

- Adopted: June 11, 1992, August 13, 1992, June 8, 1995, September 11, 1997, partial adoption April 9, 1998 through section 3.04, partial adoption May 14, 1998 of sections 4.02(4)(k)(v), 5.02(4), and 8.02(1)(f)(i), final adoption July 9, 1998 of sections 4.01(3)(c) and 6.02(2), March 4, 1999, April 13, 2000, May 9, 2002, January 13, 2005, November 9, 2006, November 8, 2007.
- Attorney General Opinion: June 18, 1992, August 20, 1992, June 27, 1995, September 30, 1997, April 23, 1998, May 29, 1998, July 28, 1998, March 11, 1999, April 20, 2000, May 16, 2002, January 20, 2005, November 17, 2006.
- Statutory Authority: Article 20 of Title 22, C.R.S., Sections 22-20-104, 22-2-107 (1) (a), 22-2-107(1) (c), 22-2-107 (1) (q), 22-20-109 and 22-20-116.

R U L E S
(F O R T H E)
A D M I N I S T R A T I O N O F T H E E X C E P T I O N A L C H I L D R E N ' S
E D U C A T I O N A L A C T

2220-R-1.00 STATEMENT OF BASIS AND PURPOSE

- 1.00 (1) The statutory authority for the enactment of these Rules and the repeal of previously existing Rules 1 CCR 301-8, Rules 2220-R-1.00 through 2220-R-10.07 (2) adopted by the State Board of Education on June 11, 1992, is found in Article 20 of Title 22, C.R.S., generally in Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-109. The purpose of these Rules is to provide the administrative framework for services offered to students pursuant to the terms of the Exceptional Children's Educational Act (ECEA). Current Rules 1 CCR 301-8, 2220-R-11.00 through 11.07 (5) are not affected by this enactment. The Rules reflect changes in educational practices and the manner of delivery of services to students within the legal parameters of the ECEA that have occurred since the prior Rules were originally enacted in 1976. The definitions of handicapping conditions and the eligibility criteria for receiving services have been clarified. The involvement of facilities that offer special education services to students has been recognized, and the conditions for approval for reimbursement have been established. Additionally, the criteria for creating and maintaining an administrative unit are set forth as are standards for the provision of educational services to eligible students. The Rules outline the procedure to be followed in identifying, assessing and serving those children eligible for services under the ECEA. The Rules also elaborate on the various procedural safeguards available to administrative units and children and their parents pursuant to the ECEA.
- 1.00 (2) The statutory basis for the amendments to these Rules adopted by the State Board of Education on September 11, 1997 is found in Sections 22-2-107(1)(c), 22-2-107(1)(q), 22-20-103(1.7) and (5.7), 22-20-104, 22-20-108(4.5) and (4.7), 22-20-109(4) and (5) and 22-20-114 C.R.S. The purpose of the amendments is to conform the Rules to recent legislative changes in the ECEA, specifically with regard to definitions of communication mode or language and literacy mode, development of individual educational programs, and tuition for children with disabilities in Charter Schools and Schools of Choice.

- 1.00 (3) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), and 22-2-107(1)(q). The purpose of the amendments to Rule 1 CCR 301-8, 2220-R-3.04(1)(f) is to reflect additional statutory requirements for the development of minimum standards for Educational Interpreters for the Deaf as specified in C.R.S. 22-20-116. The amendments to Rules 1 CCR 301-8, 2220-R-2.02(9), 3.01(5)(a), 4.01(3)(c), 4.02(4)(k)(v), 5.02(4), 6.02(2), and 8.02(1)(f)(i) are the result of a review by Legislative Legal Services.
- 1.00 (4) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reasons for the amendments to these Rules are to bring the state into compliance with the Individuals with Disabilities Education Act Reauthorization of 1997, to respond to the review of the BOCES conducted by the State Auditors Office, and to make technical amendments to sections that contain incorrect citations or grammatical errors. Subsections of Section 3.01(5)(a) have been deleted because they were allowed to expire by action of the General Assembly, and under Colorado law shall not be repromulgated [C.R.S. 24-4-103(8)(d)].
- 1.00 (5) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act final regulations issued on March 12, 1999 and to rectify an incorrect citation.
- 1.00 (6) The statutory authority for the amendments to these Rules, adopted by the State Board of Education on May 9, 2002, is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107 (1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act and to provide clarification for implementation to the field.
- 1.00 (7) The statutory authority for the amendments to these Rules is found in the Colorado Revised Statutes, Title 22, Article 20, Sections 108 and 109. The purpose of these amendments is: (A) to address new requirements in HB04-1397 and HB04-1141 that amended the special education tuition responsibility provisions of the Exceptional Children's Educational Act, Section 22-20-109, C.R.S.; (B) to add clarification regarding special education administrative unit responsibilities for special education services; and (C) to add additional clarifying language.
- 1.00 (8) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103, 104, 104.5, 108, 109, and 114, C.R.S. The purposes of the amendments are: (A) to address new requirements in SB06-118 and HB06-1375 that amended the special education tuition responsibility provisions and the out-of-home placement provisions of the Exceptional Children's Educational Act, Sections 22-20-103, 108 and 109, C.R.S.; (B) to address new requirements in SB06-118 that amended the gifted and talented provision of said Act, Sections 22-20-103, 104 and 104.5, C.R.S.; (C) to address new requirements in HB06-1375 regarding the special education funding provisions of said Act, Section 22-20-114, C.R.S.; (D) to add clarification regarding administrative unit responsibilities for gifted and talented programs; and (E) to add clarifying language.
- 1.00 (9) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 105, 104.5, 106, 107.5, 108, 112, 114, 114.5 and 118. The purposes of the amendments are:
- 1.00 (9) (a) To conform to amendments to the Exceptional Children's Educational Act (ECEA) as set forth in SB06-118, SB07-255, HB07-1244, including alignment with the federal Individuals with Disabilities Educational Improvement Act of 2004, 20 U.S.C. Section

1400 et seq., as amended, (IDEA) and its implementing Part B and Part C Regulations at 34 CFR Parts 300 and 303, respectively, including appendices.

1.00 (9) (a) (i) The IDEA Part B and Part C Regulations were issued by the United States Department of Education, Office of Special Education and Rehabilitative Services. Throughout these Rules, the applicable Part B and Part C Regulations are referred to in general (e.g., “Part B Regulations” or “Part C Child Find Regulations”) or by reference to specific regulatory section numbers (e.g., 34 CFR §300.1., 34 CFR §303.1) and are incorporated herein by reference as applicable. However, these Rules do not include later amendments or editions to the IDEA, the Part B Regulations or the Part C Regulations.

