DEPARTMENT OF EDUCATION
SPECIAL EDUCATION PROGRAMS

CHECKLIST FOR APPROVAL OF COMPREHENSIVE PLANS FOR SPECIAL EDUCATION AGENCIES

AGENCY DAKOTABILITIES

April 2008

TABLE OF CONTENTS

A. GENERAL OVERVIEW

B. REQUIRED COMPONENTS

I FULL PROGRAM SERVICE GOALS AND PROCEDURES

1. Goal Statement/Timetable

II CHILD IDENTIFICATION PRODEDURES/PROVISION OF FAPE

1. Policy Statement
2. Minimum Procedures

III REFERRAL, EVALUATION, CONSENT, ELIGIBILITY AND PLACEMENT PROCEDURES

1. Referral Procedures
2. Evaluation, Consent, and Placement Procedures
   a. Nondiscriminatory Practices
   b. Parental Consent For Initial Evaluation
   c. Consent For Ward Of The State
   d. Use Of Procedural Safeguards To Obtain Parental Consent
   e. Other Consent Requirements
   f. Preplacement Evaluation
   g. Evaluation Defined
   h. Exception To Initial Evaluation Timeline
   i. Screening For Instructional Purposes
   j. Evaluation Procedures – Notice
   k. Evaluation Procedures – General
   l. Braille Assessment Factors
   m. Determination Of Needed Evaluation Data
   n. Determination Of Eligibility
   o. Eligibility And Placement Procedures
   p. Reevaluations
   q. Consent For Reevaluation
   r. Additional Procedures For Evaluation Specific Learning Disabilities
   s. Additional Group Members For Specific Learning Disabilities
   t. Observation For Specific Learning Disabilities
   u. Documentation Of Eligibility For Specific Learning Disabilities
   v. Group Members To Certify Report In Writing
   w. Response To Intervention Model
   x. Parent Participation
   y. Participation Of Student In IEP Team Meeting
   z. Required Student Invitation
   aa. Conduct Of IEP Team Without Parents
   bb. Action To Ensure Parent Understands
   cc. Parents To Receive Copy Of Individual Education Program
   dd. IEP Team To Evaluate, Interpret, and Explain
   ee. IEP Team To Determine Placement
   ff. IEP Team To Develop Individual Education Program
   gg. Decisions Of IEP Team
   hh. Extended School Year Authorized
   ii. Prohibition On Mandatory Medication

3. Eligibility Procedures
   a. Students With Disabilities Defined
   b. Screening Procedures For Autism
   c. Autism Defined
   d. Diagnostic Criteria For Autism
   e. Diagnosed Procedures For Autism
   f. Instruments Used In Diagnosis Of Autism
   g. Deaf-Blindness Defined
   h. Deafness Defined
   i. Developmental Delay Defined
   j. Hearing Loss Impairment Defined
   k. Cognitive Disability Defined
   l. Multiple Disabilities Defined
   m. Orthopedic Impairment Defined
   n. Other Health Impaired Defined
   o. Prolonged Assistance Defined
   p. Emotional Disturbance Defined
   q. Criteria For Emotional Disturbance
   r. Specific Learning Disability Defined
   s. Criteria For Specific Learning Disability
   t. Speech Or Language Disorder Defined
   u. Articulation Disorder Defined
   v. Criteria For Articulation Disorder
   w. Fluency Disorder Defined
   x. Criteria For Fluency Disorder
   y. Voice Disorder Defined
   z. Criteria For Voice Disorder
   aa. Language Disorder Defined
   bb. Criteria For Language Disorder
   cc. Traumatic Brain Injury Defined
   dd. Vision Loss Including Blindness Defined
   ee. IEP Team Override

IV. INDIVIDUALIZED EDUCATION PROGRAM

1. IEP Team
2. Development, Review, And Revision Of Individualized Education Program
3. Content Of Individualized Education Program
4. Access To IEP
5. IEP Team Attendance
6. Initial IEP Team Meeting For Infants And Toddlers
7. IEP Team Meeting Date
8. IEP Team To Determine Related Services
9. Determination Of Related Services
10. Parental Consent For Services
11. Parental Refusal To Consent – School District Obligations
12. Hearing Aid
13. External Components Of Surgically Implanted Medical Devices
14. Medical Services
15. Transportation
16. Yearly Review And Revision Of Individual Educational Programs
17. Agreement To Change IEP
18. Amendments To IEP
19. Consolidation Of IEP Team Meetings
20. Alternative Means Of Meeting Participation
21. Individual Educational Program For Students Placed In Private Schools
22. Graduation Requirements
23. Agency Responsibility For Transition Services

24. Transition Services
25. IEPs For Student Transfers Within State
26. IEPs For Student Transfers From Another State
27. Transmittal Of Records For Student Transfers
28. Related Services Provided At No Cost
29. Rehabilitative Counseling Services
30. Services Applicable To Surgically Implanted Device
31. Employment Of Braille Teacher
32. Assistive Technology Device
33. Assistive Technology Service
34. Universal Design
35. Availability Of Assistive Technology
36. Transition To Preschool Program
37. Occupational Therapy Defined
38. Criteria For Occupational Therapy
39. Physical Therapy Defined
40. Criteria For Physical Therapy
41. Incarcerated Students In Adult Prisons
42. Modifications To IEP's For Students In Adult Prisons
43. Purchase Of Instructional Materials

V. LEAST RESTRICTIVE ENVIRONMENT

1. Least Restrictive Program To Be Provided
2. Continuum Of Alternative Placements
3. Factors In Determining Placements
4. Program Options
5. Nonacademic And Extracurricular Services
6. Nonacademic Settings
7. Children In Public Or Private Institutions
8. Physical Education Services
9. Preschool Programs

VI. CONFIDENTIALITY OF INFORMATION

1. Definitions
2. Annual Notification Of Rights
3. Access Rights
4. Record Of Access
5. Records On More Than One Child
6. Lists Of Types And Locations Of Information
7. Fees
8. Amendment Of Records At Parent's Request
9. Opportunity For A Hearing
10. Hearing Procedures
11. Results Of Hearing
12. Consent
13. Safeguards
14. Destruction Of Information
15. Children's Rights
16. Enforcement
17. Disciplinary Information
18. Records Regarding Migratory Children

VII. PROCEDURAL SAFEGUARDS

1. Opportunity To Examine Records
2. Parent Participation In Meetings/Meetings Defined

3. Independent Educational Evaluation
4. Prior Notice/Content And Form
5. Procedural Safeguards Notice-Availability
6. Procedural Safeguards Notice-Contents
7. Electronic Mail
8. Filing A Due Process Complaint
9. Timeline For Filing A Due Process Complaint
10. Free Or Low-Cost Services To Parent
11. Due Process Complaint Notice
12. Content Of Due Process Complaint
13. Sufficiency Of Complaint
14. Decision On Sufficiency Of Complaint
15. Amendment To Due Process Complaint
16. District Response To Due Process Complaint
17. Other Party Response To Due Process Complaint
18. Model Forms
19. Resolution Meeting – Participants
20. Resolution Meeting – Purpose
21. Resolution Meeting – Waive OR Mediate
22. Resolution Period – General
23. Dismissal Of Complaint Or Initiation Of Hearing
24. Adjustments To 30-Day Resolution Period
25. Written Settlement Agreement
26. Mediation
27. Mediator-Qualified And Impartial
28. Meeting To Encourage Mediation
29. Mediation Agreement
30. Impartial Due Process Hearing
31. Subject Matter Of Due Process Hearings
32. Timeline For Requesting A Due Process Hearing
33. Impartial Hearing Officer
34. Decision Of Hearing Officer
35. Appeal Of Hearing Decision - Civil Action
36. Reasonable Attorneys' Fees
37. Hearing Rights
38. Additional Disclosure Of Information
39. Time Limit For And Convenience Of Hearings
40. Child's Status During Proceedings
41. Surrogate Parents
42. Transfer Of Parental Rights

VIII. PRIVATE SCHOOL PLACEMENT

1. Applicability
2. Placement Of Children By Parents
3. Reimbursement For Private School Placement
4. Limitation On Reimbursement
5. Exceptions To Limitation On Reimbursement

IX. VOLUNATARY ENROLLMENT IN NONPUBLIC SCHOOLS

1. Child Find
2. Expenditures
3. Child Count
4. No Individual Right To Special Education And Related Services
5. Consultation
6. Written Affirmation
7. Compliance

8. Services Plan
9. Services Provided
10. Location Of Services And Transportation
11. Complaints
12. Proscribed Use Of Funds
13. Proscribed Use Of Funds For Benefit Of Private School
14. Personnel Use Authorized
15. Use Of Private School Employees Authorized
16. School District To Maintain Control Of Property, Equipment And Supplies
17. Equipment And Supplies To Be Removed From Private Schools Upon Cessation Of Need
18. Use Of Program Funds For Repairs, Minor Remodeling, Or Private Construction Proscribed

X. SUSPENSION AND EXPULSION

1. Suspension And Expulsion From School
2. Suspension From School—Definitions
3. Case-By-Case Determination
4. Short Term Suspension Hearing Procedure And Result
5. Written Report
6. Request And Notice Of Hearing
7. Right Of Waiver
8. Hearing Procedure
9. Right Of Appeal
10. Attendance Policies
11. Change Of Placement For Disciplinary Removals
12. Removals-10 School Days Or Less
13. Required Services-No Change Of Placement
14. Authority Of School Personnel—Weapons, Drugs And Serious Bodily Injury
15. Authority Of Hearing Officer
16. Parental Notification
17. Referral To IEP Team For Expulsion Or Long-Term Suspension Of Students
18. Determination Of Interim Alternative Educational Setting
19. Manifestation Determination Review Requirement
20. Determination That Behavior Was Manifestation
21. Determination That Behavior Was Not Manifestation Of Disability – Additional Authority School Personnel
22. Appeal
23. Placement During Appeals
24. Expedited Hearing - Procedures
25. Protection For Students Not Yet Eligible
26. Referral To And Action By Law Enforcement And Judicial Authorities

XI. STAFF DEVELOPMENT

1. Paraprofessional And Assistants
2. Highly Qualified Teachers
3. Right Of Action
4. Early Childhood Special Education Teachers

XII. EMPLOYMENT OF SPECIAL EDUCATION PERSONNEL

1. District Hiring Procedures
2. Child Evaluators

XIII. USE OF PART B FUNDS

1. Excess Cost
2. Nonsupplanting
3. Proscribed Use Of Funds
4. Exceptions To Maintainance Of Effort
5. Permissive Use Of Funds

XIV. USE OF PUBLIC BENEFITS OR INSURANCE/PRIVATE INSURANCE

1. Children With Disabilities Covered By Public Benefits Or Insurance
2. Children With Disabilities Covered By Private Insurance
3. Use Of Part B Funds For Insurance Costs

XV. PERFORMANCE GOALS/INDICATORS

XVI. STATE/DISTRICT-WIDE ASSESSMENTS

1. Participation In Assessments
2. Alternate Assessment
3. Reports Relating To Assessments
4. Use of Universal Design In Assessment

XVII. SUSPENSION/EXPULSION RATES

XVIII. OVERIDENTIFICATION AND DISPROPORTIONALITY

XIX. PUBLIC INFORMATION

XX. STUDENT INFORMATION MANAGEMENT SYSTEM (SIMS)

1. Timely and Accurate Data
2. Process for Data Entry and Accuracy

The DakotAbilities (agency) has formally adopted the following policies and procedures as the agency's comprehensive plan for special education. These policies and procedures were approved by the agency/facility on June 25, 2008. None of the original document in black font has been changed. As indicated by signature below, the authorizing official acknowledges the agency will meet all requirements of the Individuals with Disabilities Education Act and Article 24:05 through the implementation of these policies and procedures.

CERTIFICATION – I certify that I have read and reviewed the above assurance and will comply with all provisions of applicable federal and state laws.

Signature of Authorized Official — Date: 17 Nov 2008

Robert J. Bohm, Executive Director
Typed Name and Title

3600 S. Duluth Avenue, Sioux Falls, SD 57105 — 605-334-4220
Address/State/Zip — Telephone Number

*This page must be signed by the agency official and returned to:

Department of Education
Special Education Programs
700 Governors Drive
Pierre, SD 57501

Department of Education
Special Education Programs

Checklist for Approval of Comprehensive Plans

A. General Overview. The contents of a comprehensive plan are specified in Chapter 24:05:21 of the Administrative Rules of South Dakota (ARSD).

Each of the required components of an agency's comprehensive plan for special education is addressed in Section B of this checklist. An agency's policies and/or procedures, for any given requirement, must include the regulatory language cited for each checklist item.

*NOTE: Textboxes have been provided for all areas that require language submission from the districts.

B. Required Components. Listed below are the required components of a district's comprehensive plan for special education.

I. Full Program Service Goals and Procedures: Each school district shall establish full program service goals and procedures, including a timetable for accomplishing the goals and a description of the kind and number of facilities, personnel, and services necessary to meet the goals.

1. It is the goal of the local school district to provide full educational opportunity to all children with disabilities, aged birth through twenty-one,
consistent with the timetable established by South Dakota for Part B of the Individuals with Disabilities Education Act.

Agency/facility must insert its full program service goals and procedures.

Complete with the agencies goal statement and include the ages of individuals served.

It is the goal of the ___DakotAbilities____agency/facility to provide full educational opportunity to all children with disabilities, aged _eighteen through twenty-one__ consistent with the timetable established in the South Dakota Eligibility Document or Part B of the Individuals with Disabilities Act.

The agencies procedures for determining the additional number and kind of facilities, personnel and services needed in order to meet its full program services goal are as follows:

_____Skills Specialist/CEO designate_____ (Name of agency representative) will review current statistical information from the agencies special education program reflecting: a) number of referrals being submitted; and b) number resulting in the identification of additional students requiring special education services.

(If your agency is responsible of completing and submitting child count data into the Student Information Management System (SIMS) this section must be completed to include the name of the individual responsible).

_____N / A_____ (Name of agency representative) will review the annual federal child count statistics reflecting the current number of special students being served, their primary disability condition, kinds of related services required, amount of time in special and regular education, and any other information to assist in program development.

II. Child Identification Procedures/Provision of FAPE

Each school district shall develop and utilize a system for the identification, location, and evaluation of children in need of special education or special education and related services. The system must include all children residing within the jurisdiction of the district ages birth through 21 regardless of the severity of their disability, including children in all public and private agencies and institutions, private schools, including religious schools, and children receiving alternative instruction under SDCL 13-27-3 within the legal boundaries of the district.

The requirements of this section apply to:

(1) Wards of the state and highly mobile children with disabilities such as migrant children and homeless children:
and

(2) Children who are suspected of being children with disabilities under article 24:05 and in need of special education, even though they are advancing from grade to grade.

Additional requirements include:

A. Certified child. A certified child is a child in need of special education or special education and related services who has received a multidisciplinary evaluation and has an individual education program formulated and approved by an IEP team. Documentation supporting a child's disabling condition as defined by Part B of the Individuals with Disabilities Education Act must be maintained by the school district for verification of its annual federal child count. This definition applies to all eligible children ages 3 to 21, inclusive, and to only those children under the age of 3 who are in need of prolonged assistance.

B. Services for children less than three years of age. Each school district shall provide special education or special education and related services for children less than three years of age who are in need of prolonged assistance.

C. Services to children age three to twenty-one, inclusive. A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

D. Services to children age twenty-one. A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year.

E. Determination of educational program costs for in-state placement of children for whom the state is responsible. The school district in which the child under care and custody of the state resides is responsible for the identification, evaluation, and placement of the child pursuant to the rules in article 24:05 governing children in need of special education or special education and related services. The state is responsible for the costs of special education or special education and related services.

F. District of residence responsible for educational program in juvenile detention facility. A school district containing a juvenile detention facility is responsible for providing a free appropriate educational program for children and youth assigned to the facility by the court.

G. Free appropriate public education (FAPE) defined. For purposes of article 24:05, the term, free appropriate public education, or FAPE, includes special education and related services which meet the following requirements:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the state board in this article and the implementing regulations for Part B of the Individuals with Disabilities Education Act as in effect December 3, 2004, and 34 C.F.R. Part 300, published in the Federal Register on August 14, 2006;

(3) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

(4) Are provided in conformity with an individual educational program and article 24:05.

