school.~~

~~12.6.2 Children who score at or below the 25th percentile on a norm referenced test or the designated cut point on a curriculum based measure for any instructional screening, shall be provided Tier 2 interventions.~~

~~12.6.3 A school based team (such as a literacy team, a leadership team or a grade level team) shall review the program and progress of any child who does not score at benchmark on any instructional screening, but who does score above the 25th percentile on a norm referenced test or the designated cut point on a curriculum based measure, to assure that the child is receiving differentiated, needs-based instruction. In addition, the team's review shall include the fidelity of program implementation, pacing~~

and appropriateness of instructional groupings.

- ~~12.6.3.1~~ The child's progress toward end of year benchmarks shall be monitored at least once every 2 weeks until progress monitoring consistently demonstrates that the child is on a trajectory to meet end of year benchmarks.
- ~~12.6.3.2~~ If, after 6 weeks of progress monitoring, the child is not on a trajectory to meet end of the year benchmarks, the child shall be provided Tier 2 interventions unless the school based team specifically determines that further progress monitoring is required before additional interventions are provided.
- ~~12.7~~ Tier 2: Intervention: Tier 2 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to student need.
 - ~~12.7.1~~ Tier 2 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in small group, at a minimum of ninety (90) minutes per week in session periods appropriate to age and development, but not less than two (2) sessions per week. In the case of a student identified in need of intervention in both reading and math, the intervention shall be designed by the instructional support team proportionate to student need, but not less than one hundred twenty (120) minutes per week.
 - ~~12.7.2~~ Tier 2 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.
 - ~~12.7.3~~ If, after 6 school weeks of Tier 2 intervention, a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, an instructional support team formulated in accordance with **14 DE Admin. Code 923.11.9**, shall meet to review the child's program and progress, to assure that the child is receiving differentiated, needs-based instruction. In addition, the instructional support team's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the instructional support team shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child requires Tier 3 intervention.
 - ~~12.7.4~~ If, after an additional 6 school weeks of Tier 2 intervention (or up to a total of 12 school weeks of intervention) a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, the child shall begin receiving Tier 3 intervention as outlined by the instructional support team.
- ~~12.8~~ Tier 3: Intervention: Tier 3 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher and additional staff, but is likely to be delivered in other or additional settings, or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to the student's needs.
 - ~~12.8.1~~ Tier 3 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in groups smaller than those for

intervention delivered in Tier 2, at a minimum of one hundred and fifty (150) minutes per week in session periods appropriate to age and development, but not less than four (4) sessions per week. In the case of a student identified in need of intervention in both reading and math, the intervention shall be designed by the instructional support team proportionate to student need, but not less than one hundred eighty (180) minutes per week.

~~12.8.2 Tier 3 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.~~

~~12.8.3 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made no progress toward benchmarks, the instructional support team shall refer the child for an initial evaluation for special education services.~~

~~12.8.4 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made progress toward benchmarks, but is not on a trajectory to meet end-of-year benchmarks, the instructional support team shall meet to review the child's program and progress, to assure that the child is receiving differentiated needs-based instruction. In addition, the instructional support team's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the instructional support team shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child should be referred for an initial evaluation for special education services.~~

~~12.8.5 If, after an additional 6 school weeks of Tier 3 interventions (or up to a total of 24 school weeks of interventions), a child has not made sufficient progress toward end-of-year benchmarks, the instructional support team shall refer the child for an initial evaluation for special education services.~~

~~12.9 RTI procedures shall also be designed to permit students to move between tiers of intervention based on the child's progress against benchmarks as measured through weekly progress monitoring. Weekly progress monitoring shall continue after a student is referred for an initial special education evaluation and for any student who is evaluated and determined eligible for special education and related services after receiving the interventions required in this section. In addition, the child's IEP team shall specifically consider the information gathered about the child's response to interventions, and the results of ongoing progress monitoring, in developing and revising the child's IEP. Subject to 3.0, a public agency shall initiate a reevaluation when ongoing progress monitoring indicates that the child's performance in reading or mathematics has improved such that the child may no longer require special education and related services.~~

~~12.10 If 20% of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, including a building level administrator, shall meet to consider the need for additional classroom supports and strategies.~~

~~12.11 Consistent with 1.0 through 5.0, a parent of a child may initiate a request for an initial evaluation at any time, including during the RTI process. The public agency may grant or decline the request. If the public agency declines to conduct the initial evaluation, it must provide written notice consistent with **14 DE Admin. Code 926.3.0**. If the public agency~~

~~agrees to conduct an initial evaluation, the evaluation shall be completed, and an eligibility determination made, within the time frame established in 2.3. However, a child may be determined ineligible for services under the learning disability or mild intellectual disability categories where there are insufficient data to demonstrate that the child was provided appropriate instruction in the regular education setting, or where there is insufficient data-based documentation of repeated assessments of achievement. If a child is determined ineligible for special education services on these grounds, the child may be referred back to an instructional support team to gather the required documentation and data by completing the RTI process. Eligibility for special education services may then be reconsidered at the request of the parent or a member of the instructional support team.~~

~~(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)~~

~~11 DE Reg. 184 (08/01/07)~~

~~11 DE Reg. 1629 (06/01/08)~~

~~14 DE Reg. 1060 (04/01/11)~~

~~15 DE Reg. 352 (09/01/11)~~

13.0 to 19.0 — Reserved

20.07.0 Definition of Individualized Education Program

~~20.17.1~~ 20.17.1 General: Each child who is determined eligible for special education and related services shall have a single IEP. As used in these regulations, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with ~~20.0 through 24.0~~ Sections 7.0 through 11.0, and that shall include:

~~20.1.47.1.1~~ 20.1.47.1.1 A statement of the child's present levels of academic achievement and functional performance, including:

~~20.1.1.17.1.1.1~~ 20.1.1.17.1.1.1 How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for ~~non-disabled~~ non-disabled children); or

~~20.1.1.27.1.1.2~~ 20.1.1.27.1.1.2 For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

~~20.1.27.1.2~~ 20.1.27.1.2 A statement of measurable annual goals, including academic and functional goals designed to:

~~20.1.2.17.1.2.1~~ 20.1.2.17.1.2.1 Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;

~~20.1.2.27.1.2.2~~ 20.1.2.27.1.2.2 For children with disabilities who participate in the Alternate Assessment based on Alternate Achievement Standards (AA-AAS), a description of benchmarks or ~~short-term~~ short-term objectives.

~~20.1.37.1.3~~ 20.1.37.1.3 A description of how the child's progress toward meeting the annual goals described in ~~20.1.2~~ subsection 7.1.2 will be measured; and when periodic reports on

the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

~~20.1.4.7.1.4~~ A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

~~20.1.4.17.1.4.1~~ To advance appropriately toward attaining the annual goals;

~~20.1.4.27.1.4.2~~ To be involved in and make progress in the general education curriculum in accordance with ~~20.1.4~~ subsection 7.1.1, and to participate in extracurricular and other nonacademic activities; and

~~20.1.4.37.1.4.3~~ To be educated and participate with other children with disabilities and ~~non disabled~~ non-disabled children in the activities described in this section;

~~20.1.57.1.5~~ An explanation of the extent, if any, to which the child will not participate with ~~non disabled~~ non-disabled children in the regular class and in the activities described in ~~20.1.4~~ subsection 7.1.4;

~~20.1.67.1.6~~ A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Individuals with Disabilities Education Act; and if the IEP ~~Team~~ team determines that the child shall take an alternate assessment, instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child;

~~20.1.77.1.7~~ The projected date for the beginning of the services and modifications described in ~~20.1.4~~ subsection 7.1.4, and the anticipated frequency, location, and duration of those services and modifications; and

~~20.1.87.1.8~~ *A statement designating whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent other authorized responsible person.*

~~20.27.2~~ Transition services: *Beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP ~~Team~~ team, and updated annually thereafter, the IEP ~~must~~ shall include:*

~~20.2.47.2.1~~ Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

~~20.2.27.2.2~~ The transition services *and activities* (including courses of study) needed to assist the child in reaching those goals.