1.00 (9) (a) (ii) Copies of the IDEA Part B and Part C Regulations are available for public inspection, upon appointment, during regular business hours at the Office of the State Board of Education. Upon request, a copy of the Part B and/or Part C Regulations shall be provided at cost to the person or entity requesting a copy. Inquiries regarding the procedure for examining such regulations or for obtaining a copy of such regulations shall be directed to:

Director
Office of the State Board of Education
201 East Colfax Avenue, Denver, CO, 80203
(303) 866-6817

1.00 (9) (a) (iii) Copies of the Part B Regulations and Part C Regulations may be examined at any State Publication Depository Library.

1.00 (9) (b) To adopt new criteria for the disability category “Specific Learning Disability”;

1.00 (9) (c) To reorganize these Rules for purposes of providing enhanced clarification for implementation;

1.00 (9) (d) To clarify language;

1.00 (9) (e) To make technical amendments, including:

1.00 (9) (e) (i) Renumbering made necessary by reorganization of these Rules;

1.00 (9) (e) (ii) Correction of typographical errors such as misspellings or inaccurate legal citations; and

1.00 (9) (e) (iii) Reformatting of these Rules.

DEFINITIONS USED IN THESE RULES

2.01 Act

Act, when used in 34 CFR Parts 300 and 303, means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 et seq. (IDEA) as amended.

2.02 Administrative Unit

Administrative Unit (AU) means a school district, board of cooperative services, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for the local administration of these Rules. In order to qualify as an administrative unit, school districts and boards of cooperative services shall meet all minimum standards established in Section 3.01 of these Rules. The Charter School Institute shall meet all minimum standards established in Section 3.01 of these Rules except for Section 3.01(1)(a) addressing the size of administrative units. All administrative units shall be approved by the Department of Education.

2.02 (1) Administrative unit of residence.

Pursuant to sections 22-1-102 and 22-20-107.5, C.R.S., an administrative unit of residence (AUR) shall mean the unit in which the child resides on a day-to-day basis with the following exceptions to apply when a child has been determined to have a disability:

- 2.02 (1) (a) If a child with a disability is living at one of the regional centers, including satellite homes of such centers, operated by the Department of Human Services or any other facility operated by or under contract to the Department of Human Services or at the Colorado Mental Health Institutes at Pueblo or Fort Logan, an eligible facility, or if the child attends the Colorado School for the Deaf and the Blind, such child shall be deemed to reside where the parent or guardian of such child resides.
- 2.02 (1) (b) If a child lives in one of the regional centers or the mental health institutes at Pueblo or Fort Logan or in an eligible facility and the administrative unit of residence cannot be determined because parental rights have been relinquished by the parents or terminated by a court, the parents are incarcerated, cannot be located, reside out of state and, in all such circumstances, the Colorado Department of Human Services has made the placement within a facility, or the child is legally emancipated, the child shall be considered a resident of the administrative unit in which such facility is located.
- 2.02 (1) (c) If the child resides in a foster care home, the child shall be deemed to be a resident of the administrative unit in which the foster care home is located.
- 2.02 (1) (d) When a child attends a school in another district under the provisions of the public schools of choice law, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.
- 2.02 (1) (e) When a child attends a Charter School in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.
- 2.02 (1) (f) When a child attends a public school on-line program in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

- 2.02 (1) (g) If a child with a disability is homeless, as defined by Section 22-1-102.5, C.R.S., the provisions of Section 22-1-102(2), C.R.S., apply.
- 2.02 (1) (h) Disputes regarding residency.
- If there is a dispute as to which administrative unit constitutes the administrative unit of residence, the Commissioner of Education shall have the authority to determine questions of residency and thus responsibility after reviewing necessary details involved in the determination of residency.
- 2.02 (2) Administrative unit of attendance.
- An administrative unit of attendance (AUA) shall mean the unit that delivers the special education program for a child. It may be different from the administrative unit of residence when:
- 2.02 (2) (a) The administrative unit of residence does not have an adequate number of children with similar needs, and chooses to send the child to another administrative unit for his or her special education program.
- 2.02 (2) (b) The child resides at one of the regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services, or attends the Colorado School for the Deaf and the Blind and the special education program is provided by an administrative unit other than the administrative unit of residence.
- 2.02 (2) (c) The child attends a Charter School, School of Choice or a public school on-line program and the Special Education program is provided by a special education administrative unit other than the administrative unit of residence.

2.03 Assistive Technology Device

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

2.04 Assistive Technology Service

- 2.04 (1) *Assistive Technology Service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—
- 2.04 (1) (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- 2.04 (1) (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- 2.04 (1) (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- 2.04 (1) (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

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

2.05 Board of Cooperative Services

Board of Cooperative Services means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S. and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.

2.06 Charter School

- 2.06 (1) *District Charter School* means a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22, C.R.S.; or
- 2.06 (2) *Institute Charter School* means a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.07 Child Find

Child Find means the program component of child identification that is more fully described in Section 4.02 of these Rules.

2.08 Children with Disabilities

Children with Disabilities shall mean those persons from three to twenty-one years of age who, by reason of one or more of the following conditions, are unable to receive reasonable benefit from general education without additional supports in the public schools because of specific disabling conditions. A child shall not be determined to have a disability if the determinant factor for that determination is: lack of appropriate instruction in reading or math or limited English proficiency; and if the child does not otherwise meet the eligibility criteria under this Section 2.08. A child upon reaching his/her third birthday becomes eligible for services as of that date. A child reaching the age of 21 after the commencement of the academic year has the right to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first. In such a case, the child is not entitled to extended school year services during the summer following such current academic year. If it is determined, through an appropriate evaluation, under Section 4.02(4) of these Rules, that a child has one of the following disabilities but only needs a related service (as defined in Section 2.37 of these Rules) and not special education (as defined in Sections 2.43 and 2.51 of these Rules), then the child is not a child with a disability under these Rules. For purposes of Part C of IDEA Child Find activities, *Children with Disabilities* also means persons from birth to twenty-one years of age consistent with Section 22-20-103(5)(b), C.R.S.

- 2.08 (1) A child with a physical disability shall have a sustained illness or disabling physical condition which prevents the child from receiving reasonable educational benefit from regular education.
- 2.08 (1) (a) A sustained illness means a prolonged, abnormal physical condition requiring continued monitoring characterized by limited strength, vitality, or alertness due to chronic or acute health problems and a disabling condition means a severe physical impairment. Conditions such as, but not limited to, traumatic brain injury, autism, attention deficit disorder and cerebral palsy may qualify as a physical disability, if

they prevent a child from receiving reasonable educational benefit from regular education.