FAPE shall be made available to any eligible individual child with a disability who needs special education and related services even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. FAPE shall also be provided to eligible children with disabilities who have been suspended or expelled from school consistent with district policies and procedures. The determination that a child is eligible under article 24:05 must be made on an individual basis by an IEP team.

1. Policy Statement. District policy includes the regulatory language required under state and federal rules/regulations.

2. Minimum Procedures. At a minimum, a local school district's procedures for implementing its child identification system must include the following:

a. The name and title of the individual responsible for the coordination, implementation, and documentation of the system.

b. A written description of the district's annual public awareness campaign for informing the parents of children residing within the legal boundaries of the district and other interested parties located within the jurisdiction of the district, including all public and private agencies and institutions, private school, including religious schools, and children receiving alternative instruction under SDCL 13-27-3

c. The establishment of written procedures for collecting, maintaining, and reporting current and accurate data on all child identification activities which must be ongoing and include children not currently enrolled in the public school education program.

d. A practical method of determining which children are currently receiving needed special education or special education and related services.

Documentation supporting the implementation of a local school district's child identification system shall be maintained by the district for review by Special Education Program staff during on-site monitoring visits and must include annual child count data submitted to the division for approval.

The agency/facility inserts procedures for its system for the identification, location, and evaluation of children in need of special education or special education and related services and provision of FAPE.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, Child Identification Procedures/Provision of FAPE, does not apply to DakotAbilities.

III. Referral, Evaluation, Consent, Eligibility, and Placement Procedures.

Each school district shall establish and implement procedures for the referral, evaluation, consent and placement of children with disabilities.

1. Referral Procedures. District procedures address the following:
a. A statement to the effect that a referral includes any written request which brings a student to the attention of a school district administrator (building principal, superintendent, or special education director) as a student who may be in need of special education. A referral made by a parent may be submitted verbally, but it must be documented by a district administrator. Other sources of referrals include the following:

i. Referral through screening;

ii. Referral by classroom teacher;

iii. Referral by other district personnel;

iv. Referral by other public or private agencies; and

v. Referral by private schools, including religious schools.

b. The duties of the district after referral, which state that, upon receiving a referral the school district shall conduct an informal review or may proceed with the evaluation process. An informal review includes a conference, if appropriate and necessary, either in person or by telephone, with the person making the referral and a review of the student's school record.

c. The duties of the district after informal review, which state, that, if after an informal review arising from a parental referral, the district determines that no evaluation is necessary, the district shall inform the parents of its decision and the reasons for the decision. It shall also inform the parents of their due process rights.

If after informal review, the district determines that further evaluation is necessary, the district shall conduct a full and individual evaluation with the consent of the parents.

d. A description of the steps to be taken by the district for documenting all referrals of students that do not result in evaluation.

Agencies/facilities that initially refer and identify individuals as eligible for special education, or special education and related services **must** insert procedures for the referral of children with disabilities.

****NOTE: Please insert the agency's procedures that are followed when receiving referrals from school districts, agency/facility staff and/or parents. How are referrals handled by your agency/facility?** All students come to our agency with completed IEPs. Referrals are made to our agencies by School District Personnel—we do not make referrals to School Districts. Refer to agency Policies K-1 (Case Finding and Entry Into the System) and K-2 (Admission, Entry into Service Delivery System).

Insert Agency/Facility Procedures: See above.

Insert Agency/Facility Procedures: See above—we do not make referrals.

Insert Agency/Facility Procedures: See above—we do not make referrals.

A district's procedures for evaluation and placement, items 2a.-ii., must address each of the regulatory provisions cited in this section of the Checklist.

2. Evaluation, Consent, and Placement Procedures. District procedures address the following:

a. Nondiscriminatory practices. Assessments and other evaluation materials used for the purpose of evaluation and placement of children with disabilities must be selected and administered so as not be racially or culturally discriminatory.

b. Parental consent for initial evaluation. Any school district proposing to conduct an initial evaluation to determine whether a child qualifies as a child with a disability shall, after providing notice consistent with district policies and procedures for procedural safeguards, obtain informed consent from the parent of the child before conducting the evaluation.

Parental consent for initial evaluation may not be construed as consent for initial provision of special education and related services.

The school district 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.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

Consent, as used in this article, the term consent, means:

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

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

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime; and

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

c. Consent for ward of the state. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

d. Use of procedural safeguards to obtain parental consent. 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 this section, or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by using the procedural safeguards in article 24:05, including the mediation procedures or the due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent.

The school district does not violate its obligation under child find in article 24:05 and the requirements in this chapter regarding parental consent, evaluation, and reevaluation if the district declines to pursue the evaluation.

e. Other consent requirements. Other consent requirements include the following:

(1) Parental consent is not required before:

(a) Reviewing existing data as part of an evaluation or a reevaluation; or
(b) Administering a test or other evaluation that is administered to all children unless, before administration of the that test or evaluation, consent is required of parents of all children;

(2) A school district may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the school district, except as required by article 24:05;

(3) If a parent of a child who is receiving alternative instruction under SDCL 13-27-3 or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or if the parent fails to respond to a request to provide consent, the school district may not use the consent override procedures described in district policies for procedural safeguards, including mediation and due process hearing procedures. The school district is not required to consider the child as eligible for services under district policy for children voluntarily enrolled in nonpublic schools.

f. Preplacement evaluation. Before any action is taken concerning the initial placement of a child with disabilities in a special education program, a full and individual initial evaluation of the child's educational needs must be conducted in accordance with the requirements of this chapter. Initial evaluations must be completed within 25 school days after receipt by the district of signed parent consent to evaluate unless other timelines are agreed to by the school administration and the parents.

Written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed with 30 days from the end of the 25 school day evaluation timeline. If another timeline for completing the evaluation process is agreed to by the

parent and school administration, the written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed within 30 days from the end of agreed upon evaluation timeline.

Consistent with the consent requirements in this section, either a parent of a child or a school district may initiate a request for an initial evaluation to determine whether the child is a child with a disability.

g. Evaluation defined. Evaluation means the procedures used in accordance with district policies to determine whether a child is a child with a disability and to determine the nature and extent of the special education and related services that the child needs.

h. Exception to initial evaluation timeline. The timeline for conducting initial evaluations does not apply to a school district if:

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

(2) A child enrolls in a school of another school district after the relevant timeline for conducting an initial evaluation has begun, and before a determination by the child's previous school district as to whether the child is a child with a disability.

The exception in this section applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

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

j. Evaluation procedures -- Notice. The school district shall provide notice to the parents of a child with a disability, in accordance with article 24:05, that describes any evaluation procedures the district proposes to conduct.

k. Evaluation procedures -- General. School districts shall ensure, at a minimum, that evaluation procedures include the following:

(1) Assessments and other evaluation materials are provided and administered in the child's native language or by another 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. In addition, assessments and other evaluation materials:

(a) Are used for the purposes for which the assessments or measures are valid and reliable; and
(b) Are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;

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

(3) 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 accurately reflects the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the assessment purports to measure;

(4) No single measure or assessment is used as the sole criterion for determining eligibility or an appropriate educational program for a child;

(5) A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining:

(a) Whether the child is a child with a disability; and
(b) The content of the child's IEP, including information related to enabling the child:

(i) To be involved in and progress in the general education curriculum; or
(ii) For a preschool child, to participate in appropriate activities;

(6) Technically sound instruments, assessment tools, and strategies are used that:

(a) May assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(b) Provide relevant information that directly assists persons in determining the educational needs of the child;

(7) 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; and

(8) 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.

Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with district policies and procedures for evaluation, to ensure prompt completion of full evaluations.

l. Braille assessment factors. The following age-appropriate factors must be considered when conducting a reading and writing assessment of the student to determine whether or not braille instruction must begin or continue:

i. Reading readiness;

ii. Functional reading skills including reading level, print size, reading rate, comprehension, and stamina;
iii. Functional writing skills;
iv. Prognosis of eye condition for change in visual status;
v. Functional communication skills and primary language of communication;
vi. Functional visual abilities; and
vii. Tactile discrimination.

m. Determination of needed evaluation data. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the individual education program team required by district policy and other qualified professionals, as appropriate, with knowledge and skills necessary to interpret evaluation data, shall:

(1) Review existing evaluation data on the child, including:

(a) Evaluations and information provided by the parents of the child;

(b) Current classroom-based local or state assessments and observations; and

(c) Observations by teachers and related services providers; and

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) Whether the student has a particular category of disability as described in article 24:05;

(b) The present levels of performance and educational needs of the student; and

(c) Whether the student needs special education and related services.

The school district shall administer assessments and any other evaluation materials as may be needed to produce the data required to make the determinations listed in subdivision (2) of this section. If no additional data are needed to make the determinations in subdivision (2) of this section, the school district shall notify the student's parents of this fact and the reasons for this decision. The group described in this section may conduct its review without a meeting.

n. Determination of eligibility. Upon completing the administration of assessments and other evaluation measures as required by this chapter, the individual education program team and other qualified individuals required by district policy shall determine whether the student is a student with a disability, and shall determine the educational needs of the child, as defined in article 24:05. The school district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. A student may not be determined to be a student with a disability if the determinant factor for that decision is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in ESEA, or lack of appropriate instruction in math or limited English proficiency and if the student does not otherwise meet the eligibility criteria under district policy.

o. Eligibility and placement procedures. In interpreting evaluation data for the purpose of determining eligibility and determining the educational needs of the child in making

placement decisions, including decisions regarding preschool children, each school district shall do the following:

i. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

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

iii. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

iv. Ensure that the placement decision is made in conformity with the least restrictive environment rules in district policy; and

v. Ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

If a determination is made that a child is disabled and needs special education and related services, an individual education program must be developed for the child in accordance with least restrictive environment requirements.

p. Reevaluations. A school district shall ensure that a reevaluation of each child with a disability is conducted in accordance with this chapter if the district determines that the educational or related service needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or if the child's parents or teacher requests a reevaluation.

A reevaluation conducted under this section may occur not more than once a year, unless the parent and district agree otherwise, and must occur at least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

Reevaluations must be completed within 25 school days after receipt by the district of signed consent to reevaluate unless other time limits are agreed to by the school administration and the parents consistent with district policy.

Each school district shall follow the procedures for determining needed evaluation data when reevaluating a student for the additional purposes of:

(1) Determining whether the child continues to have a disability and determining the educational needs of the child;

(2) Determining the present levels of academic achievement and related developmental needs of the child;

(3) Determining whether the child continues to need special education and related services; and

(4) Determining 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 and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine continuing eligibility and the child's educational needs, the district shall notify the parents of that determination and reasons for it and of the right of the parent to request an assessment, for purposes of determining the child's educational needs under article 24:05, and to determine continuing eligibility. The school district is not required to conduct an assessment unless requested to do so by the child's parents. However, a school district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability. The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under article 24:05 due to graduation from a secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

q. Consent for reevaluation. Before conducting a reevaluation of an eligible child, parental consent is required, unless:

(1) The school district can demonstrate that it has taken reasonable measures to obtain consent, and the child's parent has failed to respond; and

(2) The school district documents its efforts to obtain consent by using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures described in district policy for procedural safeguards including mediation and due process hearing procedures.

r. Additional procedures for evaluating specific learning disabilities. In order for a school district to certify a child as learning disabled for purposes of the federal child count, the requirements in this section must be met and documented in a child's record.

s. Additional group members for specific learning disabilities. The determination of whether a child suspected of having a specific learning disability is a child with a disability shall be made by the child's parents and a team of qualified professionals, which shall include:

(1) The child's regular teacher;
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;
(3) If the child is less than school age, an individual certified by the department to teach a child of that age; and
(4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, remedial reading teacher, or special education teacher.

t. Observation for specific learning disabilities. The school district 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.

The group described in this section, in determining whether a child has a specific learning disability, shall:

(1) 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, as in a response to intervention model; or

(2) 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, consistent with this chapter, is obtained, as in a discrepancy model.

If a child is less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

u. Documentation of eligibility for specific learning disabilities. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with this section;

(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;

(4) The educationally relevant medical findings, if any;

(5) Whether:

(a) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards; and

(b) The child does not make sufficient progress to meet age or state-approved grade-level standards; 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;

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(a) The instructional strategies used and the student-centered data collected; and
(b) The documentation that the child's parents were notified about:

(i) 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;
(ii) Strategies for increasing the child's rate of learning; and
(iii) The parent's right to request an evaluation;

(8) If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and

(9) If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

v. Group members to certify report in writing. Each group member shall certify in writing whether the report reflects his conclusion. If it does not reflect a group member's conclusion, the group member must submit a separate statement presenting his conclusions.

w. Response to intervention model. School districts that elect to use a response to intervention model as part of the evaluation process for specific learning disabilities shall submit to the state for approval a formal proposal that at a minimum addresses the provisions in district policy for documenting eligibility for specific learning disability.

x. Parent participation. Each district shall take steps to ensure that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place. The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, including information related to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA.

If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, the notice must also address the provisions for student participation.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls consistent with district policy.

y. Participation of student in IEP team meeting. If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, and if the meeting is for a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

(1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;

(2) Indicate that the district will invite the student; and

(3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services and that will be invited to send a representative.

z. Required student invitation. The district shall invite a student with a disability to attend the student's IEP team meeting if a purpose of the meeting is the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered.

aa. Conduct of IEP team without parents. An IEP team meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. The district must have written documentation of its attempts to arrange a mutually agreed upon time and place, such as the following:

> i. Detailed records and dates of telephone calls made or attempted to parents and the results of those calls;
>
> ii. Detailed copies of dated correspondence sent to the parents and any responses received; and
>
> iii. Detailed records and dates of visits made to the parent's home or place of employment and the result of those visits.

bb. Action to ensure parent understands. The district shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

cc. Parents to receive copy of individual education program. The district shall give the parents a copy of the individual education program, at no cost.

dd. IEP team to evaluate, interpret, and explain. The IEP team is responsible for assuring that a child has been appropriately evaluated and that all evaluation data are interpreted and explained to parents.

ee. IEP team to determine placement. The IEP team shall determine whether the child is in need of special education or special education and related services.

ff. IEP team to develop individual education program. If the child is determined to be in need of special education or special education and related services, the IEP team shall develop an appropriate individual education program for the child.

At the beginning of each school year thereafter, each district must have in effect an IEP for every child with disabilities within its jurisdiction. For children beginning at age three, an IEP shall be in effect by that date. If a child's third birthday occurs during the summer, IEP team shall determine the date when services under the IEP will begin. All individual educational programs shall be developed in accordance with the provisions of article 24:05.

gg. Decisions of IEP team. All decisions of the IEP team shall be made jointly by the parents and school personnel through the individual education program process and specified on the child's individual education program. An IEP must be in effect before

special education and related services are provided to a child, and are implemented as soon as possible following an IEP team meeting.

hh. Extended school year authorized. The district shall provide ESY services to eligible children if the IEP team determines on an individual basis that such services are necessary for the provision of FAPE.

An individual education program pursuant to district policies and procedures shall be developed and implemented by the IEP team that addresses the need for ESY services. The IEP team shall determine the length of the school day and duration of extended school year services based on the individual child's needs.

In implementing the requirements of this section, a district may not:

(1) Limit extended school year services to particular categories of disability;
(2) Unilaterally limit the type, amount, or duration of those services; or
(3) Apply a regression/recoupment criterion to children in need of prolonged assistance.

As used in this section, the term, extended school year services means special education and related services that meet the standards of the state and are provided to student with a disability beyond the normal school year of the district, in accordance with the student's IEP, and at no cost to the parents of the student.

ii. Prohibition on mandatory medication. State and school district personnel may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act, as amended to January 1, 2007, for a child as a condition of attending school, receiving an evaluation under district policies and procedures, or receiving services under article 24:05.

Nothing in this section may be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians related to a student's academic and functional performance, or behavior in the classroom or school, or related to the need for evaluation for special education or related services under district policies and procedures related to child find.

3. Eligibility procedures. District procedures address the following:

(a) Students with disabilities defined. Students with disabilities are students evaluated in accordance with district policies and procedures as having autism, deaf-blindness, deafness, hearing loss, cognitive disability, multiple disabilities, orthopedic impairment, other health impairments, emotion disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, or vision loss including blindness, which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services. If it is determined through an appropriate evaluation, under district policies and procedures, that a student has one of the disabilities identified in district policies and procedures, but only needs a related service and not special education, the student is not a student with a disability under article 24:05. If consistent with district policies and procedures, the related service required by the student is considered special education, the student is a student with a disability.