~~20.2.2.17.2.2.1~~ *The IEP team shall discuss employment options with children and parents consistent with Delaware's Employment First Policy articulated by **19 Del.C. §743.***

~~20.2.2.27.2.2.2~~ *Progress made on activities and services that reasonably enable the child*

to reach the child's postsecondary goals in transition IEPs shall be reported with the same frequency as academic goals.

~~20.2-37.2.3~~ *The child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical educational programs.*

~~20.37.3~~ Transfer of rights at age of majority: Beginning not later than one (1) year before the child reaches the age of 18, the IEP shall include a statement that the child has been informed that the child's rights under **14 Del.C. §3132** will transfer to the child, or an educational representative or educational surrogate parent on reaching the age of 18 under **14 DE Admin. Code 926.20.0**.

(Authority: 20 U.S.C. 1415(m); **14 Del.C. §3132**)

~~20.47.4~~ *IEP Forms: Each public agency shall use the IEP forms as developed and required by the DOE. The requirement that public agencies use the DOE's IEP forms does not prohibit or prevent an IEP team from including on an IEP any information, service or other notation the team determines necessary to provide FAPE to a child with a disability. This section shall not be construed to require an IEP Team team to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.*

~~20.57.5~~ Extended school year services: A student's need for extended school year services shall be determined in accordance with **14 DE Admin. Code 923.6.0**.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); **14 Del.C. §3110**)

~~20.67.6~~ ~~Twelve-month~~ Twelve-month program eligibility: The DOE shall include a parental notice and acknowledgment section in IEP forms described in ~~20.4~~ subsection 7.4 which both identifies students eligible for a 12-month program pursuant to **Title 14 Del.C. §1703** and documents the parental option to accept a 12-month program. [Authority: **Title 14 Del.C. §§1703(e), 1703(f)**]

12 DE Reg. 1084 (02/01/09)

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

20 DE Reg. 549 (01/01/17)

21.08.0 IEP Team

~~21.18.1~~ 21.18.1 General: The public agency shall ensure that the IEP ~~Team~~ team for each child with a disability includes:

~~21.1.18.1.1~~ 21.1.18.1.1 The parents of the child;

~~21.1.28.1.2~~ 21.1.28.1.2 Not less than one (1) regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

~~21.1.38.1.3~~ 21.1.38.1.3 Not less than one (1) special education teacher of the child, or where appropriate, not less than one (1) special education provider of the child;

~~21.1.48.1.4~~ 21.1.48.1.4 A representative of the public agency who:

~~21.1.4.18.1.4.1~~ 21.1.4.18.1.4.1 Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

~~21.1.4.28.1.4.2~~ Is knowledgeable about the general education curriculum;

~~21.1.4.38.1.4.3~~ Is knowledgeable about the availability of resources of the public agency;
and

~~21.1.4.48.1.4.4~~ *Has authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.*

~~21.1.58.1.5~~ An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in ~~21.1.2 through 21.1.6 of this section~~ subsections 8.1.2 through 8.1.6;

~~21.1.68.1.6~~ At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

~~21.1.78.1.7~~ Whenever appropriate, the child with a disability; *and*

~~21.1.88.1.8~~ *Whenever the child is, or may be, participating in a career and technical education program, a career technical education teacher of the child, or career technical teacher coordinator.*

~~21.28.2~~ Transition services participants: In accordance with ~~21.1.7~~ subsection 8.1.7, the public agency shall, *in writing*, invite a child with a disability to attend the child's IEP ~~Team~~ team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.

~~21.2.18.2.1~~ If the child does not attend the IEP ~~Team~~ team meeting, the public agency shall take other steps to ensure that the child's preferences and interests are considered.

~~21.2.28.2.2~~ To the extent appropriate, with the consent of the parents or a child who has reached the age of 18, in implementing the requirements of ~~21.2~~ subsection 8.2, the public agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

~~21.38.3~~ Determination of knowledge and special expertise: The determination of the knowledge or special expertise of any individual described in ~~21.1.6~~ subsection 8.1.6 shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP ~~Team~~ team.

~~21.48.4~~ Designating a public agency representative: A public agency may designate a public agency member of the IEP ~~Team~~ team to also serve as the agency representative, if the criteria in ~~21.1.4.4~~ subsection 8.1.4.4 are satisfied.

~~21.4.18.4.1~~ At the beginning of each school year, the public agency shall identify its agency representatives, and any person designated to serve as an agency representative at each or any of its schools, in writing.

~~21.4.28.4.2~~ The agency's written list of representatives and designees shall be supplied to each school of the public agency. It shall be available to the DOE upon request. The agency's representative and designee list shall be updated and redistributed to schools throughout the school year to the extent staffing and personnel changes alter the original list.

~~21.58.5~~ IEP ~~Team~~ team attendance: A member of the IEP ~~Team~~ team described in ~~21.1.2 through 21.1.5 of this section~~ subsections 8.1.2 through 8.1.5 is not required to attend an IEP ~~Team~~ team

team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

~~21.5.4~~8.5.1 A member of the IEP ~~Team~~ team described in ~~21.5~~ subsection 8.5 may be excused from attending an IEP ~~Team~~ team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

~~21.5.1.4~~8.5.1.1 The parent, in writing, and the public agency consent to the excusal; and

~~21.5.1.2~~8.5.1.2 The member submits, in writing to the parent and the IEP ~~Team~~ team, input into the development of the IEP prior to the meeting.

~~21.6~~8.6 Initial IEP ~~Team~~ team meeting for child under Part C: In the case of a child who was previously served under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP ~~Team~~ team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D); **14 Del.C. §3110**)

~~21.7~~8.7 *No public agency, or any person acting under the authority of a public agency, shall discriminate or take any adverse employment or contract action against any person based upon statements that the person makes while advocating for a student in connection with an IEP, including statements made in preparation for or at a meeting, review, or conference concerning a child with a disability's free and appropriate public education.*

~~21.7.4~~8.7.1 *Entities or persons who violate this subsection shall be subject to the same sanctions as persons or entities that engage in unlawful employment practices under **19 Del.C. Ch. 7.***

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

22.09.0 Parent Participation

~~22.4~~9.1 Public agency responsibility, ~~General:~~ general: Each public agency shall take steps to ensure that one (1) or both of the parents of a child with a disability are present at each IEP ~~Team~~ team meeting or are afforded the opportunity to participate, including:

~~22.4.4~~9.1.1 Notifying parents of the meeting, *in writing, no less than ten (10) school days prior to the IEP ~~Team~~ team meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend, and no less than five (5) school days prior to a meeting to conduct a manifestation determination under **14 DE Admin. Code 926.30**; and*

~~22.4.2~~9.1.2 Scheduling the meeting at a mutually agreed on time and place.