2.08 (1) (b) Criteria for a physical disability preventing the child from receiving reasonable educational benefit from regular education should be dependent upon the child's diagnosis and degree of involvement in the regular school setting as characterized by any of the following:

2.08 (1) (b) (i) The child's chronic health problem or sustained illness requires continual monitoring, intervention, and/or specialized programming in order to accommodate the effects of the illness so as to reasonably benefit from the education program.

2.08 (1) (b) (ii) The child's disabling condition interferes with ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living to such a degree that it requires special services, equipment, and/or transportation.

2.08 (2) A child with a vision disability shall have a deficiency in visual acuity and/or visual field and/or visual performance where, even with the use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from regular education.

2.08 (2) (a) A vision disability shall be one or more of the following:

2.08 (2) (a) (i) Visual acuity of no better than 20/70 in the better eye after correction.

2.08 (2) (a) (ii) Visual field restriction to 20 degrees or less.

2.08 (2) (a) (iii) A physical condition of visual system which cannot be medically corrected and as such affects visual functioning to the extent that specially designed instruction is needed. These criteria are reserved for special situations such as, but not restricted to, oculomotor apraxia, cortical visual impairment, and/or a progressive visual loss where field and acuity deficits alone may not meet the aforementioned criteria.

The term "visual disability" does not include children who have learning problems which are primarily the result of visual perceptual and/or visual motor difficulties.

2.08 (2) (b) Criteria for a vision disability preventing the child from receiving reasonable educational benefit from regular education shall include:

2.08 (2) (b) (i) Requirement for Braille and/or adaptation of educational material, or

2.08 (2) (b) (ii) Requirement of specialized methods, aids, and/or equipment for learning, literacy, and/or mobility.

2.08 (3) A child with a hearing disability shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech where, even with the help of amplification, the child is prevented from receiving reasonable educational benefit from regular education.

- 2.08 (3) (a) A "deficiency in hearing sensitivity" shall be one of the following:
- 2.08 (3) (a) (i) An average pure tone hearing loss in the speech range (500 - 2000 Hz) of at least 20 dBHL in the better ear which is not reversible within a reasonable period of time.
- 2.08 (3) (a) (ii) An average high frequency, pure tone hearing loss of at least 35 dBHL in the better ear for two or more of the following frequencies: 2000, 4000 or 6000 Hz.
- 2.08 (3) (a) (iii) A unilateral hearing loss of at least 35 dBHL which is not reversible within a reasonable period of time.
- 2.08 (3) (b) Criteria for a hearing disability preventing the child from receiving reasonable educational benefit from regular education shall include one or more of the following:
- 2.08 (3) (b) (i) Sound-field word recognition (unaided) of less than 75% in quiet as measured with standardized open-set audiometric speech discrimination tests presented at average conversational speech (50-55 dBHL). Interpretation shall be modified for closed-set tests.
- 2.08 (3) (b) (ii) Receptive and/or expressive language delay as determined by standardized tests:
- 2.08 (3) (b) (ii) (A) under 3 years: less than one-half of expected development for chronological age.
- 2.08 (3) (b) (ii) (B) 3 to 8 years: 1 year delay or more.
- 2.08 (3) (b) (ii) (C) 9 to 13 years: 2 years delay or more.
- 2.08 (3) (b) (ii) (D) 14 to 21 years: 3 years delay or more.
- 2.08 (3) (b) (iii) An impairment of speech articulation, voice and/or fluency.
- 2.08 (3) (b) (iv) Significant discrepancy between verbal and nonverbal performance on a standardized intelligence test.
- 2.08 (3) (b) (v) Delay in reading comprehension due to language deficit.
- 2.08 (3) (b) (vi) Poor academic achievement.
- 2.08 (3) (b) (vii) Inattentive, inconsistent and/or inappropriate classroom behavior.
- 2.08 (4) A child with significant limited intellectual capacity shall have reduced general intellectual functioning which prevents the child from receiving reasonable educational benefit from regular education.
- 2.08 (4) (a) Reduced general intellectual functioning shall mean limited intellectual capacity or ability which usually originates in the developmental period and exists concurrently with impairment in adaptive behavior.
- 2.08 (4) (b) Criteria for significant limited intellectual capacity preventing the child from receiving reasonable educational benefit from regular education shall include:

- 2.08 (4) (b) (i) A score of more than 2.0 standard deviations below the mean on individually administered measures of cognition.
- 2.08 (4) (b) (ii) Evidence that the level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibilities.
- 2.08 (4) (b) (iii) A deficiency in academic achievement, as indicated by scores 2.0 standard deviations below the mean in measures of language, reading and math.

None of these indicators, by itself, shall be a sufficient criterion for determination of a significant limited intellectual capacity; however, all three indicators shall be evident for the determination of this disability. Professional judgment shall be required for interpretation of scores and/or other findings.

- 2.08 (5) A child with a significant identifiable emotional disability shall have emotional or social functioning which prevents the child from receiving reasonable educational benefit from regular education.
- 2.08 (5) (a) Emotional or social functioning shall mean one or more of the following:
 - 2.08 (5) (a) (i) Exhibits pervasive sad affect, depression and feelings of worthlessness; cries suddenly or frequently.
 - 2.08 (5) (a) (ii) Displays unexpected and atypical affect for the situation.
 - 2.08 (5) (a) (iii) Excessive fear and anxiety.
 - 2.08 (5) (a) (iv) Persistent physical complaints not due to a medical condition.
 - 2.08 (5) (a) (v) Exhibits withdrawal, avoidance of social interaction and/or lack of personal care to an extent that maintenance of satisfactory interpersonal relationships is prevented.
 - 2.08 (5) (a) (vi) Out of touch with reality; has auditory and visual hallucinations, thought disorders, disorientation or delusions.
 - 2.08 (5) (a) (vii) Cannot get mind off certain thoughts or ideas; cannot keep self from engaging in repetitive and/or useless actions.
 - 2.08 (5) (a) (viii) Displays consistent pattern of aggression toward objects or persons to an extent that development or maintenance of satisfactory internal relationships is prevented.
 - 2.08 (5) (a) (ix) Pervasive oppositional, defiant or noncompliant responses.
 - 2.08 (5) (a) (x) Significantly limited self-control, including an impaired ability to pay attention.
 - 2.08 (5) (a) (xi) Exhibits persistent pattern of stealing, lying or cheating.
 - 2.08 (5) (a) (xii) Persistent patterns of bizarre and/or exaggerated behavior reactions to routine environments.