(b) Screening procedures for autism. If a child is suspected of having autism, screening procedures for autism shall include a review of any medical, hearing, and vision data on the child; the history of the child's behavior; and the child's current patterns of behavior relevant to autism.

(c) Autism defined. Autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction and results in adverse effects on the 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. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined under Part B of Individuals with Disabilities Education Act

(d) Diagnostic criteria for autism. An autistic disorder is present in a student if at least six of the following twelve characteristics are expressed by a student with at least two of the characteristics from subdivision (1), one characteristic from subdivision (2), and one characteristic from subdivision (3):

(1) Qualitative impairment in social interaction as manifested by at least two of the following:

(a) Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures, to regulate social interaction;

(b) Failure to develop peer relationships appropriate to developmental level;

(c) A lack of spontaneous seeking to share enjoyment, interests or achievements with other people, such as a lack of showing, bringing, or pointing out objects of interest;

(d) Lack of social or emotional reciprocity:

(2) Qualitative impairment in communication, as manifested by at least one of the following:

(a) Delay in, or total lack of, the development of spoken language not accommodated by an attempt to compensate through alternative modes of communication, such as gesture or mime;

(b) In an individual with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

(c) Stereotyped and repetitive use of language or idiosyncratic language;

(d) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(3) Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(b) Apparently inflexible adherence to specific, nonfunctional routines or rituals;

(c) Stereotyped and repetitive motor mannerisms, such as hand or finger flapping or twisting, or complex whole-body movements;

(d) Persistent preoccupation with parts of objects.

A student with autism also exhibits delays or abnormal functioning in at least one of the following areas, with onset generally prior to age three: social interaction, language used as a social communication, or symbolic or imaginative play. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this section is satisfied.

(e) Diagnostic procedures for autism. Individuals suspected of having autism shall be referred for a diagnostic evaluation to an agency specializing in the diagnosis and educational evaluation of autism or to another multidisciplinary team or group or persons who are trained and experienced in the diagnosis and educational evaluation of persons with autism.

A child suspected of autism must be evaluated in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The evaluation shall utilize multiple sources of data which include information from parents and other caretakers, direct observation, performance on standardized tests of language/communication, cognitive functioning, or other skills and performance, including specialized instruments specifically developed for the evaluation of children with autism.

(f) Instruments used in diagnosis of autism. Instruments used in the diagnosis of children suspected of having autism include those which are based on structured interviews with parents and other caregivers, behavior rating scales, and other objective behavior assessment systems.

Instruments used in the diagnosis of children with autism shall be administered by trained personnel in conformance with the instructions provided by their producer.

No single instrument or test may be used in determining diagnosis or educational need. Specific consideration must be given to the following issues in choosing instruments or methods to use in evaluating children and young adults who are suspected of having autism:

(1) The child's developmental level and possible deviations from normal development across developmental domains;

(2) The child's primary mode of communication;

(3) The extent to which instruments and methods identify strengths as well as deficits; and

(4) The extent that instruments and methods are tailored to assess skills in relationship to everyday activities and settings.

(g) Deaf-blindness defined. 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 program solely for children with deafness or children with blindness.

(h) Deafness defined. Deafness is a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, even with amplification and that adversely affects a student's educational performance.

A student may be identified as deaf if the unaided hearing loss is in excess of 70 decibels and precludes understanding of speech through the auditory mechanism, even with amplification, and the student demonstrates an inability to process linguistic information through hearing, even with amplification.

(i) Developmental delay defined. A student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in district policies and procedures or if the student experiences a severe delay in development and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or emotional development, and adaptive development.

The student may not be identified as a student with a disability if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the division's definition of the term and to the age range that has been adopted by the division.

A district shall ensure that all of the student's special education and related services needs that have been identified through the evaluation procedures described under district policies and procedures are appropriately addressed.

(j) Hearing loss defined. A student may be identified as having a hearing loss if an unaided hearing loss of 35 to 69 decibels is present that makes the acquisition of receptive and expressive language skills difficult with or without the help of amplification.

(k) Cognitive disability defined. Cognitive disability is significantly below-average intellectual functioning that exists concurrently with deficits in adaptive behavior skills that is generally manifested before age eighteen and that adversely affects a student's

educational performance. The required evaluative components for identifying a student with cognitive disability are as follows:

(1) General intellectual functioning two standard deviations or more below the mean as determined by the full scale score on an individual cognitive evaluation, plus or minus standard error of measurement, as determined in accordance with district policies and procedures; and

(2) Exhibits deficits in adaptive behavior and academic or preacademic skills as determined by an individual evaluation in accordance with district policies and procedures.

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

(m) Orthopedic impairment defined. 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).

There must be evidence of the following:

(1) That the student's impaired motor functioning significantly interferes with educational performance;

(2) That the student exhibits deficits in muscular or neuromuscular functioning that significantly limit the student's ability to move about, sit, or manipulate materials required for learning;

(3) That the student's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills; and

(4) That current medical data by a qualified medical evaluator describes and confirms an orthopedic impairment.

(n) Other health impaired defined. Other health impaired means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, because of a chronic or acute health problem, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, Tourette syndrome or diabetes, that adversely affects a student's educational performance.

Adverse effects in educational performance must be verified through the full and individual evaluation process as defined in district policies and procedures.

(o) Prolonged assistance defined. Children from birth through two may be identified as being in need of prolonged assistance if, through a multidisciplinary evaluation, they

score two standard deviations or more below the mean in two or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development.

(p) Emotional disturbance defined. Emotional disturbance is a condition that exhibits one or more of the following characteristics to a marked degree over a long period of time:

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

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

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

(4) A general pervasive mood of unhappiness or depression; or

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

The term, emotional disturbance, includes schizophrenia. The term does not apply to a student who is socially maladjusted unless the IEP team determines pursuant to district policies and procedures that the student has an emotional disturbance.

(q) Criteria for emotional disturbance. A student may be identified as emotionally disturbed if the following requirements are met:

(1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from the school and one or more other sources of the frequency and severity of the targeted behaviors;

(2) The students performance falls two standard deviations or more below the mean in emotional functions, as measured in school, home, and community on nationally normed technically adequate measures; and

(3) An adverse effect on educational performance is verified through the multidisciplinary evaluation process as defined in district policies and procedures.

A student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance.

(r) Specific learning disability defined. Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive disability; emotional disturbance; or environmental, cultural, or economic disadvantage.

(s) Criteria for specific learning disability. A group of qualified professionals and the parent of the child may determine that a child has a specific learning disability if:

(1) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, if provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

(a) Oral expression;
(b) Listening comprehension;
(c) Written expression;
(d) Basic reading skill;
(e) Reading fluency skills;
(f) Reading comprehension;
(g) Mathematics calculation; and
(h) Mathematics problem solving;

(2)(a) 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 this section when using a process based on the child's response to scientific, research-based intervention; or

(b) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with article 24:05; and

(3) The group determines that its findings under this section are not primarily the result of:

(a) A visual, hearing, or motor disability;
(b) A cognitive disability;
(c) Emotional disturbance;
(d) Cultural factors;
(e) Environmental or economic disadvantage; or
(f) Limited English proficiency.

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 must consider, as part of the evaluation described in article 24:05, 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 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.

The school district must promptly request parental consent to evaluate the child to determine whether the child needs special education and related services, and must adhere to the timeframes described in article 24:05 unless extended by mutual written agreement of the child's parents and a group of qualified professionals. The district must request such consent if, prior to a referral, a child has not made adequate progress after an appropriate

period of time when provided instruction, as described in this section, and whenever a child is referred for an evaluation.

(t) Speech or language disorder defined. Speech or language impairment is a communication disorder such as stuttering, impaired articulation, a language disorder, or a voice disorder that adversely affects a student's educational performance.

(u) Articulation disorder defined. Articulation disorders include all non-maturational speech deviations based primarily on incorrect production of speech sounds. Articulation disorders include omissions, substitutions, additions, or distortions of phonemes within words. Articulation patterns that can be attributed to cultural or ethnic background are not disabilities.

(v) Criteria for articulation disorder. A student may be identified as having an articulation disorder if one of the following criteria exist:

(1) Performance on a standardized articulation test falls two standard deviations below the mean and intelligibility is affected in conversation;

(2)Test performance is less than two standard deviations below the mean but the student is judged unintelligible by the speech and language clinician and one other adult;

(3)Performance on a phonological assessment falls in the profound or severe range and intelligibility is affected in conversation;

(4)Performance on a phonological assessment falls in the moderate range, intelligibility is affected in conversation, and during a tracking period of between three and six months there was a lack of improvement in the number and type of errors; or

(5) An error persists six months to one year beyond the chronological age when 90 percent of students have typically acquired the sound based on developmental articulation norms.

(w) Fluency disorder defined. A fluency disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm, and repetitions in sounds, syllables, words, and phrases. This may be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

(x) Criteria for fluency disorder. A student may be identified as having a fluency disorder if:

(1) The student consistently exhibits one or more of the following symptomatic behaviors of dysfluency:

a. Sound, syllable, or word repetition;
b. Prolongations of sounds, syllables, or words;
c. Blockages; or
d. Hesitations.

(2)There is a significant discrepancy from the norm as measured by speech sampling in a variety of contexts. A significant discrepancy from the norm is five dysfluencies a minute; or

(3) The disruption occurs to the degree that the individual or persons who listen to the individual react to the manner of speech and the disruptions in a way that impedes communication.

(y) Voice disorder defined. A voice disorder is characterized by the abnormal production or absence of vocal quality, pitch, loudness, resonance, duration which is inappropriate for an individual's age or gender, or both.

(z) Criteria for voice disorder. A student may be identified as having a voice disorder if:

(1) Consistent deviations exist in one or more of the parameters of voice: pitch, quality, or volume;

(2) The voice is discrepant from the norm for age, gender, or culture and is distracting to the listener; and

(3) The disorder is not the result of a temporary problem, such as normal voice changes, allergies, colds, or similar conditions.

(aa) Language disorder defined. A language disorder is a reduced ability, whether developmental or acquired, to comprehend or express ideas through spoken, written, or gestural language. The language disorder may be characterized by limited vocabulary, an inability to function through the use of words (pragmatics) and their meanings (semantics), faulty grammatical patterns (syntax and morphology), or the faulty reproduction of speech sounds (phonology). A language disorder may have a direct or indirect affect on a student's cognitive, social, emotional, or educational development or performance and deviates from accepted norms. The term language disorder does not include students whose communication problems result solely from a native language other than English or from their dialectal differences.

(bb) Criteria for language disorder. A student may be identified as having a language disorder as a primary disability if:

(1) Through age eight, performance falls 1.5 standard deviations below the mean on standardized evaluation instruments; beginning at age nine, a difference is present of 1.5 standard deviations between performance on an individually administered standardized language assessment instrument and measured expected potential as measured by an individually administered intelligence test; and

(2) The student's pragmatic skills, as measured by checklists, language samples, or observation, adversely affect the student's academic and social interactions.

(cc) Traumatic brain injury defined. A traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor

abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Adverse effects in educational performance must be verified through the multidisciplinary evaluation process as defined in district policies and procedures.

(dd) Vision loss including blindness defined. Vision loss including blindness is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

A student with a vision loss has a deficiency in visual acuity that, even with the use of lenses or corrective devices, requires special education or special education and related services.

Partial sight is one or more deficiencies in visual acuity, as follows:

(1) Visual acuity of no better than 20/70 in the better eye after correction;
(2) Restricted visual field;
(3) Limited ability to move about safely in the environment because of visual disability.

Blindness is a deficiency in visual acuity of 20/200 or less in the better eye with correcting lenses or a limited field of vision in which the widest diameter subtends an angular distance of no greater than twenty degrees or has a medically indicated expectation of visual deterioration.

(ee) IEP team override. If the IEP team determines that a student is eligible for special education or special education and related services because the student has a disability and needs special education even though the student does not meet specific requirements in district policies and procedures, the IEP team must include documentation in the record as follows:

(1) The record must contain documents that explain why the standards and procedures that are used with the majority of students resulted in invalid findings for this student;

(2) The record must indicate what objective data were used to conclude that the student has a disability and is in need of special education. These data may include test scores, work products, self-reports, teacher comments, previous tests, observational data, and other developmental data;

(3) Since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision; and

(4) The IEP team override decision must include a sign-off by the IEP team members agreeing to the override decision. If one or more IEP team members disagree with the override decision, the record must include a statement of why they disagree signed by those members.

The district director of special education shall keep a list of students on whom the IEP team override criteria were used to assist the state in evaluating the adequacy of student identification criteria.

Agencies must inserts procedures for referral (if applicable), initial evaluation (if applicable), reevaluation, prior notice/consent and placement of children with disabilities.

Note: Agencies must specify who will be responsible for the completion of each component in this section. There must be a clear understanding between the placing district and the receiving agency/facility regarding the who will implement and document these IDEA requirements.

(Guidelines provided to districts) The following (written in black) are DakotAbilities' procedures for this section.

1. Utilize referral document and informal review information to determine suspected areas of disability or for reevaluation a review of existing data. This re-evaluation is the responsibility of the referring school district.
2. Based upon the skill areas effected, the eligibility guide will be used to determine category(s) of disability to be assessed. This is currently the responsibility of the referring school district.
3. Parents/ guardians will be contacted to gain their input into the evaluation process and the areas to be assessed. Responsibility of the referring school district for all referral evaluations. Upon receiving services from DakotAbilities, this is the responsibility of team members under the direction of the agency Program Coordinator and Director of Special Education.
4. Parental Prior Notice/Consent Form will be completed and sent to parents. Completed and sent by the agency Program Coordinator.
5. Upon receipt of the signed **Parental Prior Notice/Consent Form**, the date that permission was received by the district will be documented on the form. Documentation on the form is the responsibility of the agency Program Coordinator, based on information received from the district representative.
6. The district will secure an evaluation team to conduct a comprehensive evaluation in all areas of suspected disability that matches with the types of evaluations checked on the **Parental Prior Notice/Consent Form**. In addition to completing evaluations that will help the team determine eligibility, they will also gather functional assessment data and developmental information about the child relating to progress in the general curriculum. Referral evaluation information is the responsibility of the referring school district. Once receiving services at DakotAbilities, Functional Skills Assessments are completed to gather information to be assessed by teams in regards to development of a successful IEP. This is under the direction of the agency Program Coordinator and Director of Special Education.
7. Within **25 school days** of receipt of the signed **Parental Prior Notice/Consent Form**, the evaluation will be completed unless other timelines are agreed to. Assessment completion within specified days is monitored by the agency Program Coordinator.
8. Upon completion of all evaluations, the data will be analyzed compiled into a written report(s). The report(s) will be disseminated to team members prior to the meeting, which will be held within **30 calendar days** from the end of the allowable evaluation period. The individuals initial meeting will be held within 30 days with an interdisciplinary team process to gather and share information. This data will be synthesized and the report disseminated to team members.
9. The district, DakotAbilities, and parents will decide upon an mutually agreeable meeting date. DakotAbilities will mail to the parent a completed **Parental Prior Notice** informing them of the meeting date, time, place, persons invited to attend the meeting, and other required prior notice content information. This is completed by the agency Program Coordinator.

10. The **Parental Prior Notice** will be sent to the parent at least 5 days prior to the meeting. If the parent waives the 5 day prior notice requirement, the district will have them indicate their waiver by signing the **Parental Prior Notice** which is retained in the student's file. This will be completed by the agency Program Coordinator.
11. At the meeting, the team will review the evaluation report(s), determine eligibility for special education and special education and related services, and, if appropriate, develop an IEP and then determine placement in the appropriate least restrictive environment. This will be a joint process with input from the referring school district and the agency including the Director of Special Education. The agency Program Coordinator is responsible for documentation of this process.
12. The parent's consent, which is required for initial placement, will be obtained by the district prior to implementation of an IEP. This is the responsibility of the referring school district for the parent's consent for initial placement.

Insert Agency/Facility Procedures: DakotAbilities does not do initial evaluations – students that come to us have already had their IEPs completed.

IV. Individualized Education Program

Each school district shall establish and implement procedures for the development, review and revision of the individual educational program (IEP) for each child, including the determination of related services, graduation requirements and modifications to regular vocational education program.