~~22.2~~9.2 Information provided to parents: The notice required under ~~22.4~~ subsection 9.1 shall:

~~22.2.4~~9.2.1 Indicate the purpose, time, and location of the meeting and who will be in attendance; and

~~22-2-29.2.2~~ Inform the parents of the provisions in ~~24.1.6 and 24.3~~ subsections 8.1.6 and 8.3 (relating to the participation of other individuals on the IEP ~~Team~~ team who have knowledge or special expertise about the child), and ~~24.6~~ subsection 8.6 (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP ~~Team~~ team meeting for a child previously served under Part C of the Act).

~~22-2-2-19.2.2.1~~ *The IEP ~~Team~~ team shall provide notice to the parent, and if appropriate, the child, that they may request the presence of any teacher, paraprofessional, and any additional staff members at an IEP meeting.*

~~22-2-39.2.3~~ *A summary of the procedural safeguards shall be included with the notice of meeting and a full copy of the procedural safeguards shall be provided to the parents at the IEP meeting.*

~~22-2-49.2.4~~ *The IEP ~~Team~~ team shall provide notice to the parent, and if appropriate, the child, that they may request any data (e.g. classroom assessments, formative assessments, behavior data, related service reports, ~~Response to Intervention~~ multi-tiered system of support data) in the agency's possession relevant to the child's needs or disability prior to the IEP meeting.*

~~22-39.3~~ *The IEP team will ensure parent input through the following:*

~~22-3-19.3.1~~ *The IEP team shall provide a questionnaire requesting the input of a child's parent, and where appropriate, the input of the child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, ~~and/or~~ or other elements of the child's IEP.*

~~22-3-1-19.3.1.1~~ *The questionnaire shall be sent with or prior to the written meeting notice inviting the parent to attend the IEP meeting.*

~~22-3-29.3.2~~ *If the IEP ~~Team~~ team prepares a draft of the IEP prior to the date of the IEP meeting, the IEP ~~Team~~ team shall provide the parent, and if appropriate, the child, with a copy of the draft IEP accompanied by a letter clearly indicating that the document is a draft for discussion purposes only and is therefore subject to revisions.*

~~22-3-39.3.3~~ *The Department in collaboration with the Governor's Advisory Council for Exceptional Citizens shall create and provide a draft letter and associated guidance to assist public agencies with the content and application of the letter referred to in subsection ~~22-3-2~~ in **14 DE Admin. Code 925 9.3.2**.*

~~22-49.4~~ *For a child with a disability beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP ~~Team~~ team, the notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with ~~20-2~~ subsection 7.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative. *The invitation to the child shall be in writing.**

~~22-59.5~~ *Other methods to ensure parent participation: If neither parent can attend an IEP ~~Team~~ team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with ~~28-0~~ Section 14.0 (related to alternative means of meeting participation).*

~~22-69.6~~ Conducting an IEP ~~Team~~ team meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed on time and place, such as:

~~22-6-49.6.1~~ Detailed records of telephone calls made or attempted and the results of those calls;

~~22-6-29.6.2~~ Copies of correspondence sent to the parents and any responses received; and

~~22-6-39.6.3~~ Detailed records of visits made to the parent's home or place of employment and the results of those visits.

~~22-6-49.6.4~~ Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP ~~Team~~ team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

~~22-79.7~~ Parent copy of child's IEP: The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i); **14 Del.C. §3110**)

~~22-89.8~~ *The Department of Education, in conjunction with the Department of Justice, shall annually survey a random and representative sample of parents and their children who have ~~Individualized Education Programs IEPs~~ with respect to the parents' and children's satisfaction with the IEP process. Information gathered through this survey shall be used by the Department of Education and Department of Justice to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with state and federal laws and regulations.*

~~22-8-4 9.8.1~~ *Information gathered through this survey shall also be used by the Department of Education in carrying out monitoring duties as outlined in **14 DE Admin. Code 927** to ensure compliance with state and federal laws and regulations.*

~~22-8-29.8.2~~ *A summary of the survey results will be made available on the Department of Education's website.*

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

20 DE Reg. 172 (09/01/16)

23-010.0 When IEPs Shall be in Effect

~~23-110.1~~ 23-110.1 General: At the beginning of each school year, each public agency shall have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Section 2.0.

~~23-210.2~~ 23-210.2 Initial IEPs; provision of services: Each public agency shall ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

~~23-310.3~~ 23-310.3 Accessibility of child's IEP to teachers and others. Each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education

teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of:

~~23.3.4~~10.3.1 ~~His or her~~ Their specific responsibilities related to implementing the child's IEP; and

~~23.3.2~~10.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

~~23.4~~10.4 IEPs for children who transfer from and to public agencies within Delaware: If a child with a disability (who had an IEP that was in effect in a previous public agency in Delaware) transfers to a new public agency in Delaware, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency).

~~23.4.1~~10.4.1 A child with a disability who transfers from one (1) Delaware public agency to another shall be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of a parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within 60 days of the child's initial attendance in the receiving public agency, the receiving public agency ~~must either~~ shall:

~~23.4.1.1~~10.4.1.1 Adopt the child's IEP from the previous public agency at an IEP meeting convened for that purpose, or develop, adopt, and implement a new IEP that meets the applicable requirements in ~~20.0 through 24.0~~ Sections 7.0 through 11.0.

~~23.5~~10.5 IEPs for children who transfer from out of state public agencies: If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in Delaware, and enrolls in a new school in Delaware within the same school year, the new public agency (in consultation with the parents) shall provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency).

~~23.5.1~~10.5.1 A child with a disability who transfers from an out of state public agency shall be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of a parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within 60 days of the child's initial attendance in the receiving public agency, the receiving public agency ~~must~~ shall:

~~23.5.1.1~~10.5.1.1 Conduct an evaluation pursuant to Sections 4.0 through 6.0 (if determined to be necessary by the new public agency); and develop, adopt, and implement a new IEP, if appropriate, that meets the applicable requirements in ~~20.0 through 24.0~~ Sections 7.0 through 11.0.

~~23.6~~10.6 Transmittal of records and public agency duties: To facilitate the transition for a child described in ~~23.4 and 23.5~~ subsections 10.4 and 10.5:

~~23.6.1~~10.6.1 *The receiving public agency shall ensure that all requirements concerning*

evaluation, IEP development, placement, and procedural safeguards are applied in determining the provision of special education and related services. The receiving public agency in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

~~23.6.2~~10.6.2 The previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)-(C); 14 **Del.C.** §3110)

24.011.0 Development, Review, and Revision of IEP

~~24.1.1~~11.1 Development of IEP, ~~General:~~ IEP, general: In developing each child's IEP, the IEP Team ~~team~~ shall consider:

~~24.1.1.1~~11.1.1 The strengths of the child;

~~24.1.2~~11.1.2 The concerns of the parents for enhancing the education of their child;

~~24.1.3~~11.1.3 The results of the initial or most recent evaluation of the child; and

~~24.1.4~~11.1.4 The academic, developmental, and functional needs of the child.

~~24.2.1~~11.2 Consideration of special factors: The IEP Team ~~team~~ shall:

~~24.2.1.1~~11.2.1 In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

~~24.2.2~~11.2.2 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;

~~24.2.3~~11.2.3 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 ~~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;

~~24.2.4~~11.2.4 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;

~~24.2.5~~11.2.5 Consider whether the child needs assistive technology devices and services; and

~~24.2.6~~11.2.6 *In the case of a child who is blind, visually impaired, ~~and/or~~ or has a physical or print disability, consider whether the child needs accessible instructional materials.*

~~24.2.7~~11.2.7 *In the case of any child with limited reading proficiency, consider the reading*

services, supports and evidence-based interventions as those relate to the child's IEP;

~~24.2.7.4~~11.2.7.1 For a child who is not beginning to read by age ~~seven~~, seven (7), or who is beyond age seven (7) and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read. Eligibility for reading-based extended school year services shall be determined in accordance with **14 DE Admin. Code 923.6.0**.