- 2.08 (5) (b) Criteria for significant identifiable emotional disability preventing the child from receiving reasonable education benefit from regular education shall include the following characteristics and qualifiers:
- 2.08 (5) (b) (i) One or both of the following characteristics shall be present:
- 2.08 (5) (b) (i) (A) Academic functioning: an inability to receive reasonable educational benefit from regular education which is not primarily the result of intellectual, sensory or other health factors, but due to the identified emotional condition.
- 2.08 (5) (b) (i) (B) Social/emotional functioning: an inability to build or maintain interpersonal relationships which significantly interferes with the child's social development. Social development involves those adaptive behaviors and social skills which enable a child to meet environmental demands and assume responsibility for his/her own and others' welfare.
- 2.08 (5) (b) (ii) All four of the following qualifiers shall be documented for either of the above characteristics demonstrated. The first qualifier may not be applicable in the case of court ordered placements, triennial reviews and identification of children ages five years and younger.
- 2.08 (5) (b) (ii) (A) A variety of instructional and/or behavioral interventions were implemented within regular education and the child remains unable to receive reasonable educational benefit from regular education or his/her presence continues to be detrimental to the education of others.
- 2.08 (5) (b) (ii) (B) Indicators of social/emotional dysfunction exist to a marked degree; that is, at a rate and intensity above the child's peers and outside of his/her ethnic and cultural norms and outside the range of normal development expectations.
- 2.08 (5) (b) (ii) (C) Indicators of social/emotional dysfunction are pervasive, and are observable in at least two different settings within the child's environment, one of which shall be school.
- 2.08 (5) (b) (ii) (D) Indicators of social/emotional dysfunction have existed over a period of time and are not isolated incidents or transient, situational responses to stressors in the child's environment.
- 2.08 (6) Specific Learning Disability
- 2.08 (6) (a) A child with a specific learning disability shall have a learning disorder that prevents the child from receiving reasonable educational benefit from general education.
- 2.08 (6) (a) (i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of: visual, hearing, or motor disabilities; significant limited intellectual capacity;

significant identifiable emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

2.08 (6) (b) Alternative Criteria. A child may be determined to have a specific learning disability that prevents the child from receiving reasonable educational benefit from general education if the following criteria are met:

2.08 (6) (b) (i) Criteria under the Discrepancy Model. The eligibility determination under the Discrepancy Model shall include documentation that the child meets both of the following criteria:

2.08 (6) (b) (i) (A) A disorder in the psychological process which affects language and learning as evidenced by:

2.08 (6) (b) (i) (A) (I) Significant discrepancy between estimated intellectual potential and actual level of performance, and

2.08 (6) (b) (i) (A) (II) Difficulty with perceptual, cognitive and/or language processing; and

2.08 (6) (b) (i) (B) Significantly impaired achievement in one or more of the following areas:

2.08 (6) (b) (i) (B) (I) Prereading and/or reading skills.

2.08 (6) (b) (i) (B) (II) Reading comprehension.

2.08 (6) (b) (i) (B) (III) Written language expression, such as problems in handwriting, spelling, sentence structure and written organization.

2.08 (6) (b) (i) (B) (IV) Comprehension, application and retention of math concepts.

Administrative units and state-operated programs may continue to use the criteria set out in this Section 2.08(6)(b)(i) through August 14, 2009.

2.08 (6) (b) (ii) Criteria under the Response to Intervention Model. The child must meet the following criteria:

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

2.08 (6) (b) (ii) (A) (I) Oral expression;

2.08 (6) (b) (ii) (A) (II) Listening comprehension;

2.08 (6) (b) (ii) (A) (III) Written expression;

2.08 (6) (b) (ii) (A) (IV) Basic reading skill;

2.08 (6) (b) (ii) (A) (V) Reading fluency skills;

2.08 (6) (b) (ii) (A) (VI) Reading comprehension;

- 2.08 (6) (b) (ii) (A) (VII) Mathematical calculation;
- 2.08 (6) (b) (ii) (A) (VIII) Mathematics problem solving; and
- 2.08 (6) (b) (ii) (B) 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 Section 2.08(6)(b)(i) when using a process based on the child's response to scientific, research-based intervention as determined by a body of evidence demonstrating:
- 2.08 (6) (b) (ii) (B) (I) Academic skill deficit(s); and
- 2.08 (6) (b) (ii) (B) (II) Insufficient progress in response to scientific, research-based intervention.

The criteria set forth in this Section 2.08(6)(b)(ii) may be used as of the effective date of these Rules but must be used by administrative units and state-operated programs no later than August 15, 2009. No later than August 15, 2008, each administrative unit and state-operated program shall submit a plan to the Department describing how the administrative unit or state-operated program will implement the criteria set forth in this Section 2.08(6)(b)(ii) by August 15, 2009.

- 2.08 (7) A child with speech-language disability shall have a communicative disorder which prevents the child from receiving reasonable educational benefit from regular education.
- 2.08 (7) (a) Speech-language disorders may be classified under the headings of articulation, fluency, voice, functional communication or delayed language development and shall mean a dysfunction in one or more of the following:
 - 2.08 (7) (a) (i) Receptive and expressive language (oral and written) difficulties including syntax (word order, word form, developmental level), semantics (vocabulary, concepts and word finding), and pragmatics (purposes and uses of language).
 - 2.08 (7) (a) (ii) Auditory processing, including sensation (acuity), perception (discrimination, sequencing, analysis and synthesis) association and auditory attention.
 - 2.08 (7) (a) (iii) Deficiency of structure and function of oral peripheral mechanism.
 - 2.08 (7) (a) (iv) Articulation including substitutions, omissions, distortions or additions of sound.
 - 2.08 (7) (a) (v) Voice, including deviation of respiration, phonation (pitch, intensity, quality), and/or resonance.
 - 2.08 (7) (a) (vi) Fluency, including hesitant speech, stuttering, cluttering and related disorders.
 - 2.08 (7) (a) (vii) Problems in auditory perception such as discrimination and memory.
- 2.08 (7) (b) Criteria for a speech-language disability preventing a child from receiving reasonable educational benefit from regular education shall include:

- 2.08 (7) (b) (i) Interference with oral and/or written communication in academic and social interactions in his/her primary language.
- 2.08 (7) (b) (ii) Demonstration of undesirable or inappropriate behavior as a result of limited communication skills.
- 2.08 (7) (b) (iii) The inability to communicate without the use of assistive, augmentative/alternative communication devices or systems.
- 2.08 (8) A child with multiple disabilities shall have two or more areas of significant impairment, one of which shall be a cognitive impairment except in the case of deaf-blindness. Cognitive impairment shall mean significant limited intellectual capacity. The other areas of significant impairment include: physical, visual, auditory, communicative or emotional. The combination of such impairments creates a unique condition that is evidenced through a multiplicity of needs which prevent the child from receiving reasonable educational benefit from regular education.
- 2.08 (8) (a) The definition of impairment shall be the same as that for each of the single disabilities.
- 2.08 (8) (b) Criteria for multiple disabilities preventing a child from receiving reasonable educational benefit from regular education shall be the same as that considered for each of the single disabilities. Indicators for the combination of impairments creating a unique condition shall be:
 - 2.08 (8) (b) (i) Inability to comprehend and utilize instructional information.
 - 2.08 (8) (b) (ii) Inability to generalize skills consistently.
 - 2.08 (8) (b) (iii) Inability to communicate fluently.
 - 2.08 (8) (b) (iv) Inability to demonstrate problem solving skills when such information is presented in a traditional academic curriculum.
- 2.08 (9) A preschool child with a disability shall be three through five years of age and shall, by reason of one or more of the following conditions, be unable to receive reasonable educational benefit from regular education: long-term physical impairment or illness, significant limited intellectual capacity, significant identifiable emotional disorder, specific learning disability, or speech language impairment.
- 2.08 (9) (a) Children ages three through five who would otherwise qualify according to one or more of the above categorical conditions but for whom the category cannot be appropriately determined may qualify for preschool special education if multiple sources of information are utilized and if such children meet one or more of the following criteria:
 - 2.08 (9) (a) (i) Children who rank at the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (76 if the mean is 100 and the standard deviation is 16) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: cognition, communication, physical and psychosocial.
 - 2.08 (9) (a) (ii) Children with identifiable conditions known through empirical data to be associated with significant delays in development.

- 2.08 (9) (a) (iii) In extraordinary cases when a standardized score cannot be determined, a child may be determined disabled based on the informed opinion of the assessment team which includes the parent(s) and with documentation of the rationale for the inability to obtain a standardized score.
- 2.08 (9) (b) Criteria for a preschool child being unable to receive reasonable educational benefit from regular education shall be a substantial discrepancy between the child's performance and behavior as compared to children of a comparable age.
- 2.08 (10) An infant/toddler with a disability shall be a child from birth through two years of age who has significant developmental delays and who potentially may be unable to receive reasonable educational benefit from regular education is eligible for early intervention services and shall be defined by one of the following:
- 2.08 (10) (a) Significant developmental delays shall mean those children who have a significant delay in at least one or more of the following areas of development: cognition, communication, physical, motor, vision, hearing, psychosocial and self-help skills as assessed by qualified professionals utilizing appropriate methods and procedures. Significant development delay shall mean, development that qualified personnel determine to be outside the range of "normal" or "typical" for a same aged peer. Conditions associated with significant developmental delays shall mean those children who have identifiable conditions known to have a high probability of resulting in significant developmental delays, but who may not be exhibiting delays in development at the time of diagnosis. Those identifiable conditions are:
- 2.08 (10) (a) (i) Chromosomal syndromes and conditions associated with mental retardation.
- 2.08 (10) (a) (ii) Congenital syndromes and conditions associated with delays in development.
- 2.08 (10) (a) (iii) Sensory impairments.
- 2.08 (10) (a) (iv) Metabolic disorders.
- 2.08 (10) (a) (v) Prenatal and perinatal infections and significant medical problems.
- 2.08 (10) (a) (vi) Low birth weight infants weighing less than 1,200 grams.
- 2.08 (10) (a) (vii) Post-natal acquired problems known to result in significant developmental delays.

2.09 Communication Mode or Language

Communication Mode or Language means one or more of the following systems or methods of communication applicable to children who are deaf or hard of hearing:

- 2.09 (1) American Sign Language;
- 2.09 (2) English-based manual or sign systems; or
- 2.09 (3) Oral, aural, or speech-based training.

2.10 Consent

Consent means that:

- 2.10 (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- 2.10 (2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- 2.10 (3) (a) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
- 2.10 (3) (b) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

2.11 Day; Business Day; School Day

- 2.11 (1) *Day* means calendar day unless otherwise indicated as business day or school day.
- 2.11 (2) *Business Day* means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day (e.g., 34 CFR §300.148(d)(1)(ii)).
- 2.11 (3) *School Day* has the same meaning for all children in school, including children with and without disabilities.

2.12 Department

Department means the Department of Education, created and existing pursuant to Section 24-1-115, C.R.S.

2.13 Educational Surrogate Parent

Educational Surrogate Parent shall mean a person who meets the qualifications established in Section 6.02(8)(e)(iii) of these Rules and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the State. The assignment of an educational surrogate parent shall be in accordance with Section 6.02(8) of these Rules.

2.14 Eligible Facility

Eligible Facility means a group care facility (e.g., a psychiatric residential treatment facility and a therapeutic treatment facility), group home, community centered board, hospital, or state-licensed day treatment facility that offers a school program providing special education services to children with disabilities that has been approved by the State Board of Education.

2.15 Equipment

Equipment means that equipment used especially for the instruction or evaluation of children with disabilities.

2.16 ESEA

ESEA means the federal “Elementary and Secondary Education Act”, 20 U.S.C. §§6301-9276.

2.17 Evaluation

- 2.17 (1) For purposes of Part B of IDEA, the term “*Evaluation*” means procedures used in accordance with Section 4.02(2) of these Rules, to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- 2.17 (2) For purposes of Part C Child Find of IDEA, the term “*Evaluation*” means procedures used to determine a child’s initial and continuing eligibility for Part C Child Find, including but not limited to:
 - 2.17 (2) (a) Determining the status of the child in each of the developmental areas;
 - 2.17 (2) (b) Identifying the child’s unique strengths and needs;
 - 2.17 (2) (c) Identifying any early intervention services that might serve the child’s needs; and
 - 2.17 (2) (d) Identifying priorities and concerns of the family and resources to which the family has access.