1. IEP Team. Each school district shall ensure that the IEP team for each student with disabilities include the following members:
   (1) The parents of the student;

(2) Not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment;

(3) Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student;

(4) A representative of the school district who:
(a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
(b) Is knowledgeable about the general curriculum; and
(c) Is knowledgeable about the availability of resources of the school district;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions 2 to 6 inclusive, of this section;

(6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate;

(7) If appropriate, the student; and

(8) Transition services participants as described in district policies and procedures.

The determination of the knowledge or special education expertise of any individual described in this section shall be made by the party (parents or district) who invited the individual to be a member of the IEP team. A district may designate another district member of the IEP team to also serve as the district representative, if the criteria in this section are satisfied.

2. Development, review, and revision of individualized education program. In developing, reviewing and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, the academic, developmental, and functional needs of the student.

The individualized education program team also shall:

(1) In the case of a student whose behavior impedes his or her learning or that of others, consider, the use of positive behavioral interventions, and supports and other strategies to address that behavior.

(2) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;
(3) In the case of a student who is blind or visually impaired, provide for instruction in braille and the use of braille unless the team determines, after an

evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student'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 student;

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

(5) Consider whether the student requires assistive technology devices and services.

The regular education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.

Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program. No additional information may be required to be included in a student's IEP beyond what is explicitly required in this section.

3. Content of individualized education program. Each student's individualized education program shall include:

(1) A statement of the student's present levels of academic achievement and functional performance, including:

(a) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students); or
(b) For preschool student, as appropriate, how the disability affects the student's participation in appropriate activities;

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

(a) Meet the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
(b) Meet each of the student's other educational needs that result from the student's disability;

For students with disabilities who take alternate assessments aligned to alternate achievement standards, each student's IEP shall provide a description of benchmarks or short-term objectives;

(3) 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 student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student:

(a) To advance appropriately toward attaining the annual goals;
(b) To be involved and progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and
(c) To be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;

(4) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in activities described in this section;

(5) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with district policies and procedures. If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

(a) The student cannot participate in the regular assessment; and
(b) The particular alternate assessment selected is appropriate for the student;

(6) The projected date for the beginning of the services and modification described in this section and the anticipated frequency, location, and duration of those services and modifications;

(7) A description of how the student's progress toward the annual goals described in this section will be measured and when periodic reports on the progress the student 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;

(8) Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include:

(a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and

(b) The transition services (including courses of study) needed to assist the student in reaching those goals; and

(9) Beginning not later than one year before a student reaches the age of majority under state law, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with district policies and procedures.

4. Access to IEP. Each school district shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation. Each teacher and provider described above is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and
(2) The specific accommodations, modifications, and supports that must be provided the child in accordance with the IEP.

5. IEP team attendance. A member of the IEP team described in item 1 of this section, (1)-(5), inclusive, is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the school district 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. A member of the IEP team may be excused from attending, in whole or in part, an IEP team meeting that involves a modification to or discussion of the member's area of the curriculum or related services, if:

(1) The parent and school district consent in writing to the excusal; and
(2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

6. Initial IEP team meeting for infants and toddlers. If a student was previously served under part C, an invitation to the initial IEP 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.

7. IEP team meeting date. Initial IEP team meetings must be held consistent with preplacement evaluation timelines. IEP team meetings following reevaluations must be held consistent with district policies and procedures. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with an IEP.

8. IEP team to determine related services. In developing a child's individual educational program, the members of the IEP team, shall determine if any developmental, corrective, or other support services, including transportation, are required to assist a child to benefit from special education. These services must be written into the individual educational program as related services.

9. Determination of related services. In deciding whether a particular developmental, corrective, or other supportive service is a related service, the members of the IEP team shall review the results of the individual evaluation used to determine the child's need for special education. Based on the specific special education services to be provided, the Team shall determine whether or not related services are required in order to assist the child to benefit from the special education program.

10. Parental consent for services. A school district that is responsible for making a free appropriate public education available to a student with a disability under article 24:05 shall obtain informed consent from the parent of the student before initially providing special education and related services to the student.

The district shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. To meet the reasonable efforts requirement, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

If the parent of the student fails to respond or refuses to consent to services, the school district may not use the procedures in district policies and procedures for procedural safeguards, 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.

11. Parental refusal to consent -- School district obligations. If the parent of a student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide such consent:

(1) The school district is not considered to be in violation of the requirement to make available free appropriate public education to the student for the failure to provide the student with the special education and related services for which the school district requests such consent; and

(2) The school district is not required to convene an IEP meeting or develop an IEP under this chapter for the student for the special education and related services for which the school district requests such consent.

12. Hearing aid. For children with hearing impairments, including deafness, in need of special education who wear hearing aids in school, the IEP team shall include, as a related service, a monitoring schedule in the individual educational program to ensure the proper functioning of these corrective devices.

13. External components of surgically implanted medical devices. Each school district shall ensure that the external components of surgically implanted medical devices are functioning properly.

For a child with a surgically implanted medical device who is receiving special education and related services under article 24:05, a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

14. Medical services. Medical services, as a related service, may only be authorized by an IEP team for diagnostic or evaluation purposes. Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

15. Transportation. If transportation is required for the child to benefit from the special education program, transportation shall be written in the individual educational program and provided at no cost to the parent. A district my not require that a parent provide transportation; however, if both parties agree that the parent will provide the transportation, it shall be noted on the individual educational program and the parent shall be reimbursed by the district in accordance with state law.

16. Yearly review and revision of individual educational programs. Each school district

shall initiate and conduct IEP team meeting to periodically review each child's individual educational program and, if appropriate revise its provisions. An IEP team meeting must be held for this purpose annually.

The review shall be conducted to determine whether the annual goals for the student are being achieved. The individualized education program shall be revised, as appropriate, to address: any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; the results of any reevaluation conducted; information about the student provided to, or by, the parents; the student's anticipated needs; or other matters.

17. Agreement to change IEP. In making changes to a student's IEP after the annual IEP meeting for a school year, the parent of a student with a disability and the school district may agree not to convene an IEP meeting for the purposes of making the changes, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP in accordance with this section, the district shall ensure that the student's IEP team is informed of the changes.

18. Amendments to IEP. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or, as provided in district policies and procedures for agreeing to changing the IEP, 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.

19. Consolidation of IEP team meetings. To the extent possible, the school district shall encourage the consolidation of reevaluation meetings for the student and other IEP team meetings for the student.

20. Alternative means of meeting participation. When conducting IEP team meetings pursuant to district policies and procedures, and carrying out administrative matters under procedural safeguards (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

21. Individual educational program for the students placed in private schools. Before a resident school district places or refers a child in need of special education or special education and related services to a private school, facility, or a contracting district, the district shall initiate and conduct an IEP team meeting to develop an individual educational program for the child in accordance with district procedures.

The district shall ensure that a representative of the private school or facility attends the IEP team meeting. If the representative of the private school or facility cannot attend the IEP team meeting, the district shall use other methods to ensure participation, including individual or conference telephone calls.

After a child in need of special education or special education and related services enters a private school or facility, any meetings to review and revise the child's individual educational program may be initiated and conducted by the private school or facility at the discretion of the district.
If the private school or facility initiates and conducts these meeting, the district shall ensure that the parents and a district representative are involved in any decision about the child's individual educational program and agree to any proposed changes in the program

before those changes are implemented.

Even if a private school or facility implement a child's individual educational program, responsibility for compliance with this section remains with the school district and the department of education.

22. Graduation requirements. Completion of an approved secondary special education program with a regular high school diploma signifies that the student no longer requires special education services. A regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED). Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with article 24:05.

The instructional program shall be specified on the individual educational program. The individual educational program shall state specifically how the student in need of special education or special education and related services will satisfy the district's graduation requirements. Parents must be informed through the individual educational program process at least one year in advance of the intent to graduate their child upon completion of the individual educational program and to terminate services by graduation.

For a student whose eligibility terminates under the above graduation provisions, or due to exceeding the age eligibility for a free appropriate public education, a school district shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

23. Agency responsibility for transition services. If a participating agency, other than the school district, fails to provide transition services contained in the IEP of a student with a disability, the school district responsible for the student's education shall reconvene an IEP team meeting for the purpose of identifying alternative strategies to meet the transition objectives set out in the student's IEP.

Nothing in this section relieves a 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 students with disabilities who meet the eligibility criteria of that agency.

24. Transition services. Transition services are a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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

25. IEPs for student transfers within state. If a student with a disability transfers school districts within the same academic year, enrolls in a new school, and had an IEP that was in effect in the state, the school district shall provide the student with a free appropriate public education. This includes providing services comparable to those described in the previously held IEP, in consultation with the parents, until the school district adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with federal and state law.

26. IEPs for student transfers from another state. If a student with a disability, who had an IEP that was in effect in a previous school district in another state, transfers to a school district in South Dakota, and enrolls in a new school within the same school year, the new school district, in consultation with the parents, shall provide the child with FAPE, including services comparable to those described in the student's IEP from the previous school district, until the new school district:

(1) Conducts an evaluation pursuant to district policies and procedures, if determined to be necessary by the new school district; and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in this chapter.

27. Transmittal of records for student transfers. To facilitate the transition for a transfer student within state and from another state:

(1) The new school in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the student, from the previous school in which the student was enrolled, pursuant to § 99.31(a)(2) of the federal Family Educational Rights and Privacy Act as amended to July 1, 2005; and

(2) The previous school in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new school.

28. Related services provided at no cost. Consistent with district policies and procedures for determining the need for related services, the district shall provide related services at no cost to the parent. Related services include transportation; speech-language pathology; audiological 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; medical services for diagnostic or evaluation purposes; school nurse and school health services designed to enable a student with a disability to receive a free appropriate public education as described in the IEP of the student; social work services in schools; and parental 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 the device.

29. Rehabilitative counseling services. Rehabilitation counseling services are 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 students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended to January 1, 2007.

30. Services applicable to surgically implanted device. Nothing in this section:

(1) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services listed in this chapter that are determined by the IEP team to be necessary for the child to receive FAPE;

(2) Limits the responsibility of a school district 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

(3) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in this chapter.

31. Employment of braille teacher. If an IEP team determines that a student's instruction in reading and writing must be accomplished through the use of braille, the district shall utilize the services of a certified braille teacher. By July 1, 1993, all individuals employed as a braille teacher must be certified pursuant to state requirements.

32. Assistive technology device. The term 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 functional capabilities of children with disabilities.

33. Assistive technology service. The term assistive technology service means any service that directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

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

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

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices;

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

(5) Training or technical assistance for a child with disabilities, or if appropriate, the child's family; and

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

34. Universal design. Universal design is a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable without requiring assistive technologies and products and services that are made usable with assistive technologies.

35. Availability of assistive technology. Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if they are required as a part of the child's special education or related services or as supplementary aids and services.

On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the student's placement committee determines that the child needs access to those devices in order to receive FAPE.

36. Transition to preschool program. Each local school district shall develop policies and procedures for the transition of children participating in the early intervention program under Part C of the Individuals with Disabilities Education Act (IDEA) who are eligible for participation in preschool programs under Part B of IDEA.

Each district's policies and procedures must include the following:

(1) A description of how the families will be included in the transitional plans;

(2) Procedures to be used by the district for notifying the local network in which the child resides of the need for transitional planning;

(3) Procedures for convening, with the approval of the family, a conference between the network, family, and district;

(4) A requirement for convening the conference at least 90 days, and at the discretion of all parties, not more than 9 months before the child is eligible for the preschool program under Part B of Individual with Disabilities Education Act; and

(5) Procedures for reviewing a child's program options for the period beginning with the day a child turns three and running through the remainder of the school year including the development and implementation of an individual education program consistent with article 24:05.

Each affected district shall participate in transition planning conferences arranged by the IDEA, Part C, program.

In the case of a child with a disability, aged three, previously eligible for Part C of IDEA, the IEP team must consider the child's IFSP that contains the IFSP content, including the natural environments statement, described in article 24:14, Early Childhood.

37. Occupational therapy defined. Occupational therapy, as a related service, includes:

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

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

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

38. Criteria for occupational therapy. A student may be identified as in need of occupational therapy as a related service if:

(1) The student has a disability and requires special education;

(2) The student needs occupational therapy to benefit from special education; and

(3) The student demonstrates performance on a standardized assessment instrument that falls at least 1.5 standard deviations below the mean in one or more of the following areas: fine motor skills, sensory integration, and visual motor skills.

39. Physical therapy defined. Physical therapy, as a related service, includes gross motor development; mobility; use of adaptive equipment; and consultation and training in handling, positioning, and transferring students with physical impairments.

40. Criteria for physical therapy. A student may be identified as in need of physical therapy as a related service if:

(1) The student has a disability and requires special education;

(2) The student needs physical therapy to benefit from special education; and

(3) The student demonstrates a delay of at least 1.5 standard deviations below the mean on a standardized motor assessment instrument.

41. Incarcerated students in adult prisons. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) Participation of students with disabilities in general assessment; and

(2) Transition planning and services with respect to the student whose eligibility under this article 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.

42. Modifications to IEPs for students in adult prisons. The IEP team may modify the student's individualized education program or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. However, these modifications do not apply with respect to:

(1) The development, review, and revision of individualized education programs as described in district policies and procedures;

(2) Content of the individualized education program with the exception of general assessment and transition as noted above; and

(3) The least restrictive environment provisions relating to being educated with nondisabled students and removal from the regular education environment.

43. Purchase of instructional materials. A school district that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the department. Nothing in this section requires a school district to coordinate with the NIMAC.

If a school district chooses not to coordinate with the NIMAC, the district shall provide an assurance to the department that the district will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

Nothing in this section relieves a district of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

Agencies/facilities must insert procedures for the development, review, and revision of IEPs. Please include how the agency works with the resident district to implement IEP procedures.
Note: Agencies must specify who will be responsible for the completion of each component in this section. There must be a clear understanding between the placing district and the receiving agency/facility regarding the who will implement and document these IDEA requirements.

(Guidelines provided to districts)
If the school district chooses to write the IEP:

1. The superintendent/designee will be responsible to ensure that the proper procedures are followed in the development, review, and revision of each IEP. This would include completing and mailing parental prior notices and other correspondence relating to development, review, or revision of IEP's, adhering to time lines, composition of the IEP team, and properly completing each section of the IEP.
2. The IEP team will ensure that all appropriate special education issues are addressed and documented on the IEP. The district's Comprehensive Plan along with the IEP Technical Assistance Guide, available from Special Education Programs, will be used as references in the development, review, and revision of each IEP.
3. All decisions of the IEP team will be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP. The IEP will be in effect before special education and related services are provided to a child and will be implemented as soon as possible following a placement committee meeting.
4. The special educator will ensure that the parent receives a copy of the completed IEP. The district will ensure the general educators and other service providers are made aware of the sections of the IEP they are responsible for implementing in the child's program.

If the school district has DakotAbilities write the IEP:

1. The DakotAbilities IEP Team will be responsible to ensure that the proper procedures are followed in the development, review, and revision of each IEP. This would include completing and mailing parental prior notices and other correspondence relating to development, review, or revision of IEP's, adhering to time lines, composition of the IEP team, and properly completing each section of the IEP.
2. The DakotAbilities IEP team will ensure that all appropriate special education issues are addressed and documented on the IEP. The district's Comprehensive Plan along with the IEP Technical Assistance Guide, available from Special Education Programs, will be used as references in the development, review, and revision of each IEP.
3. All decisions of the DakotAbilities IEP team will be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP. The IEP will be in effect before special education and related services are provided to a child and will be implemented as soon as possible following a placement committee meeting.
4. The special educator will ensure that the parent receives a copy of the completed IEP. The district will ensure the general educators and other service providers are made aware of the sections of the IEP they are responsible for implementing in the child's program.

Insert Agency/Facility Procedures: Once placement at DakotAbilities has occurred, the agency is responsible for development, review and revision of IEP's. DakotAbilities' Program Coordinator is ultimately responsible for assuring that proper procedures are followed in the development, review and revision of the persons annual meeting/IEP information. This includes completing and mailing parental prior notices and other correspondence relating to the IEP. (Refer to agency Policies: E-3 Individual Support Plan; E-4 Individual Support Plan Coordination; E-5 Individual's Support Plan Review ; E-6 Discussion of Needs and E-7 Goals and Objectives.)

Note: Agency procedures for children transitioning from Part C to Part B are only required if the agency provides services to children of this age.