~~24.3~~11.3 Requirement with respect to regular education teacher: A regular education teacher of a child with a disability, as a member of the IEP ~~Team~~, team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child; and supplementary aids and services, program modifications, and support for school personnel consistent with ~~20.4.4~~ subsection 7.1.4.

~~24.4~~11.4 Agreement: In making changes to a child's IEP after the annual IEP ~~Team~~ team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP ~~Team~~ team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP in accordance with this section, the public agency shall ensure that the child's IEP ~~Team~~ team is informed of those changes.

~~24.5~~11.5 Consolidation of IEP ~~Team~~ team meetings: To the extent possible, the public agency shall encourage the consolidation of ~~reevaluation~~ re-evaluation meetings for the child and other IEP ~~Team~~ team meetings for the child.

~~24.6~~11.6 Amendments: Changes to the IEP may be made either by the entire IEP ~~Team~~ team at an IEP ~~Team~~ team meeting, or as provided in ~~24.4~~ subsection 11.4, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

~~24.7~~11.7 Review and revision of IEPs, ~~General:~~ general: Each public agency shall ensure that, subject to ~~24.8 and 24.9~~ subsections 11.8 and 11.9, 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 address:

~~24.7.4~~11.7.1 Any lack of expected progress toward the annual goals described in ~~20.4.2~~ subsection 7.1.2, and in the general education curriculum, if appropriate;

~~24.7.2~~11.7.2 The results of any ~~reevaluation~~ re-evaluation conducted under Section 3.0;

~~24.7.3~~11.7.3 Information about the child provided to, or by, the parents, as described ~~under~~ in subsection 5.1.4;

~~24.7.4~~11.7.4 The child's anticipated needs; or

~~24.7.5~~11.7.5 Other matters.

~~24.8~~11.8 Consideration of special factors: In conducting a review of the child's IEP, the IEP ~~Team~~ team shall consider the special factors described in ~~24.2~~ subsection 11.2.

~~24.9~~11.9 Requirement with respect to regular education teacher: A regular education teacher of the child, as a member of the IEP ~~Team~~ team, shall, consistent with ~~24.3~~ subsection 11.3, participate in the review and revision of the IEP of the child.

~~24.10~~24.11.10 Failure to meet transition objectives, participating agency failure: If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with ~~20.2~~ subsection 7.2, the public agency shall reconvene the IEP Team ~~team~~ to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

~~24.11~~24.11.11 Construction. Nothing in these regulations relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

~~24.12~~24.11.12 Children with disabilities in adult prisons, requirements that do not apply: The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

~~24.12.1~~24.11.12.1 The requirements contained in section 612(a)(16) of the Individuals with Disabilities Education Act and ~~20.4.6~~ **14 DE Admin. Code 925.7.1.6** (relating to participation of children with disabilities in general assessments).

~~24.12.2~~24.11.12.2 The requirements in ~~20.2~~ subsection 7.2 (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Individuals with Disabilities Education Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

~~24.13~~24.11.13 Modifications of IEP or placement: Subject to ~~24.13.4~~ subsection 11.13.1, the IEP Team ~~team~~ of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

~~24.13.1~~24.11.13.1 The requirements of ~~20.0~~ Section 7.0 (relating to IEPs), and **14 DE Admin. Code 923.14.0** (relating to LRE) do not apply with respect to the modifications described in ~~24.13~~ of this section subsection 11.13.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e); **14 Del.C. §3110**)

14 DE Reg. 1060 (04/01/11)

18 DE Reg. 564 (01/01/15)

18 DE Reg. 861 (05/01/15)

25.012.0 Private School Placements by Public Agencies

~~25.4~~25.12.1 Developing IEPs: Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with ~~20.0 and 24.0~~ Sections 7.0 and 11.0.

~~25.4.1~~25.12.1.1 The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

~~25.2~~25.212.2 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 public agency.

~~25.2.4~~25.2.412.2.1 If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency 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.

~~25.3~~25.312.3 Responsibility: Even if a private school or facility implements a child's IEP, responsibility for compliance with these regulations remains with the public agency and the DOE.

(Authority: 20 U.S.C. 1412(a)(10)(B); 14 Del.C. §3110)

26.0 — Reserved

~~27.0~~27.013.0 Educational Placements in the Least Restrictive Environment

~~27.4~~27.413.1 Educational Placement Options. Following the development of a child's IEP, the IEP team shall determine the child's educational placement in the least restrictive environment based on the child's individual needs and the services identified in the IEP. Educational placement options shall include, but not be limited to, the following:

~~27.4.4~~27.4.413.1.1 Inside Regular Education Class \geq 80 percent of the day: Children with disabilities receiving special education and related services outside the regular classroom less than 21 percent of the day. This may include children with disabilities placed in: regular class with special education related service provided within regular classes; regular class with special education related services provided outside regular classes; or regular class with special education services provided in resource rooms.

~~27.4.2~~27.4.213.1.2 Inside Regular Class \leq 79 percent of the day and \geq than 40 percent of the day: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent of the day and no more than 60 percent of the day. This may include children placed in: resource rooms with special education related service provided within the resource room; or resource rooms with part time instruction in a regular class.

~~27.4.3~~27.4.313.1.3 Inside Regular Class $<$ 40 percent of the Day: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the day. This may include children placed in: self-contained special classrooms with part time instruction in a regular class; or self-contained special classrooms with full time education instruction on a regular school campus.

~~27.4.4~~27.4.413.1.4 Separate school: Children with disabilities receiving education programs in public or private separate day school facilities. This includes children with disabilities receiving special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate schools. This may include children placed in: public and private day schools for children with disabilities; public and private day schools for children with disabilities for a portion of the day (greater

than 50 percent) and in regular school buildings for the remainder of the day; or public and private residential facilities if the student does not live at the facility.

~~27.4.5~~13.1.5 Residential Facility: Receives education programs in public or private residential facilities during the school week. Includes children with disabilities receiving special education and related services, at public expense, for greater than 50 percent of school day in public or private residential facilities. May include children placed in: public and private residential schools for children with disabilities; or public and private residential schools for children with disabilities for a portion of the day (greater than 50 percent) and in separate day schools or regular schools buildings for the remainder of the day if the students.

~~27.4.6~~13.1.6 Homebound and Hospital: Receives education programs in homebound hospital placement. Includes children with disabilities placed in and receiving special education and related services in: hospital programs, or homebound programs.

~~27.4.7~~13.1.7 Correctional Facilities: Children receiving special education in: short-term detention facilities (community based or residential); or correctional facilities.

~~27.4.8~~13.1.8 Parentally Placed Private Schools: Children enrolled by their parents or guardians in regular parochial or other private schools and whose basic education is paid through private resources and who receive special education and related services at public expense from the local education agency or intermediate unit under a service plan.

~~27.2~~13.2 Each public agency shall ensure a child with a disability is placed in a chronologically age appropriate placement.