2.18 Excess Costs

When used in 34 CFR Part B, *Excess Costs* means those costs that are in excess of the average annual per-student expenditure in an AU or state-operated program during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

- 2.18 (1) Amounts received:
 - 2.18 (1) (a) Under Part B of the Act;
 - 2.18 (1) (b) Under Part A of Title I of the ESEA; and
 - 2.18 (1) (c) Under Parts A and B of Title III of the ESEA and;
- 2.18 (2) Any state or local funds expended for programs that would qualify for assistance under any of the Parts described in paragraph (1) of this Section, but excluding any amounts for capital outlay or debt service. (See Appendix A of 34 CFR Part 300 for an example of how excess costs must be calculated.)
- 2.18 (3) This definition for “Excess Costs” is different from the term “Tuition Costs” as defined in Section 9.00 of these Rules.

2.19 Free Appropriate Public Education

Free Appropriate Public Education or FAPE means special education and related services that:

- 2.19 (1) Are provided at public expense, under public supervision and direction, and without charge;
- 2.19 (2) Meet the standards of the Department, including the requirements of these Rules;

- 2.19 (3) Include an appropriate preschool, elementary school, or secondary school education in the State; and
- 2.19 (4) Are provided in conformity with an individualized education program (IEP) that meets the IEP content, development, review and revision requirements of Section 4.03 of these Rules and 34 CFR §§300.320 through 300.324.

2.20 Highly Qualified Special Education Teachers

Special education teachers in administrative units, state-operated programs and eligible facilities who are teaching core academic subjects (i.e., English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) must meet the highly qualified requirements established in 34 CFR §300.18.

2.21 Homeless Children

Homeless Children has the meaning given the term Homeless Children and Youths in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. and Section 22-1-102.5, C.R.S.

2.22 IDEA

IDEA means the federal “Individuals with Disabilities Education Improvement Act of 2004”, 20 U.S.C. §1400 et seq., as amended, and its implementing regulations, 34 CFR Part 300 and also 34 CFR Part 303, as those regulations pertain to child find.

2.23 Include

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

2.24 Individualized Education Program

Individualized Education Program or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Section 4.03 of these Rules and 34 CFR §§300.320 through 300.324.

2.25 Individualized Education Program Team

Individualized Education Program Team or *IEP Team* means a group of individuals described in Section 4.03(5) of these Rules that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

2.26 Individual Family Service Plan

Individual Family Service Plan or *IFSP* means a written statement for a child from birth through two years of age with a disability, which statement is developed, reviewed, and revised in accordance with Part C Child Find of IDEA and with rules promulgated by the Department of Human Services.

2.27 Institution of Higher Education

Institution of Higher Education—

- 2.27 (1) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and
- 2.27 (2) Also includes any community college receiving funds from the Secretary of the Interior under the tribally controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

2.28 Least Restrictive Environment

Consistent with 34 CFR §300.114(a)(2), *Least Restrictive Environment* means that:

- 2.28 (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- 2.28 (2) Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general educational classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2.29 Limited English Proficient

Limited English Proficient has the meaning given the term in Section 9101(25) of the ESEA.

2.30 Literacy Mode

Literacy Mode means one of the following four systems or methods of achieving literacy applicable to children who are blind:

- 2.30 (1) Auditory Mode means any method or system of achieving literacy that depends upon the auditory senses, including the use of readers, taped materials, electronic speech, speech synthesis, or any combination of the above.
- 2.30 (2) Braille means the system of reading and writing by means of raised points, commonly known as Standard English Braille.
- 2.30 (3) Print Enlargement means any method or system of achieving literacy that includes optical aids to enhance apprehension of printed material, electronic enlargement or printed material, books and textual materials printed in large print, and any combination of the above.
- 2.30 (4) Regular Print Mode means any method or system of achieving literacy that depends upon the apprehension of regular-sized printed material.

2.31 Local Educational Agency

When used in 34 CFR Part B, the term *Local Educational Agency* means an administrative unit, as defined in Section 2.02 of these Rules, or a state-operated program as defined in Section 2.49 of these Rules.

2.32 Native Language

- 2.32 (1) *Native Language*, when used with respect to an individual who is limited English proficient, means the following:
- 2.32 (1) (a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (1)(b) of this Section.
- 2.32 (1) (b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- 2.32 (2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

2.33 Parent

- 2.33 (1) *Parent* means—
2. 33 (1) (a) A biological or adoptive parent of a child;
2. 33 (1) (b) 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;
- 2.33 (1) (c) 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);
2. 33 (1) (d) An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
2. 33 (1) (e) An educational surrogate parent who has been assigned in accordance with Section 6.02(8) of these Rules.
2. 33 (2) (a) Except as provided in Section (2)(b) of this Rule 2.33, the biological or adoptive parent, when attempting to act as the parent under these Rules and when more than one party is qualified under Section (1) of this Rule 2.33 to act as a parent, must be 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.
2. 33 (2) (b) If a judicial decree or order identifies a specific person or persons under Sections (1)(a) through (d) of this Rule 2.33 to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this Section.

2.34 Personally Identifiable

Personally Identifiable means information that contains--

- 2.34 (1) The name of the child, the child's parent, or other family member;
- 2.34 (2) The address of the child;

- 2.34 (3) A personal identifier, such as the child's social security number or student number; or
- 2.34 (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

2.35 Public Agency

The term "*Public Agency*":

- 2.35 (1) When used in connection with out of district placements, shall have the meaning given it in Section 9.01(5) of these Rules.
- 2.35 (2) When used in 34 CFR Part 300, shall mean an administrative unit, as defined in Section 2.02 of these Rules, and a state-operated program as defined in Section 2.49 of these Rules.

2.36 Public Placement

The term "*Public Placement*" shall have the meaning given it in Section 9.01(6) of these Rules.

2.37 Related Services

- 2.37 (1) General.

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

- 2.37 (2) Exception.

Services that apply to children with surgically implanted devices, including cochlear implants.