Insert Agency/Facility Procedures:

This section regarding procedures for children transitioning from Part C to Part B does NOT apply to DakotAbilities.

V. Least Restrictive Environment

Each school district shall establish and implement procedures consistent with the provisions of the least restrictive environment, including preschool programs.

1. Least restrictive program to be provided. Children in need of special education or special education and related services, to the maximum extent appropriate, shall be educated with children who are not disabled and shall be provided special programs and services to meet their individual needs which are coordinated with the regular educational program. Special classes, separate schooling, or other removal of children with disabilities from the regular educational classroom may occur only when the nature or severity of the child's needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. Continuum of alternative placements. Alternative placement which must be made available including the following:

a. Regular educational programs with modification;
b. Resource rooms;
c. Self-contained programs;
d. Separate day school programs;
e. Residential school programs;
f. Home and hospital programs; and
g. Other settings.

For each of the programs listed in this section, the IEP team shall determine the extent to which related services are required in order for the child to benefit from the program. The length of the school day shall be equal in duration to that of a regular public school day unless an adjusted school day is required in order to meet the individual needs of the child. The IEP team shall provide for supplementary services, such as resource room or itinerant instruction to be provided in conjunction with regular class placement as applicable.

In those cases where placement is made in a separate day school program or residential school program, the district may abide by the school term of the facility in which the child is placed based on the individual needs of the child.

3. Factors in determining placements. Each school district shall establish and implement procedures which ensure that the following factors are addressed in determining placements:

a. Each child's educational placement must be individually determined at least annually and must be based on the child's individual education program;

b. Provisions are made for appropriate classroom or alternative settings necessary to implement a child's individual education program;

c. Unless a child's individual education plan requires some other arrangement, the child shall be educated in the school which that child would normally attend if not disabled. Other placement shall be as close as possible to the child's home;

d. Placement in the least restrictive environment will not produce a harmful

effect on the child or reduce the quality of services which that child needs; and

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

4. Program options. Each school district shall take steps to ensure that its children in need of special education or special education and related services have available to them the variety of educational programs and services available to nondisabled children in the area served by the district, including art, music, industrial arts, family and consumer science, and vocational education.

5. Nonacademic and extracurricular services. Each school district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children in need of special education or special education and related services an equal opportunity for participation in those activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

6. Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities listed in this section, such school district shall develop and implement procedures which ensure that each child in need of special education or special educational and related services participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The district shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

7. Children in public or private institutions. Each school district through its IEP team and individual education program procedures, shall ensure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate.

8. Physical education services. Physical education services, specially designed if necessary, shall be made available to every child in need of special education or special education and related services, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities unless the child is enrolled full time in a separate facility or the child needs specially designed physical education which cannot be provided in the regular physical education program.

If specially designed physical education is prescribed in the child's individual education program, the school district responsible for the education of the child shall provide the services directly or make arrangements for it to be provided through other public or private programs.

For children enrolled in separate facilities, the district responsible for the education of the child shall ensure that the child receives appropriate physical education services.

9. Preschool programs. The requirements of this section apply to all eligible preschool children, ages three through five, who are entitled to receive a free appropriate public education.

In each case, the school district must ensure that placement is based upon each child's individual education program and meets all the other requirements of this section.

Agency/facility must insert procedures consistent with the provisions of the least restrictive environment, including preschool programs, if applicable. Please describe all procedures that the agency implements in order to allow for education of students in the least restrictive environment.

Note: Agencies must describe the procedures implemented to ensure individuals served participate with non disabled peers through integration activities, employment or community experiences.

1. Describe the agencies procedures for ensuring the child is placed in the least restrictive environment and the factors the teams use in determining placement.
Insert Agency/Facility Procedures: DakotAbilities and the school district are committed to working with individual students to assure the least restrictive environments are utilized. Least restrictive environment is based on input from people that know the student, assessment and evaluation information and observation of the student. Refer to agency Policy E-1, Individual Support Plan Principles.

2. Describe the agencies procedure for placing the child within the continuum of alternative placements and how the district determines the need for related services.
Insert Agency/Facility Procedures: The school district and DakotAbilities are committed to working with individuals to assure appropriate placement. Alternative placement options are addressed at the 30-day meeting and at each IEP. The agency Program Coordinator is responsible to complete this paperwork and guide the discussion at the team meeting.

3. Describe how the agency ensures the provision of program options, nonacademic and extracurricular services, are available to children in need of special education or special education and related services.
Insert Agency/Facility Procedures: DakotAbilities is committed to ensuring options are available to people based on their strengths, needs and interests. Information for this area is gathered through previous evaluation/assessment information, current evaluations and observations. As described in #2 above, the student's team meeting provides coordinated, comprehensive input designed to meet the students special education needs. Refer to agency Policies B-17 Recreation and Leisure; B-18 Alternative Services; and, B-19 Consumer Empowerment and Decision Making.

4. Describe how the agency ensures that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate.
Insert Agency/Facility Procedures: Whenever possible, people are provided with opportunities to participate in activities with non-disabled peers. As described in #2 above, the student's team meeting provides coordinated, comprehensive input designed to meet the students special education needs. Refer to agency Policy B-8 Program Groups.

5. Describe how the agency will determine the need for physical education services, specially designed if necessary, will be made available to every child in need of special education or special education and related services.
Insert Agency/Facility Procedures: DakotAbilities does not offer physical education services. Most students referred to us no longer require physical education services due to their age. Should this be a need, it would be addressed with the referring school district.

6. Describe how the agency will ensure all eligible preschool children, ages three through five, receive a free appropriate public education based upon each child's individual education program. (Required if agency serves children of this age)
Insert Agency/Facility Procedures: DakotAbilities does not provide services to preschool children.

VI. Confidentiality of Information

Each school district shall develop and implement policies and procedures on the confidentiality of information consistent with Part B of the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act.

1. Definitions. Terms used in this chapter mean:

(1) "Act," "FERPA," the Family Educational Rights and Privacy Act of 1974, as amended to January 1, 2007, enacted as section 444 of the General Education Provisions Act, as amended to January 1, 2007;

(2) "Attendance," presence in person or by correspondence; the period during which a person is working under a work-study program;

(3) "Destruction," physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable;

(4) "Directory information," information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed, such as the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, enrollment status (e.g. full time or part time) participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees, honors, and awards received, and the most recent previous educational agency or institution attended;

(5) "Disclosure," to permit access to or the release, transfer, or other communication of education records or the personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic;

(6) "Education records," records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the following:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit and the law enforcement records are maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to law enforcement officials of the same jurisdiction;

(c) Records related to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, are related exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of the individual's status as a student are educational records and not excepted under this subdivision;

(d) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment. For the purpose of this section, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(e) Records that only contain information about an individual after the individual is no longer a student at that agency or institution;

(7) "Eligible student," a student who has reached 18 years of age or is attending an institution of postsecondary education;

(8) "Institution of postsecondary education," an institution that provides education to students beyond the secondary school level;

(9) "Secondary school level," the educational level, not beyond grade twelve, at which secondary education is provided as determined under state law;

(10) "Participating agency," any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA;

(11) "Personally identifiable information," the student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, and a list of personal characteristics or other information that would make the student's identity easily traceable; and

(12) "Record," any information recorded in any way, including handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

2. Annual notification of rights. Each school district shall annually notify parents of students currently in attendance at the agency or institution of their rights under the Family Educational Rights and Privacy Act (Act) and this section. The notice must inform the parent or eligible student that the parent or eligible student has a right to do the following:

a. Inspect and review the student's education records;

b. Seek amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

c. Consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this section authorize disclosure without consent;

d. File with the U.S. department of education a complaint concerning alleged failures by the agency or institution to comply with the requirements of the Act

and this section;

The notice shall also include the procedures for exercising the right to inspect and review education records, the procedures for requesting the amendment of records and, if the educational agency or institution has a policy of disclosing education records, a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

The district may provide this notice by any means that are likely to inform the parents and eligible students of their rights and that will effectively notify parents of students who have a primary or home language other than English, and parents or eligible students who are disabled.

3. Access rights. Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this section. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing or resolution session and in no case more than 45 calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

a. The right to response from the district to reasonable requests for explanations and interpretations of the records;

b. The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the records.

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

4. Record of access. Each school district shall keep a record of parties obtaining access to education records collected, maintained, or used under this section, except access by parents and authorized employees of the district, including the name of the party, the date access was given, and the purpose for which the party is authorized to the use the records. A parent or eligible student may inspect this record on request.

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

6. List of types and locations of information. Each school district shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the district.

7. Fees. A school district may charge a fee for copies of records which are made for

parents under this section if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The district may not charge a fee to search for or retrieve information under this section.

8. Amendment of records at parent's request. A parent who believes that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of the student may request the district which maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If the district decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

9. Opportunity for a hearing. The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

10. Hearing procedures. At a minimum, a district's hearing procedures must include the following elements:

a. The hearing must be held within 30 days after the district received the request, and the parent of the student or eligible student shall be given notice of the date, place, and time 5 days in advance of the hearing;

b. The hearing may be conducted by any party, including an official of the district, who does not have a direct interest in the outcome of the hearing;

c. The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his choice at his own expense, including an attorney;

d. The district shall make its decision in writing within 30 days after the conclusion of the hearing; and

e. The decision of the district shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

11. Results of hearing. If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and inform the parents in writing.

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the district.

Any explanation placed in the records of the student under this section must be

maintained by the district as part of the records of the student as long as the record or contested portion is maintained by the district. If the records of the student or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party.

12. Consent. Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under article 24:05 or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA. The district may not release information from education records to participating agencies without parental consent except as follows:

> (1) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and
>
> (2) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

Notwithstanding the FERPA exceptions for releasing information from education records without parental consent, including the annual notice provision, if a student is enrolled, or is going to enroll in a private school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the school district where the private school is located and officials in the school district of the parent's residence.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements.

13. Safeguards. Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
One official in the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this section concerning personally identifiable

information.

Each district shall maintain for public inspection a current listing of the names and positions of those employees within the district who may have access to personally identifiable information on student in need of special education or special education and related services.

14. Destruction of information. The school district shall inform parents when personally identifiable information collected, maintained, or used under this section is no longer needed to provide educational services to the student. The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

15. Children's rights. All of the parental rights in this section are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, consistent with the transfer of student rights at age of majority, including taking into consideration the type or severity of a child's disability.

16. Enforcement. The department of education, special education programs, shall ensure that all school districts in this state comply with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

17. Disciplinary information. A local educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

Consistent with the policy above, if a child transfers from one school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

18. Records regarding migratory children with disabilities. A school district shall cooperate in the U.S. Secretary of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

Agencies/facilities must inserts policies and procedures on confidentiality of information. These policies and procedures ensure protection of the confidentiality of any personally identifiable information collected, used or maintained under Part B of the Individuals with Disabilities Education Act.

Insert Agency/Facility Procedures: DakotAbilities implements policies and procedures to ensure protection of the confidentially of any personally identifiable information collected, used or maintained under Part B of the Individuals with Disabilities Education Act (IDEA) and the Family Education Rights and Privacy Act (FERPA).

At a minimum each district:

1. Adopts an education records policy and implements procedures that meet the standards of FERPA 99.6.
2. Annually notifies parents and students in attendance of their rights pertaining to student records according to FERPA 99.7.
3. Maintains a permanent file on each student.
4. Maintains special education records.
5. Provides public notice of directory information and provide parents an opportunity to refuse to disclose such information.
6. Provides annual training to school staff on records and confidentiality.

HIPAA Guidelines are followed throughout the agency. Refer also to agency Policy H-5 Confidentiality of Records for Individuals Served. Confidentiality is highly valued at DakotAbilities as we recognize the importance of assuring personal information is kept private. Realizing that information sometimes needs to be shared, written releases are required to be signed by the person, their guardian and/or parent.

VII. Procedural Safeguards

Each school district shall establish, maintain, and implement procedural safeguards which meet the requirements of this section, including opportunity to examine records, parent participation in meetings, independent educational evaluation, prior notice and parent consent, procedural safeguards notice, impartial due process hearing, due process complaint notice, resolution meetings, appeals, attorneys' fees, mediation, surrogate parents, and transfer of rights.

1. Opportunity to examine records. The parents of a child in need of special education or special education and related services shall be afforded, in accordance with the confidentiality of information requirements, an opportunity to inspect and review all education records concerning the identification, evaluation, and educational placement for the child and the provisions of a free appropriate public education to the child.

2. Parent participation in meetings/meetings defined. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Each school district shall provide notice consistent with district policies and procedures for procedural safeguards to ensure that parents of eligible students be given the opportunity to participate in the meeting described in article 24:05. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

A placement decision may be made by a group without parental involvement, if the district is unable to obtain the parent's participation in the decision. The district must have a record of its attempts to ensure parental involvement.

A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of services provision. In addition, a meeting does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

3. Independent educational evaluation. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district subject to the conditions in this section.

Each district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations specified in this section.

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

If the parent requests an independent educational evaluation at public expense, the district must, without unnecessary delay, either file a due process complaint to request a hearing

under this chapter to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria. If the district files a due process complaint to request a hearing under this chapter and the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation must be considered by the district, if it meets district criteria, in any decision made with respect to the provision of a free appropriate public education to the child and may be presented by any party as evidence at a hearing under this chapter regarding that child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. If an independent evaluation is made at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Each district shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

For the purposes of this section, the term, independent education evaluation, means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. For purposes of this section, the term, public expense, means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with department and district policies on interagency agreements, coordination of services, obligations of noneducational public agencies, public benefits or insurance, private insurance, and use of Part B funds for insurance costs.

Except for the criteria described in this section, a district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

4. Prior notice/ content and form. Written notice which meets the requirements of this section must be given to the parents 5 days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education the child. The 5-day notice requirement may be waived by the parents.

a. Content of notice. The notice must include the following:

i. A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any other options the IEP team considered and the reasons why those options were rejected;

ii. A description of each evaluation procedure, assessment, record, or report that the district uses as a basis for the proposal or refusal;

iii. A description of any other factors which are relevant to the district's proposal or refusal;

iv. A statement that the parents of a child with a disability have protection under the procedural safeguards of this article 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

v. Sources for parents to contact to obtain assistance in understanding the provisions of article 24:05.

b. Form of notice. This notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the local education agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his native language or other mode of communication, that the parent understands the content of the notice, and that there is written evidence that the requirements in this section have been met.

5. Procedural safeguards notice-availability. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must also be given to the parent:

(1) Upon initial referral or parental request for evaluation;

(2) Upon request by a parent;

(3) In accordance with the discipline procedures in district policies on suspension and expulsion; and

(4) Upon receipt of the first state complaint filed under department procedures and the first due process complaint filed under district policies and procedures in a school year.

A district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

6. Procedural safeguards notice-contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this article and the state complaint procedures relating to:

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:

(a) The time period in which to file a complaint;
(b) The opportunity for the district to resolve the complaint; and
(c) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The child's placement during pendency of any due process complaint;

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

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

(9) The availability of mediation;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

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

(12) Attorneys' fees.

The form of the notice must be consistent with district policies and procedures, including written evidence that the requirements in this section have been met.

7. Electronic mail. A parent of a child with a disability may elect to receive notices required by this chapter by an electronic mail communication, if the district makes that option available.

8. Filing a due process complaint. A parent or a school district may file a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

9. Timeline for filing a due process complaint. A due process complaint shall allege a violation that occurred not more than two years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(1) Specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint; or
(2) The district's withholding of information from the parent that was required under this chapter to be provided to the parent.

10. Free or low-cost services to parent. The school district shall inform the parent of any free or low-cost legal and other relevant services available in the area, if the parent or

school district files a due process complaint under this section or the parent requests the information.

11. Due process complaint notice. A school district must have procedures that require either party or the attorney representing a party, to provide to the other party a due process complaint, which must remain confidential. The party filing a due process complaint shall forward a copy to the department.

12. Content of due process complaint notice. The notice required in district policies and procedures must include:

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;

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

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

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

13. Sufficiency of complaint. The due process complaint required by this chapter is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in district policies and procedures.

14. Decision of sufficiency of complaint. Within five days of receipt of the notification required under district policies and procedures, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of district policies and shall immediately notify the parties in writing of that determination.

15. Amendment to due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendments and is given the opportunity to resolve the due process complaint through a resolution meeting held under district policies and procedures; or

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

A party files an amended due process complaint, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.