~~27.3~~13.3 *If a child with a disability is a danger to himself or to herself, or is so disruptive that ~~his or her~~ their behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.*

~~27.3.4~~13.3.1 *Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with the requirements for the provision of a free, appropriate public education.*

~~27.3.2~~13.3.2 *In instances of parental objection to such home instruction, parents may exercise any of the applicable procedural safeguards in these regulations.*

~~27.3.3~~13.3.3 *To be eligible for supportive instruction and related services, the following criteria shall be met:*

~~27.3.3.4~~13.3.3.1 *The child shall be identified as disabled and in need of special education and related services and enrolled in the LEA or other public educational program; and*

~~27.3.3.2~~13.3.3.2 *If the absence is due to a medical condition, be documented by a physician's statement where the absence will be for two weeks or longer; or*

~~27.3.3.3~~13.3.3.3 *If the absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and the such placement is both necessary and temporary; or if for*

transitional in school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

~~27.3.4~~ 13.3.4 *IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.*

~~27.3.5~~ 13.3.5 *Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team the child needs a transitional program to facilitate ~~his or her~~ their return to the school ~~program~~ program.*

(Authority: **14 Del.C. §3110**)

28.014.0 Alternative Means of Meeting Participation

When conducting IEP ~~Team~~ team meetings and placement meetings pursuant to these regulations, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Authority: 20 U.S.C. 1414(f); **14 Del.C. §3110**)

14 DE Reg. 1060 (04/01/11)

29.015.0 High School Graduation

Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at public agency expense, until their 21st birthday. Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to ~~his or her~~ their disability, educational placement or the type of document conferred.

(Authority: **14 Del.C. §3110**)

10 DE Reg. 1816 (06/01/07)

11 DE Reg. 184 (08/01/07)

11 DE Reg. 1629 (06/01/08)

12 DE Reg. 1084 (02/01/09)

14 DE Reg. 1060 (04/01/11)

15 DE Reg. 352 (09/01/11)

18 DE Reg. 564 (01/01/15)

18 DE Reg. 861 (05/01/15)

20 DE Reg. 172 (09/01/16)

20 DE Reg. 549 (01/01/17)

21 DE Reg. 626 (02/01/18)

24 DE Reg. 13 (07/01/21) (Implementation Date)

<p>14 DE Admin Code §§ 923.6.0 and 925.7.5</p>	<p><u>Extended School Year Services Criteria</u></p> <p>State regulations obligate public agencies to consider specific factors in deciding whether a child needs extended school year services in order to receive FAPE. Such factors are set forth in the regulations, and include the degree of impairment, regression, recoupment, breakthrough opportunities, vocational opportunities, and any other rare and unusual extenuating circumstances.</p> <p>In addition, State regulations include ESY for reading acquisition. Notwithstanding any contrary provision, if a child is not beginning to read by age seven, or is beyond age seven and not yet beginning to read, the team shall presumptively include extended year services in the IEP which incorporate evidenced-based interventions that address the child’s inability to read. The team may decline to include such extended school year services in the IEP only if the team provides a specific explanation in the IEP why such services are inappropriate. A child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.</p>
<p>14 DE Admin Code § 926.1.2.3 14 Del. C. § 3130</p>	<p><u>Opportunity to Examine Educational Placements</u></p> <p>Public agencies must permit the parents of a child with a disability to visit and observe, either personally or through a representative, their child’s current or proposed educational program.</p>
<p>14 DE Admin Code § 926.1.5 14 Del. C. § 3131</p>	<p><u>Minutes of Meetings</u></p> <p>State law permits parents and public agencies to take minutes of IEP meetings. Minutes must be maintained subject to applicable confidentiality requirements.</p> <p>Minutes of Meetings. A parent, a parent’s authorized representative, or any public agency conducting a meeting, review or conference may take minutes of the meeting, review or conference concerning a child with a disability’s free and appropriate public education. Minutes may be taken by a disclosed recording device or by a stenographer. The cost of recording the minutes is the responsibility of the person or agency electing to take minutes. Once taken, public agency minutes shall be maintained subject to the confidentiality requirements of these regulations and any other applicable Delaware or federal law. If initiated by the public agency, parents must be offered a free digital copy.</p>
<p>14 DE Admin Code § 926.3.1 14 Del. C. § 3133</p>	<p><u>Prior Written Notice</u></p> <p>State law requires public agencies to provide prior written notice no less than 10 school days before the public agency proposes or refuses an action. In cases involving a change of placement for a disciplinary removal, public agencies must provide prior written notice no less than 5 school days before the public agency proposes to change the child’s placement.</p>
<p>14 DE Admin Code § 926.3.2.8</p>	<p><u>Content of Notice</u></p> <p>A <i>written</i> description of the action proposed or refused by the agency; and A <i>written</i> explanation of why the agency proposes or refuses to take the action; and</p>

	<p>A <i>written</i> description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and</p> <p>A <i>written</i> statement that the parents of a child with a disability have protection under the procedural safeguards of <i>state and federal</i> regulations 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; and</p> <p>Sources for parents to contact to obtain assistance in understanding the provisions of these regulations, <i>including contact information for parent assistance programs, legal assistance programs, and the Delaware State Bar Association</i>; and</p> <p>A <i>written</i> description of any other options the IEP Team considered and the reasons why those options were rejected; and</p> <p>A <i>written</i> description of other factors which are relevant to the agency's proposal or refusal; and</p> <p><i>A written summary of procedural safeguards must be available to the parents under state and federal law and regulations.</i></p> <p><i>A full copy of the procedural safeguards under state and federal law and regulations shall be provided to the parents at the IEP meeting.</i></p>
<p>14 DE Admin Code § 926.3.2.8 14 Del. C. § 3134</p>	<p><u>Prior Written Notice</u></p> <p>State law requires the prior written notice to include a full explanation of all the procedural safeguards available to parents.</p>
<p>14 DE Admin Code § 926.4.0</p>	<p><u>Procedural Safeguards Notice</u></p> <p>Public agencies must provide a copy of the procedural safeguards notice to parents upon a decision to remove a child with a disability from his or her educational placement because of a violation of a code of student conduct and <u>provide a copy to the parents of a child with a disability at each IEP meeting.</u></p>
<p>14 DE Admin Code § 926.6.0</p>	<p><u>Mediation</u></p> <p>Any public agency involved in mediation must assure that an individual from the public agency with the authority to make decisions and commit resources to agreed upon services attends the mediation. In addition, parents are permitted to be accompanied and advised at mediation by individuals of their choice.</p>
<p>14 DE Admin Code § 926.11.4</p>	<p><u>Due Process Hearings</u></p> <p>The impartial due process hearing officer is required to work in cooperation and consultation with other hearing officers appointed to a given hearing panel and complete training as required by the Secretary of Education.</p>
<p>14 DE Admin Code § 926.11.10 14 Del. C. § 3140</p>	<p><u>Due Process Hearings</u></p> <p>The burden of proof and persuasion in a due process hearing is placed on the public agency which is a party to the proceeding.</p>
<p>14 DE Admin Code § 926.12.1.6</p>	<p><u>Due Process Hearings</u></p>