- 2.37 (2) (a) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- 2.37 (2) (b) Nothing in Section 2.37(2)(a)—
 - 2.37 (2) (b) (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this Section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
 - 2.37 (2) (b) (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

- 2.37 (2) (b) (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 34 CFR §300.113(b).
- 2.37 (3) Individual related services terms defined.
- The terms used in this definition are defined as follows:
- 2.37 (3) (a) Audiology includes—
- 2.37 (3) (a) (i) Identification of children with hearing loss;
- 2.37 (3) (a) (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- 2.37 (3) (a) (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- 2.37 (3) (a) (iv) Creation and administration of programs for prevention of hearing loss;
- 2.37 (3) (a) (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- 2.37 (3) (a) (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- 2.37 (3) (b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- 2.37 (3) (c) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- 2.37 (3) (d) Interpreting services that includes—
- 2.37 (3) (d) (i) The following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), c-print, and typewell; and
- 2.37 (3) (d) (ii) Special interpreting services for children who are deaf-blind.
- 2.37 (3) (e) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- 2.37 (3) (f) Occupational therapy—
- 2.37 (3) (f) (i) Means services provided by a qualified occupational therapist; and
- 2.37 (3) (f) (ii) Includes—

- 2.37 (3) (f) (ii) (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- 2.37 (3) (f) (ii) (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- 2.37 (3) (f) (ii) (C) Preventing, through early intervention, initial or further impairment or loss of function.
- 2.37 (3) (g) Orientation and mobility services—
- 2.37 (3) (g) (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
- 2.37 (3) (g) (ii) Includes teaching children the following, as appropriate:
 - 2.37 (3) (g) (ii) (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - 2.37 (3) (g) (ii) (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - 2.37 (3) (g) (ii) (C) To understand and use remaining vision and distance low vision aids; and
 - 2.37 (3) (g) (ii) (D) Other concepts, techniques, and tools.
- 2.37 (3) (h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- 2.37 (3) (i) Physical therapy means services provided by a qualified physical therapist.
- 2.37 (3) (j) Psychological services includes—
 - 2.37 (3) (j) (i) Administering psychological and educational tests, and other assessment procedures;
 - 2.37 (3) (j) (ii) Interpreting assessment results;
 - 2.37 (3) (j) (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - 2.37 (3) (j) (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

- 2.37 (3) (j) (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- 2.37 (3) (j) (vi) Assisting in developing positive behavioral intervention strategies.
- 2.37 (3) (k) Recreation includes—
- 2.37 (3) (k) (i) Assessment of leisure function;
- 2.37 (3) (k) (ii) Therapeutic recreation services;
- 2.37 (3) (k) (iii) Recreation programs in schools and community agencies; and
- 2.37 (3) (k) (iv) Leisure education.
- 2.37 (3) (l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- 2.37 (3) (m) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- 2.37 (3) (n) Social work services in schools includes—
- 2.37 (3) (n) (i) Preparing a social or developmental history on a child with a disability;
- 2.37 (3) (n) (ii) Group and individual counseling with the child and family;
- 2.37 (3) (n) (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- 2.37 (3) (n) (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- 2.37 (3) (n) (v) Assisting in developing positive behavioral intervention strategies.
- 2.37 (3) (o) Transportation includes—
- 2.37 (3) (o) (i) Travel to and from school and between schools;
- 2.37 (3) (o) (ii) Travel in and around school buildings; and
- 2.37 (3) (o) (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

2.38 Scientifically Based Research

Scientifically Based Research has the meaning given the term in Section 9101(37) of the ESEA.

2.39 School

2.39 (1) Elementary School

When used in 34 CFR Part B, *Elementary School* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

2.39 (2) Secondary School

When used in 34 CFR Part B, *Secondary School* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

2.40 School District

School District means a school district organized and existing pursuant to law, but shall not include a junior college district.

2.41 Services Plan

Services Plan means a written statement that describes the special education and related services the administrative unit will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132, and is developed and implemented in accordance with 34 CFR §§300.137 through 300.139.

2.42 Secretary

The term “*Secretary*”, when used in 34 CFR Parts 300 and 303, means the Secretary of the United States Department of Education.

2.43 Special Education

2.43 (1) General.

2.43 (1) (a) *Special Education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

2.43 (1) (a) (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

2.43 (1) (a) (ii) Instruction in physical education.

2.43 (1) (b) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (1)(a) of this Section—

2.43 (1) (b) (i) Speech-language pathology services that includes—

2.43 (1) (b) (i) (A) Identification of children with speech or language impairments;

- 2.43 (1) (b) (i) (B) Diagnosis and appraisal of specific speech or language impairments;
 - 2.43 (1) (b) (i) (C) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - 2.43 (1) (b) (i) (D) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - 2.43 (1) (b) (i) (E) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
 - 2.43 (1) (b) (i) (F) Rule of construction: A child with a disability, as defined in Section 2.08 of these Rules, shall be entitled to receive speech language pathology services as specially designed instruction if the child's IEP Team determines that the child needs speech language pathology services in order to receive a free appropriate public education.
 - 2.43 (1) (b) (ii) Travel training; and
 - 2.43 (1) (b) (iii) Vocational education.
 - 2.43 (2) Individual special education terms defined.
- The terms in this definition are defined as follows:
- 2.43 (2) (a) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.
 - 2.43 (2) (b) Physical education means—
 - 2.43 (2) (b) (i) The development of—
 - 2.43 (2) (b) (i) (A) Physical and motor fitness;
 - 2.43 (2) (b) (i) (B) Fundamental motor skills and patterns; and
 - 2.43 (2) (b) (i) (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - 2.43 (2) (b) (ii) Includes special physical education, adapted physical education, movement education, and motor development.
 - 2.43 (2) (c) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - 2.43 (2) (c) (i) To address the unique needs of the child that result from the child's disability; and
 - 2.43 (2) (c) (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards of the responsible administrative unit or state-operated program as established in Section 8.00 of these Rules.

- 2.43 (2) (d) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—
- 2.43 (2) (d) (i) Develop an awareness of the environment in which they live; and
- 2.43 (2) (d) (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- 2.43 (2) (e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

2.44 Special Education Expenditures

Special Education Expenditures are those costs which are incurred by an administrative unit or state-operated program for professional services associated with special education referrals and assessments of children who may be disabled and for the provision of special education and related services as identified on individual students' Individualized Educational Programs (IEPs), and do not include costs of the regular education program.

2.45 Special Education Services

Special Education Services or *Special Education Programs* means the services or programs provided to a child with a disability in conformity with the child's IEP or IFSP.

2.46 State Board

State Board means the State Board of Education, created and existing pursuant to Section 1 of Article IX of the State Constitution.

2.47 State Charter School Institute

State Charter School Institute means the State Charter School Institute created pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.48 State Educational Agency

The term "*State Educational Agency*", when used in 34 CFR Parts 300 and 303, means the Colorado Department of Education.

2.49 State-Operated Program

State-Operated Program means an approved school program supervised by the Department and operated by:

- 2.49 (1) The Colorado School for the Deaf and the Blind;
- 2.49 (2) The Department of Corrections; or
- 2.49 (3) The Department of Human Services, including but not limited to the Division of Youth Corrections and the Mental Health Institutes at Fort Logan and Pueblo.