16. District response to due process complaint. If the district has not sent a prior written notice under this chapter to the parent regarding the subject matter contained in the parent's due process complaint, the district shall, within ten days of receiving the due process complaint, send to the parent a response that includes:

(1) An explanation of why the district proposed or refused to take the action raised in the due process complaint;

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

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

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

A response by the district under this section does not preclude the district from asserting that the parent's due process complaint was insufficient, if appropriate.

17. Other party response to due process complaint. Except as provided in district policies, the party receiving a due process complaint shall, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

18. Model forms. The department shall develop model forms to assist parents and school districts in filing a due process complaint in accordance with this chapter and a state complaint under department procedures. However, the department or a school district may not require the use of the model forms.

Parents, school districts, and other parties may use the appropriate model forms described in this section, or another form or other document, if the form or document that is used meets, as appropriate, the content requirements in district policies and procedures for filing a due process complaint, or the requirements for filing a state complaint with the department.

19. Resolution meeting -- Participants. Within 15 days of receiving notice of the parent's due process complaint, and before the initiation of a due process hearing under this chapter, the district shall convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint. The meeting:

(1) Shall include a representative of the district who has decision-making authority on behalf of the district; and

(2) May not include an attorney of the district unless the parent is accompanied by an attorney.

The parent and district shall determine the relevant members of the IEP team to attend the meeting.

20. Resolution meeting -- Purpose. The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint.

21. Resolution meeting -- Waive or mediate. The resolution meeting need not be held if:

(1) The parent and the district agree in writing to waive the meeting; or

(2) The parent and the district agree to use the mediation process described in this chapter.

22. Resolution period -- General. If the district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in district policies and procedures, the timeline for issuing a final decision in a due process hearing begins at the expiration of the 30-day period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

23. Dismissal of complaint or initiation of hearing. If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedure in district policies, the district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

If the district fails to hold the resolution meeting specified in district policies and procedures within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing office to begin the due process hearing timeline.

24. Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing described in this chapter starts the day after one of the following events:

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

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

(3) If, after both parties agree in writing to continue the mediation at the end of the 30-day resolution period, the parent or district withdraws from the mediation process.

25. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in district policies and procedures, the parties shall execute a legally binding agreement that is:

(1) Signed by both the parent and a representative of the district who has the authority to bind the district; and

(2) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement pursuant to this section, a party may void the agreement within three business days of the agreement's execution.

If a settlement agreement is reached in a resolution meeting, the local school district shall forward a signed and dated copy of the written agreement to the state director of special education. The department is required to report data on resolution agreements to the U.S. Department of Education, Office of Special Education Programs.

26. Mediation. Each school district shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under article 24:05, including matters arising before the filing of a due process complaint, to resolve disputes through a mediation process. Procedures for mediation are as follows:

(1) The district shall ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay an aggrieved party's right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and

(2) The mediation conference is an intervening, informal process conducted in a nonadversarial atmosphere that is scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

The state shall bear the cost of the mediation process, including the costs of meetings described in district policies and procedures.

27. Mediator-qualified and impartial. The mediation process shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators shall be selected on a random, rotational, or other impartial basis. An individual who serves as a mediator:

(1) May not be an employee of:

(a) Any school district or state agency that is involved in the education or care of the child; or
(b) The department, if the department is providing direct services to a child who is the subject of the mediation process; and

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

A person who otherwise qualifies as a mediator is not an employee of a district or state agency solely because the person is paid by the department to serve as a mediator.

28. Meeting to encourage mediation. A school district may establish procedures to offer to parents and schools who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with a parent training and information center or community parent resource center in the state, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

29. Mediation agreement. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court; and

(2) Is signed by both the parent and a representative of the district who has the authority to bind the district.

A written signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

30. Impartial due process hearing. If a due process complaint is received under this chapter, suspension, or expulsion, the parents or the district involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in article 24:05.

The department is responsible for ensuring that a due process hearing is held.

31. Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under this chapter, unless the other party agrees otherwise.

A parent may file a separate due process complaint on an issue separate from a due process complaint already filed.

32. Timeline for requesting a due process hearing. A parent or district shall request an impartial hearing on their due process complaint within two years of the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the exceptions in district policies and procedures exist.

33. Impartial hearing officer. A hearing may not be conducted by a person who is an employee of a school district which is involved in the education or care of the child or by any person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

A hearing officer shall:

(1) Possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;

(2) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(3) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

An individual who otherwise qualifies to conduct a hearing is not an employee of the department solely because the individual is paid by the department to serve as a hearing officer.

Each school district shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

34. Decision of hearing officer. Subject to the provisions of this section, a hearing officer's determination of whether a child received FAPE shall be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(1) Impeded the child's right to a FAPE;

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

(3) Caused a deprivation of educational benefit.

Nothing in this section precludes a hearing officer from ordering a district to comply with procedural requirements under this chapter, suspension, and expulsion.

35. Appeal of hearing decision -- Civil action. Any party aggrieved by the decision of the hearing officer under this chapter or suspension and expulsion may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 90 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

(1) Shall review the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 as amended to January 2, 2007, Title V of the Rehabilitation Act of 1973 as amended to January 1, 2007, or other federal laws protecting the rights of children with disabilities. However, before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for filing a due process complaint must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

36. Reasonable attorneys' fees. In any action or proceeding brought under 20 U.S.C. § 1415(e), the court, in its discretion, may award reasonable attorneys' fees under 20 U.S.C. § 1415(i)(3) as in effect on December 3, 2004, as part of the cost to the prevailing party who is the parent of a child with a disability; to the prevailing party who is the state or district against the attorney of a parent who riles a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to the prevailing party who is the state or district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and this chapter. This does not preclude a district from using IDEA, Part B funds for conducting an action or proceeding under section 615 of IDEA.

A court shall award reasonable attorneys' fees under section 615(i)(3) of the IDEA consistent with the following:

(1) Fees awarded under section 615(i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this section;

(2) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure (1987) or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

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

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

(3) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the department for a mediation described in this chapter. A resolution meeting conducted pursuant to this chapter is not considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of this section;

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

(5) The court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

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

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

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

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with this chapter.

(6) The provisions of subdivision (5) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

37. Hearing rights. Any party to a hearing under district policies and procedures for procedural safeguards or suspension/expulsion has the right to:

i. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
ii. Present evidence and confront, cross-examine, and compel the attendance of witness;
iii. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
iv. Obtain a written or at the option of the parents, electronic verbatim record of the hearing; and

v. Obtain written, or at the option of the parents, electronic findings of fact and decisions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory counsel and shall make those findings and decisions available to the public.

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

38. Additional disclosure of information. At least 5 business days prior to a hearing conducted under district policies and procedures for procedural safeguards, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

39. Time limit for and convenience of hearings. The department shall ensure that not later than 45 calendar days after the expiration of the 30-day period under district policies and procedures for procedural safeguards or adjusted time period described in district policies and procedures, a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

40. Child's status during proceedings. Except as provided under district policies and procedures for suspension and expulsion, during the pendency of any administrative hearing or judicial proceeding regarding a due process complaint notice requesting a due process hearing pursuant to this chapter, the child involved must remain in the present educational placement unless the state or school district and the parents agree otherwise. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

If the complaint involves an application for initial services under this article from a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services, then the district must provide initial provision of special education and related services, then the district must provide those special education and related services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of pendency.

41. Surrogate parents. Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in district policies and procedures, can be identified and the district, after reasonable effort, cannot locate a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento

Homeless Assistance Act, as amended to January 1, 2007. A district's method for determining whether a child needs a surrogate parent must include the following:

(1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;

(2) The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and

(3) The establishment of a referral system within the district for the appointment of a surrogate parent.

If a child is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, if the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of the department, district, or any other agency that is involved in the education or care of the child.

If a child is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, without regard to the nonemployee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

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

The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a district determines that the child needs a surrogate parent.

The term, parent, means:

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

(3) 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;

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

(5) A surrogate parent who has been appointed in accordance with district policies and procedures.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section 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 under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

Ward of the state means a child who, as determined by the state, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the above definition of a parent.

42. Transfer of parental rights. Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur:

(1) The school district shall provide any notice required by article 24:05 to both the individual and the parents;

(2) All other rights accorded to parents under article 24:05 transfer to the child; and

(3) All rights accorded to parents under article 24:05 transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights. If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program of the child, the school district shall appoint the parent, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under this article.

Note(s): With the exception of item 3, Independent Educational Evaluation, district procedures will probably be verbatim from the ARSD. Item 3 is discussed below.

In developing its policies and procedures for an independent education evaluation (IEE), the district may want to consider including the following points:

1. While it is reasonable for a district to require that it be notified prior to the parent's obtaining an IEE at public expense, a district may not fail to pay for an IEE if a parent does not notify the district that an IEE is being sought.

2. In order to avoid unreasonable charges for IEE's, s district may establish maximum allowable charges for specific tests. If a district does establish maximum allowable charges for specific tests, the maximum cannot simply be an average of the fees customarily charged in the area by professionals who are qualified to conduct the specific test. Rather, the maximum must be established so that it allows parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees. When enforcing reasonable cost containment criteria, the district must allow a parent the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria. If this justification is forthcoming, the IEE must be at public expense. If a district does not adopt cost criteria, parents are free to obtain the services of any qualified evaluator. The district could challenge the reasonableness of a particular fee in a due process hearing.

3. Parents are not entitled to reimbursement for IEE's which were not initiated as a result of disagreement with a district's evaluation.

4. Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the district uses when it initiates an evaluation. The district should have criteria for the minimum qualifications of the persons who conduct evaluations (i.e., the state's requirements for child evaluators). Listing the names and addresses of evaluators who meet the minimum qualifications of the district can be an effective way for districts to inform parents of how and where they may obtain an IEE.

If the child's needs can be appropriately evaluated by the persons identified on the district's list and the list exhausts the availability of qualified persons within the geographic area specified, then a district can restrict parents to selecting from among those persons on the list. However, when enforcing IEE criteria, the district must allow the parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria. If justified, the IEE must be a public expense.

If the district's list does not exhaust the number of persons minimally qualified to evaluate the unique need of every child in the district, parents are free to select whom they choose, so long as the evaluator(s) meet the district's location, qualification, and reasonable cost criteria.

5. The district may establish reasonable timelines regarding how long after receiving the results of a child's school district evaluation a parent can wait to request reimbursement for an IEE.

6. If the parent disagrees with the results of an IEE paid for by the district, the parent does not have a right to another IEE at public expense.

Agencies/facilities must inserts policies and procedures for procedural safeguards that meet the requirements of the Individuals with Disabilities Act, Part B, §300.500 - 300.537 including those established for Independent Educational Evaluations.

Insert Agency/Facility Procedures: It is the responsibility of the DakotAbilities Program Coordinator to assure a Parental Rights Packet is sent to the parents of all school age children. Please refer to Policy H-8 Due Process and H-10 Education and Training in regards to in house supports in the area of Rights Training and Education provided by DakotAbilities staff.

Note: The agency inserts additional procedural safeguards addressing Independent Educational Evaluations and how they work with the resident districts to accomplish these evaluations.

Insert Agency/Facility Procedures: Agreements regarding Independent Educational Evaluations would be the responsibility of the funding School District. Parental Rights Packets include Parental rights Brochure from the Office of Special Education's website. Although DakotAbilities has no specific policy regarding the use of Independent Educational Evaluations, we are always open to working with other resident districts regarding the use of independent educational evaluations. DakotAbilities will insure that the entity that performed the evaluation was a valid and reliable resource. DakotAbilities will follow the South Dakota Parental Rights Booklet's Guidelines for Request for Independent Evaluations and Due Process Procedures.

Private School Placement

Each school district shall establish and implement procedures for the placement of children with disabilities in private schools, including out-of-state placements.

1. Applicability. The provisions of this chapter apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services and to eligible children placed in private schools by their parents when FAPE is at issue.

2. Placement of children by parents. If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this section to pay for the child's education, including special education and related services, at the private school or facility. However, the public agency must include the child in the population whose needs are addressed under voluntary enrollment in nonpublic schools.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

3. Reimbursement for private school placement. If the parents of an eligible child, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer of a court even if it does not meet the state standards that apply to education provided by the state and districts.

4. Limitation on reimbursement. The cost of reimbursement described in this chapter may be reduced or denied if:

(1) At the most recent individualized education program team meeting that the parents attended prior to removal of the child from the public school:

(a) The parents did not inform the individualized education program team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least 10 business days, including any holidays that occur on a business day, before to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in subsection (a) above;

(2) Prior to the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements

described in district policies and procedures for procedural safeguards, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

5. Exceptions to limitation on reimbursement. Notwithstanding the notice requirements in this chapter, the cost of reimbursement may not be reduced or denied for failure to provide notice if:

(1) Compliance with item 4 of this chapter would likely result in physical harm to the child;

(2) The school prevented the parent from providing the notice; or

(3) The parents had not received notice, pursuant to district policies and procedures for procedural safeguards, of the notice requirement in item 4 of this chapter.

In addition, the cost of reimbursement, may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English or if compliance with this section would likely result in serious emotional harm to the child.

Agencies/facilities are NOT responsible for procedures for the placement of children with disabilities in private schools, including out-of-state placements.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, regarding Private Placement of children with disabilities in private schools, including out-of-state placements, does NOT apply to DakotAbilities.

IX. Voluntary Enrollment in Nonpublic Schools

Each school district shall establish and implement procedures for the provision of special education and related services to eligible children voluntarily enrolled in nonpublic schools.

1. Child find. Each district shall establish a child find process to locate, identify, and evaluate all private school children with disabilities, including religious elementary and secondary school children and children receiving alternative instruction under SDCL 13-27-3 in schools located in the school district served by the district. The activities undertaken to carry out the responsibility for private school children with disabilities must be similar to activities undertaken for children with disabilities in public schools.

The child find process shall be designed to ensure:

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

The child find process shall be completed in a time period comparable to that for students attending public schools in the district consistent with article 24:05.

Each school district in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools that they attend are located.

Each school district shall maintain in its records, and provide to the department, the following information related to parentally-placed private school children covered under this chapter: the number of children evaluated; the number of children determined to be children with disabilities; and the number of children served.

2. Expenditures. To meet the requirements of this chapter, each school district must spend the following amounts on providing special education and related services including direct services to parentally-placed private school children with disabilities:

(1) For children aged 3 to 21, inclusive, an amount that is the same proportion of the school district's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and

(2) For children aged 3 to 5, inclusive, an amount that is the same proportion of the school district's total subgrant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services, including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the district, after timely and meaningful consultation with representative of private schools, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities under this chapter.

3. Child count. Each school district shall:

(1) After timely and meaningful consultation with representatives of parentally-placed private school children, determine the number of eligible children attending private schools located in the district; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

The child count must be used to determine the amount that the school district must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year. Expenditures for child find activities described in this chapter, including individual evaluations, may not be considered in determining whether the school district or other public agency has met the requirements of this chapter. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this section consistent with state law or local policy.

4. No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to eligible private school children with disabilities under this chapter must be made in accordance with district policies and procedures for written affirmation and service plans. The school district shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.

5. Consultation. To ensure timely and meaningful consultation, a school district, or, of appropriate, the department shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(1) The child find process, including:

(a) How parentally-placed private school children suspected of having a disability can participate equitably; and
(b) How parents, teachers, and private school officials will be informed of the process;

(2) The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this chapter, including the determination of how the proportionate share of those funds was calculated;

(3) The consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(4) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:

(a) The types of services, including direct services and alternate service delivery mechanisms;
(b) How special education and related services will be apportioned if funds are sufficient to serve all parentally-placed private school children; and
(c) How and when those decisions will be made; and

(5) How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

6. Written affirmation. When timely and meaningful consultation, as required by this chapter, has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the district shall forward the documentation of the consultation process to the department.

7. Compliance. A private school official has the right to submit a complaint to the department that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint by the district with the applicable private school provisions in this chapter. The district shall forward the appropriate documentation regarding its consultation process to the department.

If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the U. S. secretary of education by providing the

information on noncompliance described in this section. The department shall forward the appropriate documentation regarding the state's decision on the complaint to the U.S. secretary of education.