<p>14 Del. C. § 3139</p>	<p>State regulations afford parties the right to compel the attendance of witnesses at due process hearings by requesting the issuance of subpoenas through the Secretary of Education.</p>
<p>14 DE Admin Code § 926.12.3 14 Del. C. § 3138</p>	<p><u>Due Process Hearings</u></p> <p>State regulations require that any testimony presented at a due process hearing be under oath or affirmation. The hearing panel must also ensure that parents have been advised of their procedural safeguards.</p>
<p>14 DE Admin Code § 926.12.3.4</p>	<p><u>Due Process Hearings</u></p> <p>Parents shall be given the right to have the due process hearing conducted at a time and place which is reasonably convenient to the parents and child involved.</p>
<p>14 DE Admin Code § 926.13.6</p>	<p><u>Due Process Hearing Decisions</u></p> <p>Delaware’s mechanism for publishing findings is to place legal notice annually in newspapers of sufficient circulation in each of the three (3) Delaware counties that the information may be obtained through the DDOE, and to also place the findings and decision on the DDOE website.</p>
<p>14 DE Admin Code § 926.15.2</p>	<p><u>Timeliness and Convenience of Due Process Hearings and Reviews</u></p> <p>A due process hearing panel may, for good cause, grant specific extensions of time at the request of either party, provided that a final decision and copy thereof is mailed to each party within fifteen (15) days of the date of the hearing or, where applicable, within fifteen (15) days of the completion of post-hearing argument. In granting extensions, the panel shall ensure that a party’s right to redress is in no way diminished or unnecessarily delayed.</p>
<p>14 DE Admin Code § 926.19.0 14 Del. C. § 3132</p>	<p><u>Educational Surrogate Parents</u></p> <p>Educational surrogate parents are appointed by the DDOE through the process outlined in state regulations.</p>
<p>14 DE Admin Code § 926.20.1</p>	<p><u>Transfer of Parental Rights at Age of Majority</u></p> <p>Age of majority: To assure that children with disabilities who have reached age 18 have an identified decision-maker, which may be the child with a disability, the IEP team shall discuss the potential need for an educational representative during the transfer of rights at age of majority review, and annually thereafter. In determining the need for an educational representative, the IEP team shall consider:</p> <ul style="list-style-type: none"> • A child with a disability without a court-appointment guardian of the person shall be presumed to have capacity and be accorded the rights of a parent upon attainment of age 18. • The public agency shall notify both the child and the parents that all rights accorded to parents under the <u>14 Del. C. §3132 (b)</u> transfer to the child. • A child with a disability with capacity may authorize an adult agent to exercise rights through execution of a power of attorney or a standard voluntary grant of authority form published by the Department of Education. • The determination of capacity shall be made by the IEP team during an IEP meeting and shall

	<p>confirm to the following standards:</p> <ul style="list-style-type: none"> • In cases where capacity is uncertain, a school psychologist familiar with the child must attend the initial meeting. For purposes of this section, the term “familiar with the child” means the school psychologist has conducted a recent in-person evaluation of the child which conforms to evaluation procedures established by the Department of Education. In subsequent annual IEP meeting reviews, the participation of a school psychologist is discretionary if it is clear there has been no change in the child’s capacity. • The child with a disability and parent, as defined in 14 <u>Del.C.</u> §3101 (7), must be invited to participate in the meeting regardless of whether the child has already attained the age of 18. • The IEP team may consider information from sources apart from school personnel and may authorize evaluation if necessary to inform its deliberations. • If information is ambiguous, any benefit of the doubt shall be exercised in favor of a finding of capacity. • If the IEP team determines that the child lacks capacity, the IEP team shall appoint an individual to serve as an educational representative in the following descending order of priority: <ul style="list-style-type: none"> • Willing and available biological or adoptive parent; • Willing and available adult relative. • If such an individual is not identified, the IEP team shall promptly facilitate a referral to the Department of Education for appointment of an educational surrogate parent. An appointed educational representative shall have the same authority as a parent under 14 <u>Del.C.</u> §3101 (7). • If a child with a disability or parent disagrees with the capacity determination, either may contest the determination by pursuing dispute resolution options described in the procedural safeguards in this regulation or in 14 <u>Del.C.</u> Ch 31. • The capacity determination is limited to the exercise of rights under 14 <u>Del.C.</u> Ch. 31 or this regulation and shall not affect exercise of rights in any other context. In furtherance of this limitation, any order statute notwithstanding, the capacity determination shall not be admissible as evidence of competency or capacity in any non-educational judicial or administrative proceeding.
<p>14 DE Admin Code § 926.30.8</p>	<p><u>Notification of Discipline Policies</u></p> <p>Public agencies must ensure that the parents, guardian, or Relative Caregiver of each child with disabilities receives written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, and exclusion as a treatment procedure at the beginning of each school year or upon entry into a special education program during the school year.</p>
<p>14 DE Admin Code § 926.36.1.3</p>	<p><u>Change of Placement Because of Disciplinary Removals</u></p> <p>A change of placement occurs if a child has been subjected to a series of in-school removals totaling more than 10 school days and it deprives the child from meeting the goals set out in the IEP,</p>

	<p>progressing in the general curriculum though in another setting, and receiving those services and modifications described in the IEP; or, if the child has been subjected to a series of removals from transportation and it results in the child's absence from school for more than 10 school days.</p>
14 DE Admin Code § 927.2.2.1	<p><u>State and Local Performance Plans and Public Reports</u></p> <p>LEAs are required to use the targets established in the State's performance plan, and the priority areas described in the regulations, to analyze and report on its performance to the DDOE. The LEA's report shall be submitted in the manner and format required by the DDOE.</p>
14 DE Admin Code § 927.3.1	<p><u>DDOE's Review and Determination Regarding LEA Performance</u></p> <p>The DDOE will annually review the performance of LEAs on the targets in the State's performance plan. The DDOE's review may include such other data, indicators and monitoring information as it determines appropriate to fully review an LEA's performance under, and in compliance, with the regulations.</p>
14 DE Admin Code § 927.4.1.2	<p><u>Enforcement of Determination Findings</u></p> <p>If the DDOE determines, for two consecutive years, that an LEA needs assistance in implementing the requirements of Part B of the IDEA and Delaware's regulations, the DDOE may, in addition to the actions outlined in federal law and regulations, direct the use of LEA sub grants under Section 611(f) of the IDEA on the area or areas in which the LEA needs assistance.</p>
14 DE Admin Code § 927.4.2.2	<p><u>Enforcement of Determination Findings</u></p> <p>If the DDOE determines, for three or more consecutive years, that an LEA needs intervention in implementing the requirements of Part B of the IDEA and Delaware's regulations, the DDOE may, in addition to the actions outlined in federal law and regulations, require the LEA to enter into a compliance agreement with the DDOE if the DDOE has reason to believe that the LEA cannot correct the problem within one year, withhold not less than twenty nor more than fifty percent of the LEA's sub grant under section 611(f) of the IDEA for each year of the determination until the DDOE determines that the LEA has sufficiently addressed the areas in which the LEA needs intervention, and/or seek to recover funds in any manner available under state or federal law after providing written notice and an opportunity for a hearing.</p>
14 DE Admin Code § 927.4.3	<p><u>Enforcement of Determination Findings</u></p> <p>If the DDOE determines that an LEA needs substantial intervention in implementing the requirements of Part B of the IDEA and Delaware's regulations, the DDOE may, in addition to the actions outlined in federal law and regulations, seek to recover funds in any manner available under state or federal law after providing written notice and an opportunity for a hearing, refer the case to any other appropriate state or federal agency and/or refer the matter for any other appropriate enforcement action.</p>
14 DE Admin Code § 928.5.4	<p><u>Federal Sub Grants to LEAs</u></p> <p>Each LEA seeking a sub grant must complete and submit an application to the DDOE within the</p>

	timeframes established by the DDOE, in written or electronic form as required by the DDOE, and include any certifications or assurances required by the DDOE. The application must also be consolidated with the LEA's application for other federal programs to the extent permitted by DDOE procedures.
14 DE Admin Code § 928.5.5.1	<p><u>Federal Sub Grants to LEAs</u></p> <p>The DDOE must review each timely sub grant application, notify the LEA whether its application is approved or not approved, and advise the LEA of any conditions which must be met in order for the application to be approved.</p>
14 DE Admin Code § 928.5.5.6	<p><u>Federal Sub Grants to LEAs</u></p> <p>Except as otherwise provided, hearings shall be conducted in accordance with the DDOE's "Hearing Procedures and Rules."</p>
14 DE Admin Code § 928.5.5.7.2	<p><u>Federal Sub Grants to LEAs</u></p> <p>A copy of the LEA's federal notice of appeal must be filed with the DDOE when filed with the United States Secretary of Education.</p>
14 DE Admin Code § 928.18.1 - 18.2	<p><u>Facilities, Equipment, and Materials</u></p> <p>All instructional or treatment programs for children with disabilities must provide appropriate materials and equipment for implementation of individualized education programs. All facilities which house programs for children with disabilities must meet state and federal standards with regard to space, health, fire, safety, and barrier free regulations.</p>
14 DE Admin Code § 929.3.0	<p><u>Students in Need of Unique Educational Alternatives</u></p> <p>The State may provide unique educational alternative support for children with disabilities who have needs that cannot be addressed through existing resources and programs of the State, including, residential placements and private day programs. State statutes and regulations establish how and when such support may be provided to public agencies.</p>
14 Del. C. § 3101(5)(e) & (f)	<p><u>FAPE</u></p> <p>FAPE is designed as specially designed instruction including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions, and related services as defined by the DDOE rules and regulations approved by the State Board of Education and as may be required to assist a child with a disability to benefit from education that:</p> <ul style="list-style-type: none"> (a) Is provided at public expense, under public supervision and direction and without charge in the public school system; (b) Meets the standards of the DDOE; (c) Includes elementary, secondary or vocational education in the State;

	<p>(d) Is individualized to meet the unique needs of the child with a disability;</p> <p>(e) Provides significant learning to the child with a disability; and</p> <p>(f) Confers meaningful educational benefit on the child with a disability that is gauged to the child with a disability's potential.</p>
14 Del.C. §122 (b)	<p><u>State Assessment System</u> - 14 DE Admin. Code 101</p> <p>Purpose: The purpose of this regulation is to outline the procedures, criteria and responsibilities related to the state assessment system required pursuant to 14 Del.C. §151.</p> <p>Purpose and Definitions</p> <p>Delaware System of Student Assessments (DeSSA)</p> <p>General and End of Course Assessments</p> <p>Alternate Assessment - In addition, the creation of a Portfolio Alternate Assessment was added which outline procedures for participation, procedures for design and evaluation of Portfolio Alternate Assessment, Alternate Assessment review.</p> <p>Levels of Performance</p>
14 DE Admin Code § 121	<p><u>Certificate of Eligibility</u></p> <p>“Certificate of Eligibility” means a credential which may be issued to teachers of students with disabilities if the employing district or charter school establishes that the proposed recipient meets the requirements of 1221(2) of this title.</p> <p>(2) A certificate of eligibility, if the employing district or charter school establishes that all of the following apply:</p> <ol style="list-style-type: none"> a. The proposed recipient is participating in a state-approved, appropriate alternative route for teacher licensure and certification program for teachers of students with disabilities. b. The proposed recipient of the certificate of eligibility is competent, c. The employing district or charter school is committed to support and assist the proposed recipient in achieving the skills and knowledge necessary to meet certification requirements.
14 DE Admin Code § 152	<p><u>Diploma of Alternate Achievement Standards</u></p> <p>§ 152 State high school diploma requirements [For application of this section, see 81 Del. Laws, c. 229, § 2]</p> <p>(d) The Department shall award a State of Delaware — Diploma of Alternate Achievement Standards to a student who has met the requirements of the student's Individualized Education Program but will not complete the high school graduation course credit requirements established by the State, district, or charter school for a regular "State of Delaware High School Diploma" under subsection (a) of this section.</p>
14 DE Admin Code § 1332	<p><u>Statewide Program for Services for Students with Autism Spectrum Disorder (ASD).</u></p>

(a) The Department shall provide training and technical assistance across all public schools within this State on behalf of students with an educational classification of autism spectrum disorder ("ASD"). Educational programming provided under this chapter must have high-quality instruction based on research and evidence-based practice.

(b) The Department, with the approval of the State Board of Education, shall designate a school district or other entity to administer the statewide program ("program") for students with an educational classification of ASD. If no district or other entity is willing to administer the statewide program, the Department must act in that role.

(c) The entity administering the program must employ a statewide director ("Director") for a period of 12 months each year. The Director must be hired in consultation with the Peer Review Committee and have the following qualifications and expertise with ASD:

(1) A doctorate degree in psychology, exceptional children, or applied behavior analysis ("ABA").

(2) At least 5 years of experience working with individuals with ASD.

(3) Graduate-level training in evidence-based practices in curriculum, instruction, and behavioral support such as ABA instructional strategies.

(4) Experience planning or leading skill development in communication and social skill training programs for individuals with ASD.

(5) Experience as a consultant to teams and an understanding of basic principles related to performance management.

(6) Successful experience leading the development and implementation of an autism services program.

(7) Successful experience leading the development and implementation of a structured professional development program and a performance management plan.

(8) Successful direction and management of similar autism projects.

(9) Other qualifications for certification as required by the Department, with the approval of the State Board of Education.

(d) The Department shall pay the Director a salary in an amount for which the Director qualifies under § 1305(a), (b), and (d) of this title plus an amount for administrative responsibility determined in accordance with § 1321(c) of this title. The Director's salary, including "years of experience," shall be determined in accordance with rules and regulations adopted by the Department with the approval of the State Board of Education.

(e) The program shall provide training and technical assistance for all public schools. The training and technical assistance under this subsection is a 3-year pilot program that ends on June 30, 2021, unless extended by an act of the General Assembly.

(1) The program must provide training and technical assistance by doing all of the following:

a. Identifying those practices specifically relevant to the education of students with an educational classification of ASD that are established as evidence-based through the best available outcome research or by expert consensus.

b. Promoting utilization of these practices by leading training and technical assistance activities specifically relevant to students with an educational classification

of ASD,

c. Assisting with implementation of all aspects of training and technical assistance in all public schools, for students from birth to age 21 with an educational classification of ASD.

d. Supervising or managing contracts for training specialists employed under paragraph (e)(2) of this section.

e. Consulting and working collaboratively with the Department on all aspects of education programs related to ASD.

f. Serving as the primary liaison between the Department and other state agencies, committees, and programs on questions regarding programs for students with an educational classification of ASD.

(2) The program must have training specialists as follows:

a. At least 1 training specialist per 100 students with an educational classification of ASD. The total number of positions must be determined annually through the September 30 count of students with an educational classification of ASD. The program must be phased in with a minimum of 2 training specialists in Fiscal Year 2019, 2 training specialists added in Fiscal Year 2020, and additional training specialists added each fiscal year until the number of training specialists required under this paragraph (e)(2)a. is met or the pilot program ends under this subsection.

b. "Training specialists" must include qualified speech-language pathologists, behavior analysts, and other personnel with expertise in evidence-based instruction for people with ASD, in classroom, community, and home-based consultation.

c. Training specialists must serve eligible students within all public schools.

d. A training specialist must have a master's degree and 3 years of experience of demonstrated consultative experience with students with ASD.

e. The duties of a training specialist include providing training and technical assistance for staff working with students with an educational classification of ASD, including classroom consultation; plan development and performance feedback; parent training; and providing training for regular education staff on ASD and evidence-based strategies for inclusion practices.