8. Services plan. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from district, the district shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with this chapter; and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

9. Services provided. The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of article 24:05. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

(1) Meet the IEP content requirements with respect to the services provided; and

(2) Be developed, reviewed, and revised consistent with the IEP provisions in article 24:05.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by the school district with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

10. Location of services and transportation. Services provided to eligible parentally-placed private school children may be provided on the premises of a child's private school, including a religious school, to the extent consistent with state law. If necessary for the child to benefit from or participate in the services provided under this chapter, a private school child with a disability must be provided transportation:

(1) From the child's school or the child's home to a site other that the private school; and

(2) From the service site to the private school, or to the child's home, depending on the timing of the services.

Districts are not required to provide transportation from the child's home to the private school. The cost of transportation described in this section may be included in calculating whether the district has met the requirement of this chapter.

11. Complaints. The due process hearing and mediation procedures in the chapter on procedural safeguards do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan. The due process hearing and mediation procedures in district policies and procedures apply to complaints that the district has failed to meet the child find requirements in this chapter, including the parent consent and evaluation requirements in this article. Any due process complaint regarding the child find requirements shall be filed with the school district in which the private school is located and a copy shall be forwarded to the department. Complaints that the department or a school district has failed to meet the requirements of this chapter may be filed under department procedures consistent with the procedures in this chapter.

12. Proscribed use of funds. A school district may not use section 619 Preschool or Part B funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

13. Proscribed use of funds for benefit of private school. A school district may not use Section 619 Preschool or Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

The school district shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for:

(1) The needs of a private school; or
(1) The general needs of the students enrolled in the private school.

14. Personnel use authorized. A school district may use Section 619 Preschool and Part B funds make public personnel available in other than public facilities to the extent necessary to provide services designed for students enrolled in a private school if those services are not normally provided by the private school.

15. Use of private school employees authorized. A school district may use Section 619 Preschool or Part B funds to pay for the services of an employee of a private school if the employee performs the services outside of his regular hours of duty and the employee performs the services under public supervision and control.

16. School district to maintain control of property, equipment and supplies. A school district shall control and administer the funds used to provide special education and related services under this chapter, and hold title to and administer materials, equipment,

and property purchased with those funds for the uses and purposes provided in Part B of the IDEA.

The school district may place equipment and supplies in a private school for the period of time needed for the Part B program.

The school district shall ensure that the equipment or supplies placed in a private school are used only for the purposes of the program and can be removed from the private school without remodeling the private school facilities.

17. Equipment and supplies to be removed from private schools upon cessation of need. The school district shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for the purposes of the program authorized under Part B of the IDEA or if removal is necessary to avoid unauthorized use of the equipment or supplies for other than Part B program purposes.

18. Use of program funds for repairs, minor remodeling, or private construction proscribed. A school district shall ensure that Section 619 Preschool or Part B funds are not used for repairs, minor remodeling, or construction of private school facilities.

Agencies/facilities are NOT responsible for procedures for the provision of special education and related services to eligible children voluntarily enrolled in nonpublic schools.

**** NOTE: This section is Not Applicable for all agencies.****

This section, regarding procedures for the provision of special education and related services to eligible children voluntarily enrolled in nonpublic schools, does NOT apply to DakotAbilities.

X. Suspension and Expulsion

Each school district shall establish and implement procedures for the suspension and expulsion of students with disabilities.

1. Suspension and expulsion from school. The suspension or expulsion of students in need of special education or special education and related services shall include the general due process procedures used for all students and the additional steps in the process that a district must take if the student is receiving special education or special education and related services under an individualized education program.

2. Suspension from school -- Definitions. Terms used in district policies and procedures for suspension and expulsion mean:

(1) "Controlled substance," a drug or other substance identified under SDCL 34-20B-11 to 34-20B-26, inclusive;

(2) "Dangerous weapon," a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length;

(3) "Illegal drug," a controlled substance, but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under SDCL 34-20B-11 to 34-20B-26, inclusive, or under any provision of federal law; and

(4) "Serious bodily injury," bodily injury that involves:

(a) A substantial risk of death;

(b) Extreme physical pain;

(c) Protracted and obvious disfigurement; or

(d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

3. Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

4. Short-term suspension hearing procedure and result. If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the principal or superintendent shall give oral or written notice to the pupil as soon as possible after discovery of the alleged violation, stating the basis for the suspension. The pupil shall be given the opportunity to answer the charges. When a pupil is suspended, the principal or superintendent shall give the parent oral notice, if possible, and shall send the parent a written notice; however, a pupil may not be removed from the school premises before the end of the school day without contacting a parent.

5. Written report required. If a long-term suspension or expulsion is anticipated because

of a student's violation of a rule, regulation, or policy, the district's general due process procedures apply. If an expulsion is anticipated because of a student's violation of rules or policies or for insubordination or misconduct, the district's general due process procedures apply.

6. Request and notice of hearing. If the superintendent finds grounds for a long-term suspension from a class or classes or for expulsion from school, the superintendent may exclude the student from a class or classes before the hearing by using the short-term suspension procedure. The superintendent shall give notice of the necessity for the hearing in writing to each school board member. A written notice shall be given to the student's parents. The parents' notice shall contain the following minimum information:

a. The rule, regulation, or policy allegedly violated;
b. The date, time, and place for the hearing;
c. A description of the hearing procedure;
d. The reason for the disciplinary proceedings;
e. A statement that the student's records are available at the school for examination by the student's parents or their authorized representative; and
f. A statement that the student may present witnesses.

7. Right of waiver. The student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties. If an expulsion is anticipated and if the hearing is waived in writing, the school board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

8. Hearing procedures. The school board shall constitute the hearing board and shall conduct the hearing in the following manner:

a. A school board member or a school board designee who is not an employee of the school district shall be appointed as presiding officer;

b. Each party may make an opening statement;

c. Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;

d. Each party may be represented by an attorney;

e. The administration shall present its case first;

f. The hearing shall be closed to the public and there shall be no verbatim record by mechanical or electronic means;

g. Witnesses may be present only when testifying. All witnesses must take an oath or affirmation to be administered by the school board president or business manager;

h. Each party may raise objections; however, objections shall be limited to relevancy and scope of the question;

i. All relevant evidence shall be admitted; however, unproductive or repetitious evidence may be limited by the presiding officer;

j. The presiding officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;

k. Each party may make a closing statement;

l. After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the presiding officer of the hearing may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney not present at the hearing. Consultation with any other person during deliberation may occur only if a representative of the student is present; and

m. The decision of the school board shall be based solely on the evidence presented at the hearing and shall be formalized by a motion made in open meeting. The motion shall omit the name of the student and shall state the reason for the board's action. The student or student's parents shall be notified in writing of the decision. The notice shall state the length of the suspension or expulsion.

9. Right of appeal. A decision adverse to the student by the school board may be appealed to a circuit court.

10. Attendance policies. The attendance policy of a school district may not exclude a pupil from a class or from school for more than ten days without providing due process procedures pursuant to suspension policy. In the case of an anticipated expulsion, the attendance policy of a school district may not exclude a student from one or more classes or from a school for more than ten consecutive school days without providing the due process procedures in this chapter or general due process procedures.

11. Change of placement for disciplinary removals. For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student is subjected to a series of removals that constitute a pattern because:

(a) They cumulate to more than ten school days in a school year;
(b) Of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another and
(c) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

12. Removals- Ten school days or less. To the extent removal would be applied to students without disabilities, including alternative settings, school personnel may order the removal of a student with a disability from the student's current placement to an appropriate interim alternative educational setting or another setting, or they may order suspension for not more than ten consecutive school days, for any violation of a code of student conduct. Additional removals of not more than ten consecutive school days in that same school year may be ordered for separate incidents of misconduct if those removals do not constitute a change of placement under this section.

13. Required services-no change of placement. A school district need not provide services during periods of removal under this section to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. If a student with a disability has been removed from his or her current placement for more than ten school days in that school year, and the removal is not for more than ten consecutive school days and is not a change in placement, the district, for the remainder of the removals, shall provide services to the extent necessary to enable the student to participate in the general curriculum and to progress toward meeting the goals set out in the student's IEP. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are necessary to enable the student to participate in the general curriculum and to progress toward meeting the goals set out in the student's IEP.

14. Authority of school personnel -- Weapons, drugs, and serious bodily injury. School personnel may remove a student to an appropriate interim alternative setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:

(1) The student carries a weapon to or possesses a weapon at school, on school premises, or at school or to a school function under the jurisdiction of a state or local education agency;

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or

(3) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state education agency or a school district.

15. Authority of hearing officer. A hearing officer under article 24:05 hears and makes a determination regarding an appeal under this chapter. In making the determination under this section, the hearing officer may:

(1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this chapter or that the student's behavior was a manifestation of the student's disability; or

(2) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school

days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

The procedures under this section may be repeated if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

16. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district shall notify the parents of that decision and provide the parents the procedural safeguards notice described in district policies and procedures.

17. Referral to IEP team for expulsion or long-term suspension of students.
If a student identified as in need of special education or special education and related services pursuant to SDCL 13-37-1 is the subject of expulsion or long-term suspension, a referral shall be made by the superintendent or chief administering officer to the district's IEP team.

18. Determination of interim alternative educational setting. The student's IEP team shall determine the interim alternative educational setting in which a student is placed because of weapons, drugs, or serious bodily injury; because of a change of placement for disciplinary removals; and because of behavior determined not to be a manifestation of a student's disability.

19. Manifestation determination review requirement. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(2) Whether the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision (1) or (2) of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine that the condition described in subdivision (2) of this section was met, the district shall take immediate steps to remedy those deficiencies.

20. Determination that behavior was a manifestation. If the school district, the parent, and relevant members of the IEP team determine that the conduct was a manifestation of the student's disability, the IEP team shall either:

(1) Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted

in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(2) If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

In addition, and except as provided under district policies and procedures related to weapons, drugs or serious bodily injury, the IEP team shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

21. Determination that behavior was not manifestation of disability – Additional authority of school personnel. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to this chapter, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in this section.

A student with a disability who is removed from the student's current placement pursuant to this section or district policies and procedures related to weapons, drugs or serious bodily injury must:

(1) Continue to receive educational services, as provided in this article, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

22. Appeal. The parent of a student with a disability who disagrees with any decision regarding placement under this chapter or with the manifestation determination, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to article 24:05.

23. Placement during appeals. If an appeal under this chapter has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in district policies and procedures related to weapons, drugs or serious bodily injury or behavior determined not to be a manifestation of a student's disability, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

24. Expedited hearing-- procedures. If a hearing is requested under this chapter, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of article 24:05, except as provided in this section.

The department shall arrange the expedited due process hearing, which must occur within 20 school days of the date of the complaint requesting the hearing is filed. The hearing officer shall make a determination within ten school days after the hearing.

Unless the parents and school district agree in writing to waive the resolution meeting described in this section, or agree to use the mediation process described in district policies and procedures for procedural safeguards:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable consistent with district policies and procedures for procedural safeguards.

25. Protection for students not yet eligible. A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in article 24:05 if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(2) The parent of the student has requested an evaluation of the student pursuant to article 24:05; or

(3) The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to article 24:05, or has refused services under this article, or the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability.

If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of article 24:05 including the discipline procedures and free appropriate public education requirements.

26. Referral to and action by law enforcement and judicial authorities. Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under district suspension policy may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended to January 1, 2007.

Agencies/facilities must inserts policies and procedures for implementing suspension and expulsion requirements. Agency disciplinary policies and procedures may be used to address this section.

Insert Agency/Facility Procedures: DakotAbilities is committed to working with individuals and their families/guardians prior to consideration of Termination or Transfer. Please refer to agency Policy K5 Termination, Transfers, Discharge of Individuals Served and K-6 Counsel for Termination of Service.

XI. Staff Development

Each school district shall develop staff development procedures that include information to demonstrate that:

(1) All personnel necessary to carry out Part B of the Individuals with Disabilities Education Act within the jurisdiction of the district are appropriately and adequately prepared and trained, including ensuring that those personnel have the same content knowledge and skills to serve children with disabilities; and

(2) District policies and procedures are consistent with the requirements of the chapter on personnel development and qualifications and the ESEA.

Each school district shall take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this article to children with disabilities.

1. Paraprofessional and assistants. Paraprofessional and assistants who are appropriately trained and supervised in accordance with this section may be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act. At a minimum, the following standards must be met:

(1) Paraprofessionals must have a high school diploma or GED;

(2) Paraprofessionals must work within defined roles and responsibilities as identified by the school district;

(3) Paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and

(4) Each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan.

2. Highly qualified teachers. Each school district shall meet the following requirements for highly qualified special education teachers:

a. Requirements for highly qualified 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 ESEA, except that the requirements for highly qualified also include:

(1) The requirements described in item b below; and

(2) The option for teachers to meet the requirements of ESEA by meeting the requirements of items c and d below.

A teacher who is highly qualified under this section is considered highly qualified for purposes of ESEA.

The requirements in this section do not apply to teachers hired by private elementary schools or secondary schools, including private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities under district policies and procedures.

b. Requirements for highly qualified special education teachers -- Generally. For any public elementary school or secondary school special education teacher teaching in South Dakota, being highly qualified requires that:

(1) The teacher has obtained full state certification as a special education teacher, or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher;

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

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

Any public elementary school or secondary school special education teacher teaching in the state who is not teaching a core academic subject is highly qualified if the teacher meets the requirements in this section.

c. Requirements for highly qualified special education teachers -- Teaching to alternate achievement standards. For any special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards, being highly qualified means the teacher, whether new or not new to the profession, may either:

(1) Meet the applicable requirements of the ESEA for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements 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, as determined by the state.

d. Requirements for highly qualified special education teachers -- Teaching multiple subjects. For any special education teacher, who teaches two or more core academic subjects exclusively to children with disabilities, being highly qualified means that the teacher may either:

(1) Meet the applicable requirements of the ESEA;

(2) 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, which may include a single, high objective uniform state standard of evaluation covering multiple subjects; or

(3) 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 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, which may include a single highly objective uniform state standard of evaluation covering multiple subjects.

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.

3. Right of action. Notwithstanding any other individual right of action that a parent or student may maintain under article 24:05, nothing in this article creates a right of action on behalf of any individual student or class of students for the failure of a particular state or school district employee to be highly qualified, or to prevent a parent from filing a complaint under department procedures about staff qualifications with the department as provided under this article.

4. Early childhood special education teacher. A school district that is operating an early childhood special education program must employ a teacher who meets all state requirements.

Agencies/facilities must inserts staff development procedures. Procedures must include the training to be provided to paraprofessionals.

1. Describe the agencies procedures to ensure all personnel necessary to carry out part B of IDEA are appropriately and adequately prepared and agency policies and procedures are consistent with the requirements of the chapter of personnel development and qualifications and the Elementary and Secondary Education Act (ESEA).

Insert Agency/Facility Procedures: Appropriate School District Staff are invited to attend and participate in all meetings for students receiving services at DakotAbilities. Special Education instructors are highly qualified and paraprofessional staff receive appropriate training for the activities/services provided. Please refer to Policies I-1 Employee Orientation; I-2 Staff Training and I-3 Staff Qualifications and Responsibilities.

2. Describe the steps the agency takes to recruit, hire, train and retain highly qualified personnel (including paraprofessionals) to provide special education and related services under this article to children with disabilities.

Insert Agency/Facility Procedures: DakotAbilities is committed to assuring staff receive the necessary training to provide services to people. We maintain a Special Education certified, highly qualified teacher on our staff with applicable up to date certifications. Please refer to Policies I-1 Employee Orientation; I-2 Staff Training and I-3 Staff Qualifications and Responsibilities.

DakotAbilities Program Coordinators are ultimately responsible for completion of Special Education paperwork within the agency.

XII. Employment of Special Education Personnel

Each school district shall establish and implement procedures for the employment of special education personnel who have the special education endorsement as required in state rules, including child evaluators and early childhood special education teachers.