(3) The program may, after approval by the Department, purchase specialized services instead of hiring staff to provide the education and training required under this section.

a. The dollar value of each full-time equivalent, when purchasing services to be provided by an outside contractor, is the number of dollars set in the state-supported salary schedule for a teacher holding a master's degree with 10 years of experience and employed for 12 months.

b. The calculation of this funding is for the current school year.

c. The State Board of Education may review any objection to the Department's decision.

(4) State appropriations must be phased in over several years, starting in Fiscal Year 2019 and in equal increments each subsequent fiscal year until fully funded or the pilot program ends under this subsection.

- (5) Additional funding may be provided through any of the following:
 - a. Units and funds appropriated by the General Assembly.
 - b. Units and funds allocated by the Department.
 - c. Pass through funds and direct grants.
 - d. Tuition funds from public school districts as established by the rules and regulations of the Department, according to Chapter 6 of this title.
 - e. Fees for service for support where other funding is inadequate.
 - f. Other funds as available, including funds in excess of standard match funding under this title.

(f) The Department, with the approval of the State Board of Education, shall adopt such rules and regulations to establish and provide for the following committees:

(1) Parent Advisory Committees ("PAC").

(2) Peer Review Committee ("PRC") which, at the request of the Department, may also review educational procedures and programming for students with an educational classification of ASD and related disabilities.

(3) Statewide Monitoring Review Board ("SMRB"), composed of no less than 7 members, including 2 nonvoting public representatives nominated annually by the PAC. A public representative may not have a child with an educational classification of ASD enrolled in a Delaware public school program.

a. The SMRB shall review, at least annually, the education and provision of related services provided to students with an educational classification of ASD throughout all public schools to ensure the application of evidence-based practice and opportunities for meaningful and measurable progress and inclusion, as appropriate, are afforded to all such students.

b. The SMRB shall make findings and recommendations based on its review to include data measuring these specific recommendations and suggestions for corrective action to ensure consistent quality and equity of services throughout this State.

c. The SMRB shall submit its findings and recommendations, at least annually, to the Department and the Education Committees of the General Assembly. The SMRB's report must be available on each school district or school website.

d. The SMRB shall resolve disputes within or between public schools and the Director. This paragraph (f)(3)d. does not diminish the procedural safeguards guaranteed to children with an educational classification of ASD, their parents or guardians, or public schools or agencies.

e. If a public school is found to be out of compliance with the specific recommendations in this paragraph (f)(3), the Department and the Director must allow the public school the opportunity for technical assistance and progressive implementation of a corrective action plan for improvement agreed upon by the school and the Director.

14 DE Admin Code §508

Exhibit B

508 Multi-Tiered System of Support (MTSS)

1.0 Purpose

Each local education agency shall implement procedures to determine when a student requires scientific, evidence-based interventions within a Multi-Tiered System of Support (MTSS) for: 1) Written Expression, 2) Reading, 3) Oral Expression, 4) Listening Comprehension, 5) Mathematics, 6) Behavior, and 7) Social-Emotional Skills.

2.0 Definitions

The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise:

“**Department**” means the Delaware Department of Education.

“**Evidence-based**” means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.

“**Local Education Agency**” or “**LEA**” means a reorganized traditional school district, vocational-technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

“**Multi-Tiered System of Support**” or “**MTSS**” means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision making to meet the academic and non-academic needs of all students. High quality core academic instruction and non-academic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

“**Parent**” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for

the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Caregiver's School Authorization executed in compliance with 14 Del.C. §202 is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926.19.0.

3.0 Instructional Resources

LEAs shall evaluate and select instructional resources for Tier 1, and interventions for Tier 2 and Tier 3, for academic, behavioral and social-emotional skills which are of high quality, evidence-based and aligned with the State's appropriate content standards.

4.0 Assessment

Screening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures. Any tools used shall be norm-referenced, criterion-referenced, or curriculum-based as appropriate.

5.0 Problem Solving Team

5.1 LEAs will have a school-based problem-solving team at each of their schools consisting of three to five core members and shall include at least one of the student's classroom teachers. **[Additional members may be added as needed.]**

5.2 The team shall review student data to identify individual student needs and make evidence-based decisions.

5.3 Using the student data, the problem-solving team will design an intervention plan as outlined in Section 7.0, which shall **[include, but is not limited to, include]** specific baseline data, learning targets, type and frequency of **[intervention and data collection intervention, data collection, and anything else the problem-solving team considers necessary]**.

5.4 The team shall collect progress monitoring data at regular intervals. Data collection must include documentation of fidelity of implementation, consisting of differentiated, evidence-based instruction, pacing and appropriateness of instructional

groupings.

5.5 The team shall hold meetings after the six to eight-week intervention cycle to monitor progress toward identified targets, the fidelity of implementation and determine the next steps. [Teams may meet earlier, as needed.]

5.6 LEAs shall have a process for providing parents with the MTSS intervention plan and data collected as part of the MTSS framework as described in Section 7.0.

6.0 MTSS Framework and Procedures

6.1 The MTSS framework and procedures shall include the tiers, types and duration of services and interventions described in subsections 6.1.1 and 6.1.3.3.

6.1.1 Tier 1 - Core classroom instruction which is aligned to Delaware adopted state standards and practices, shall be designed and delivered with fidelity to all students. Tier 1 core classroom instruction should be high quality, evidence-based and differentiated within flexible groupings and responsive to all students' needs. A multiple-gating procedure shall be implemented as follows:

6.1.1.1 The first stage is a universal screening, which shall be conducted within the first four weeks of the school year or within four weeks of the student's entry into school. Universal screening will take place at least two more times during the school year at spaced intervals. For students who are identified through universal screening as needing additional supports, a second stage of screening is conducted within the next two weeks to specify the areas of need.

6.1.1.2 The second stage involves additional data analysis to confirm that there are specific areas of need for Tier 2 supports.

6.1.1.3 If twenty percent (20%) of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, which may be an existing team, including a building level administrator, shall meet to consider the need for additional classroom,

instructional and systems level supports and strategies.

6.1.1.4 Based on the results of the multiple-gating procedure, a problem-solving team shall design intervention plans for students who require Tier 2 support as described in subsection 6.1.2.

6.1.2 Tier 2 - Interventions shall be designed to be delivered in the student's primary, scheduled education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.

6.1.2.1 After **[no more than]** six to eight school weeks of Tier 2 **[intervention intervention,]** the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments, as described in Section 4.0, are required, and whether changes to Tier 2 academic or non-academic methods are required; or the student should be provided Tier 3 intervention.

6.1.2.1.1 If a student has made significant progress and is now on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention or be excused from Tier 2 intervention.

[6.1.2.1.2 After no more than six to eight school weeks of Tier 2 intervention, the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 2 academic or non-academic methods are required.]

~~6.1.2.1.2~~ 6.1.2.1.3] If a student has made no progress toward benchmarks, or has made progress but is not on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or receive Tier 3 interventions.

6.1.3 Tier 3 - Interventions shall be designed to be delivered in the

student's primary (scheduled) education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.

6.1.3.1 After [no more than] six to eight school weeks of Tier 3 [intervention intervention,] the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 3 academic or non-academic methods are required; or the student should be referred for an initial evaluation for special education.

6.1.3.2 If a student has made significant progress towards established targets, a student may continue in Tier 3 intervention with a new target or be provided Tier 2 intervention.

6.1.3.3 If a student has made no progress towards established targets, or has made progress, but is not on a trajectory to meet established targets, a student may continue in Tier 3 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or be referred for an initial evaluation for special education services as outlined in Regulation 925.

7.0 Program Effectiveness

7.1 LEA shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.

[7.2 This regulation will go into effect August 1, 2020.]