1. District hiring procedures address the endorsement requirements for special education personnel.

2. Child evaluators utilized by the district meet the following requirements:

a. Educational evaluator. An educational evaluator must process a valid teaching certificate and must have training in individual and group tests to be administered.

b. Psychological evaluator. A psychological evaluator must be a school psychologist certified by the division of education or a school psychological examiner certified by the division of education. A school psychological examiner's report must be co-signed by a certified school psychologist.

c. Psychiatric evaluator. A psychiatric evaluator must be a psychiatrist licensed by the state board of medical and osteopathic examiners.

d. Language, speech, or hearing evaluator. A language, speech, or hearing evaluator must have a valid South Dakota certificate as a speech and language therapist.

e. Audiological evaluator. An audiological evaluator must have a valid South Dakota certificate as a school audiologist.

f. Medical evaluator. A medical evaluator must be licensed by the state board of medical and osteopathic examiners.

g. Occupational therapy evaluator. An occupational therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

h. Physical therapy evaluator. A physical therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

i. Vision evaluator. A vision evaluator must be an opthamologist licensed by the state board of medical and osteopathic examiners or an optometrist licensed by the state board of optometry

Note(s): The general employment practices used by a district for all personnel which address meeting the state endorsement requirements, in order to be hired, could satisfy the provisions of this section.

Agencies/facilities must insert procedures to ensure only certified, licensed, or (if required) highly qualified personnel, including child evaluators, special education teachers and early childhood teachers, will be employed/contracted by the agency to provide special education and related services.

Insert Agency/Facility Procedures: The school district is responsible to ensure that child evaluators, special education teachers and early childhood teachers are available for students as needed. DakotAbilities has a certified Special Education Teacher on site that attends and participates in all IEP meetings. The School District is also asked to send a representative from their school district for all IEP's.

XIII. Use of Part B Funds

Each school district shall develop policies on the use of Part B funds that address the following requirements:

1.Excess cost. A local education agency may only use funds under the Individuals with Disabilities Education Act, Part B, for excess costs of providing special education and related services to certified children with disabilities.

Excess costs are those costs that are in excess of the average annual per student expenditure in a local education agency during the preceding school year for an elementary or secondary school student.

Excess costs must be computed after deducting amounts received under Part B of IDEA; Part A of Title I of the Elementary and Secondary Act of 1965 as amended to January 1, 2007, or under Parts A and B of Title III of that Act; and any state or local funds expended for programs that would qualify for assistance under any of those parts but excluding any amounts for capital outlay or debt service.

2. Nonsupplanting. Each local education agency must use Individuals with Disabilities Education Act, Part B funds to supplement other federal, state, and local funds expended for the education of certified children with disabilities. Federal IDEA Part B funds may not be used to supplant state, other federal, and local funds.

3. Proscribed use of funds. Except as provided in district policy on exception to maintenance of effort and adjustments to local fiscal efforts in certain fiscal years, Individuals with Disabilities Education Act, Part B funds may not be used to reduce the level of expenditures made by a local education agency from local funds below the level of expenditures for the fiscal year immediately preceding the fiscal year for which the local education agency is applying for funds for the education of children with disabilities.

A school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

(1) Local funds only; or

(2) The combination of state and local funds.

A district that relies on subdivision (1) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, and must ensure that the standard in subdivision (1) of this section was used to establish compliance.

The department may not consider any expenditures made from funds provided by the federal government for which the department is required to account to the federal government or for which the district is required to account to the federal government directly or through the department in determining a district's compliance with the requirements of this section.

4. Exception to maintenance of effort. Notwithstanding the restrictions in district policy on proscribed use of funds, a school district may reduce the level of expenditures by the district under Part B of the Individuals with Disabilities Education Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(2) A decrease in the enrollment of students with disabilities;

(3) The termination of the obligation of the district, consistent with this chapter, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district;
(b) Has reached the age at which the obligation of the district to provide a free appropriate public education to the student has terminated; or
(c) No longer needs the program of special education;

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities; or

(5) The assumption of cost by the extraordinary costs fund operated by the department.

5. Permissive use of funds. Notwithstanding federal requirements governing excess cost, use of Part B funds to supplement state, local and other federal funds and not supplant those funds, maintenance of effort, and commingling requirements, IDEA Part B funds provided to a school district may be used for the following activities:

(1) For the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more nondisabled students benefit from these services;

(2) To develop and implement coordinated, early intervening educational services in accordance with this chapter; and

(3) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

Agencies/facilities are NOT recipients of IDEA, Part B funds.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, regarding agencies that are not recipients of IDEA, Part B funds, does NOT apply to DakotAbilities.

XIV. Use of Public Benefits or Insurance/Private Insurance

1. Children with disabilities covered by public benefits or insurance. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under article 24:05 as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under article 24:05 the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to department policy, may pay the cost that the parent otherwise would be required to pay;

(3) May not use a student's benefits under a public benefits or insurance program if that use would:

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

(4) Must obtain parental consent consistent with district policies and procedures each time that access to public benefits or insurance is sought; and

(5) Must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

2. Children with disabilities covered by private insurance. With regard to services required to provide FAPE to an eligible student under article 24:05, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this article. Each time the public agency proposes to access the parent's private insurance proceeds, it must:

(1) Obtain parent consent in accordance with article 24:05; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

3. Use of Part B funds for insurance costs. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the

parent would incur a cost for a specified service required under article 24:05, to ensure FAPE the public agency may use its Part B funds to pay for the service.

To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g. the deductible or co-pay amounts).

Proceeds from public benefits or insurance or private insurance may not be treated as program income for purposes of 34 CFR 80.25.

If a public agency spends reimbursements from federal funds (e.g. Medicaid) for services under this article those funds are not considered "state or local" funds for purposes of the maintenance of effort provisions in article 24:05.

Agencies/facilities must inserts procedures on use of public benefits or insurance/private insurance.

The _DakotAbilities__ agency/facility ensures its procedures for the use of public benefits or insurance/private insurance are in accordance with ARSD 24:05:14:01.03.

Insert Agency/Facility Procedures: DakotAbilities works with families and referring school districts to assure services are provided and paid for using public benefits and insurance—including private insurance. DakotAbilities Program Coordinators work with families and service providers in regards to necessary paperwork for reimbursement for services.

XV. Performance Goals/Indicators

The department shall have in effect established goals for the performance of children with disabilities in the state that:

(1) Promote the purposes of Part B of the Individuals with Disabilities Education Act;

(2) Are the same as the state's objectives for progress by children in its definition of adequate yearly progress, including the state's objectives for progress by children with disabilities, under the ESEA;

(3) Address graduation rates and dropout rates, as well as such other factors as the state may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the state.

The department shall have in effect established performance indicators that the state shall use to assess progress toward achieving the above goals including measurable annual objectives for progress by children with disabilities under the ESEA. Annually, the department shall report to the U.S. Secretary of Education and the public on the progress of the state, and of children with disabilities in the state, toward the goals established under this section, which may include elements of the reports required under the ESEA.

As required by 34 CFR 300.157, the state of South Dakota has established goals for the performance of children with disabilities that are consistent with other goals and standards for non-disabled children established by the state. These goals are aligned with the state content standards for education in the areas of language arts, mathematics, social studies and science. These standards were established pursuant to South Dakota Codified Law 13-3-48. Academic Content Standards - Course Guidelines.

"The secretary of the Department of Education shall prepare and submit for approval of the South Dakota State Board of Education academic content standards in language arts, mathematics, social studies, and science for grades kindergarten through twelve. Each school district shall adopt and implement clearly defined and measurable course guidelines so as to meet the state academic content standards."

The content standards serve the purpose of increasing achievement and educational equity for South Dakota students by focusing instruction on student learning, serving as framework for curriculum and professional development, and helping define options for student assessment.

Alternate Academic Achievement Standards and Descriptors exist for those students who meet the significant cognitive disability criteria and whose IEP team determines that the student is most appropriately assessed on an alternate assessment. The Alternate Academic Standards enable students to participate in grade level standards.

The Alternate Academic Standards are aligned with the general education content standards and identify target skills that provide entry points into the curriculum. Target skills provide a range of options at which a student with a disability can access the

learning standard at a challenging level. This allows students to learn grade level content and participate in statewide assessment by taking the Dakota STEP-A.

Assessment

Performance Goal - The performance goal for students with disabilities is that they perform to a level that is commensurate with students who are non-disabled on state and district-wide assessments.

Data collection and analysis will continue on an annual basis with regards to student performance on assessment. As data becomes available, the information will be analyzed to provide a picture of student performance.

Dropout Rate

Performance Goal - The performance goal for students with disabilities is to have a 4% or under drop out rate for students with disabilities by 2010-2011 as per the state performance plan.

South Dakota Department of Education's Consolidated State Application Accountability workbook defines a dropout as:
An individual who

- Was enrolled in school at some time during the previous school year; and
- Was not enrolled at the beginning of the current school year; and
- Has not graduated from high school or completed a state or district approved educational program; and
- Does not meet any of the following exclusionary conditions:
    - Transfer to another public school district, private school, or state- or district-approved educational program (including correctional or health facility programs);
    - Temporary absence due to suspension or school-excused illness; or
    - Death.

This definition is used in South Dakota for all students grades nine through twelve.

Graduation

Performance Goal – The performance goal for the graduation rate of students with disabilities is to increase the rate as set in the State Performance Plan.

The formula to be utilized can be found in the State Performance Plan: state performance plan.

The school district implements state established performance goals and indicators described above for students with disabilities in the district.

Agencies/facilities are NOT responsible for procedures regarding performance goals and indicators.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, on procedures regarding performance goals and indicators, does NOT apply at DakotAbilities.

XVI. State/District-wide Assessments

1. Participation in assessments. All children with disabilities shall be included in all general state and district-wide assessment programs, including assessments described in the ESEA, with appropriate accommodations and alternate assessments if necessary and as indicated in their respective IEPs. As appropriate, the department or local educational agencies shall develop guidelines for the provision of appropriate accommodations.

The department's or local educational agencies' guidelines for the provision of appropriate accommodations shall:

(1) Identify only those accommodations for each assessment that do not invalidate the score; and

(2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

2. Alternate assessments. As appropriate, the department or local educational agency shall develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments even with accommodations as indicated in their respective individualized education programs. The alternate assessments and guidelines shall provide for alternate assessments that:

(1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted modified academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with disabilities against those standards; and

(3) If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with the most significant cognitive disabilities against those standards.

As appropriate, the department or local educational agency shall provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards, such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma.

As appropriate, the department or local educational agency shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

3. Reports relating to assessments. As appropriate, the department or local educational agency shall make available to the public, and report to the public with the same

frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

(1) The number of children with disabilities participating in regular assessments and the number of those children who were provided accommodations that did not result in an invalid score in order to participate in those assessments;

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards; and

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if:

(a) The number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information; and
(b) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

4. Use of universal design in assessments. As appropriate, the department or local educational agency shall, to the extent possible, use universal design principles in developing and administering any assessments under this section.

Agencies/facilities must insert procedures regarding the administration of state/district-wide assessments.

The _____DakotAbilities_____ agency ensures all children with disabilities shall be included in all general state and district-wide assessment programs, including assessments described in the Elementary and Secondary Education Act, with appropriate accommodations and alternate assessments if necessary and as indicated in their respective IEPs.

Note: Agencies must specify who will be responsible for the completion of each component in this section. There must be a clear understanding between the placing district and the receiving agency/facility regarding who will implement and document these IDEA requirements.

Insert Agency/Facility Procedures: _Due to the age of students receiving services from DakotAbilities, most students have already completed the State/District Wide Assessment that is required. If a student may take the assessment, DakotAbilities' Special Education teacher will provide the instruction.

XVII. Suspension/Expulsion Rates

The department shall examine data, including data disaggregated by race and ethnicity, from local education agencies and other state agencies, as appropriate, to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies in the state or compared to the rates for nondisabled children within the agencies. If discrepancies are occurring, the department shall review and, if appropriate, revise or require the affected local education agency or state agency to revise its policies, procedures, and practices relating to:

(1) The development and implementation of individualized education programs;

(2) The use of positive behavioral interventions and supports; and

(3) Procedural safeguards to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act, Part B.

Agencies/facilities are NOT responsible for procedures regarding suspension/expulsion rates.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, regarding procedures for suspension/expulsion rates, does NOT apply to DakotAbilities.

XVIII. Over identification and Disproportionality

The department shall provide for the collection and examination of data to determine whether any inappropriate over identification or significant disproportionality based on race and ethnicity is occurring in the state and in districts of the state with respect to:

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in district policies and procedures;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of inappropriate over identification or significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular settings of these children, the department shall provide for the review of and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure compliance with the requirements of Part B of the Individuals with Disabilities Education Act; require any district identified under this section to reserve the maximum amount of funds allowable to provide comprehensive coordinated early intervening services to serve children in the district, particularly, but not exclusively, children in those groups that were significantly over identified under this section; and require the district to publicly report on the revision of policies, practices, and procedures described under this section

Agencies/facilities are NOT responsible for procedures regarding Student Information Management System including over identification and disproportionality.

**** NOTE: This section is Not Applicable for all agencies/facilities.****

This section, regarding over identification and disproportional within the SIMS data, does NOT apply to DakotAbilities.

XIX. Public Information

The school district will make available to parents of children with disabilities and to the general public all documents relating to the district's eligibility under Part B of the Individuals with Disabilities Education Act.

Agencies/facilities must insert procedures on the availability of public information including a list of all documents available to parents of children with disabilities and the general public (i.e. comprehensive plan, monitoring reports).

The ___DakotAbilities_____ agency makes the following documents available to the public: (List documents)

1. Comprehensive Plan for Special Education
2. Agency Audit—Form 990
3. Accountability Reviews
4. Special Education Reviews
5. FERPA statement
6. HIPAA document

The documents are available at our primary location at 3600 S. Duluth Avenue, Sioux Falls, SD__ location), _____five (5)_____ days per week between the hours of 8:00 a.m._ and _4:30 p.m.__.

Title of individual responsible for assuring access to documents (contact person):

____Robert J. Bohm, Executive Director_____.
_____.

Describe how the agency informs parents of children with disabilities and the general public that the documents are available for review.

Insert Agency/Facility Procedures: This information is shared at the IEP/annual meeting with people receiving services and their parents/guardians—at least annually. These documents are available at the DakotAbilities address written above and access to the documents is also published with data on our website.

XX. STUDENT INFORMATION MANAGEMENT SYSTEM (SIMS)

State-wide coordination of child find and data collection activities. The Office of Educational Services and Supports, through its special education programs, is the state agency responsible for coordinating the planning and implementation of state-wide child find and data collection activities. Child identification procedures are a required component in each school district's comprehensive plan for special education. The district shall provide information in the form required by the office's special education programs.

This process combined with the state's federal child count procedures serve as the basis for developing the child identification system for the Individuals with Disabilities Education Act, Part B. These procedures are extended to agencies other than school districts through the use of interagency agreements.

Reporting requirements can be found at:
http://doe.sd.gov/oess/specialed/docs/SIMSManual10.07.pdf

Return of information. Local education agencies shall return information on counting eligible children to the Office of Data Collection. Each local school superintendent shall certify in writing that the information provided is an accurate and unduplicated count of children with disabilities receiving special education or special education and related services on December 1 of each school year. If December 1 falls on Saturday or Sunday, the count shall be taken on the first working day following the weekend.

Part B State Performance Plan. Indicator 20 requires State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.

Agencies/facilities must inserts specific procedures implemented for ensuring that all State reported data is timely and accurate.

1) Who is responsible for data entry and their specific responsibilities?
Insert Agency/Facility Procedures: The DakotAbilities Skills Specialist, is responsible for SIMS data entry.

2) What is the process for reviewing data entered on a regular basis for accuracy and reliability?
Insert Agency/Facility Procedures: The DakotAbilities Skills Specialist/designated staff reviews data in accordance with guidelines and informally reviews data as needed.

3) What is the process for making corrections and responding to the SEP data verification form?
Insert Agency/Facility Procedures: The DakotAbilities Skills Specialist/designated staff is responsible for all data verification in this area.

4) What is the process for generating data reports for use in identifying potential issues and related training and technical assistance needs?
Insert Agency/Facility Procedures: In-house, this would be conducted by the DakotAbilities Skills Specialist/designated staff based on input from team members and staff.

5) Who reviews the data and looks at improving program performance?
Insert Agency/Facility Procedures: At DakotAbilities, this is completed by the DakotAbilities Skills Specialist/designated staff with input from Program Coordinators, the Director of Program Services, Director of Special Education and the Executive Director.

6) Who is responsible for correcting and tracking progress on noncompliance issues?
Insert Agency/Facility Procedures: At this time, the Program Coordinators, Director of Special Education and Director of Program Services make corrections and track progress on non-compliance issues (as addressed in the Special Education Review) under the direction of the Executive Director.