2.50 Supplementary Aids and Services

Supplementary Aids and Services means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 CFR §§300.114 through 300.116.

2.51 Transition Services

2.51 (1) *Transition Services* means a coordinated set of activities for a child with a disability that--

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

2.51 (1) (b) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

2.51 (1) (b) (i) Instruction;

2.51 (1) (b) (ii) Related services;

2.51 (1) (b) (iii) Community experiences;

2.51 (1) (b) (iv) The development of employment and other post-school adult living objectives; and

2.51 (1) (b) (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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

2.52 Universal Design

The term “*Universal Design*”, when used in 34 CFR Parts 300 and 303, has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

2.53 Ward of the State

As used in 34 CFR Part B, the term *Ward of the State* means:

2.53 (1) General. Subject to 2.53(2) of this Section, ward of the State means a child who, as determined by the State where the child resides, is—

2.53 (1) (a) A foster child;

2.53 (1) (b) A ward of the State; or

2.53 (1) (c) In the custody of a public child welfare agency.

- 2.53 (2) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in Section 2.33 of these Rules.

ADMINISTRATION

3.01 Standards For Administrative Units

- 3.01 (1) Minimum standards for special education administrative units.

To qualify as a special education administrative unit, a school district or a board of cooperative services shall satisfy the following standards.

- 3.01 (1) (a) Enrollment of 4,000 pupils in membership or at least 400 children with disabilities. Variance from this specific requirement may be requested of the Department of Education according to the procedures outlined in 7.06 of these Rules.
- 3.01 (1) (a) (i) Demonstration that the district(s) seeking a variance are able to meet the obligation to provide appropriate services to children with disabilities. If the manner in which the district(s) propose to meet this obligation is determined to be inadequate by the Department of Education, the variance will not be granted.
- 3.01 (1) (a) (ii) Demonstration that the administrative unit from which the district(s) is proposing to withdraw will be able to continue to provide appropriate educational services to children with disabilities. If such demonstration cannot be made to the satisfaction of the Department of Education, the variance will not be granted.
- 3.01 (1) (a) (iii) Commitment to comply with all other requirements of this section 3.01 of the Rules.
- 3.01 (1) (a) (iv) The establishment of additional administrative units does not create a hardship on the Department of Education. If such is determined to be the case by the Department of Education, the Department reserves the right to refuse the approval of additional administrative units.
- 3.01 (1) (b) Employment of sufficient instructional and related services staff to identify and evaluate children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.
- 3.01 (1) (c) Employment of a qualified and certificated full-time professional who has the flexibility to function at least half time as director of special education and who has the authority to assure that all the duties and responsibilities of the administrative unit as specified in these Rules are carried out.
- 3.01 (1) (d) Development and implementation of an approved special education comprehensive plan.
- 3.01 (1) (e) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.
- 3.01 (1) (f) Governance by a board which may be a local school board of education or a Board of Cooperative Educational Services.
- 3.01 (2) Every school district and Board of Cooperative Services that provides services to children with disabilities shall be an administrative unit or a part of an administrative unit.

Small districts that do not meet the qualifications of an administrative unit and are not a part of a board of cooperative services shall contract to become part of an approved unit and shall abide by all policies and procedures contained in that unit's comprehensive plan. Such contract shall be approved by the Department of Education.

3.01 (2) (a) The Department of Education may disapprove an application for an administrative unit if it has excluded a contiguous district that does not meet the criterion set forth above.

3.01 (2) (b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 8.00 of the Rules.

3.01 (3) Application for new administrative units.

Districts and boards of cooperative services desiring to form new or reorganized administrative units shall submit an application to the Department of Education by November 1 of the year preceding the fiscal year in which the new administrative unit is to begin operation. This application shall include:

3.01 (3) (a) A letter of intent which:

3.01 (3) (a) (i) specifies the objectives to be sought by the change;

3.01 (3) (a) (ii) outlines how the proposed administrative unit will comply with the requirements of these Rules;

3.01 (3) (a) (iii) explains how the proposed administrative unit will efficiently address the administration of and the provision of special education services; and

3.01 (3) (a) (iv) specifies the manner in which it will comply with the by-laws of the Board of Cooperative Services if it is a member of such.

3.01 (3) (b) Comprehensive plans for the newly reorganized administrative units.

3.01 (3) (c) Budget projections reflecting the anticipated revenues and expenditures for the administrative units should the request be approved, as well as projections for the existing administrative unit without the change.

3.01 (4) Department of Education approval.

The Department of Education shall have 60 days in which to approve or deny an application for a new administrative unit or to request other clarification.

3.01 (4) (a) When the formation of a new administrative unit is approved, such administrative unit shall be expected to satisfy all the qualifications for the efficient administration of and provision of services for administrative units stipulated in these Rules, including the approval of a comprehensive plan.

3.01 (4) (b) If the Department of Education determines that the proposed administrative unit will not be able to satisfy the qualifications for the efficient administration of and provision of services, it shall present its reasons for such finding in writing.

3.01 (4) (c) If, within 30 days of the Department's determination to disapprove the formation of a new administrative unit, the school districts or boards of cooperative services affected are unable to negotiate a satisfactory resolution of differences with the

Department of Education, they may utilize standard appeal procedures in accordance with Section 7.07 of these Rules.

- 3.01 (4) (d) Existing units which do not meet the qualifications and/or for the efficient administration of or provision of services stipulated in these Rules shall be subject to revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.

3.02 Standards for Eligible Facilities and State Operated Programs

3.02 (1) Eligible Facilities

- 3.02 (1) (a) Minimum standards for special education eligible facilities.

To qualify as an approved school program, eligible facilities as determined by the State Board of Education shall satisfy the following standards:

- 3.02 (1) (a) (i) Prior licensing by appropriate state agencies.
- 3.02 (1) (a) (ii) Placements must be due to the need for mental health and/or medical treatment.
- 3.02 (1) (a) (iii) In the case of Day Treatment programs, placements must be due to the child being considered at risk for out of home placement.
- 3.02 (1) (a) (iv) The education of the children in placement at the eligible facility is the responsibility of the state or local education agency.
- 3.02 (1) (a) (v) The education of children in placement is not the responsibility of another Colorado State agency or entity.
- 3.02 (1) (a) (vi) Employment of sufficient qualified administrative, instructional and support staff to plan for and provide services for all children who are determined to have a disability.
- 3.02 (1) (a) (vii) Each eligible facility shall employ or contract in writing, on at least a part-time basis, for a Director of Special Education who meets the qualification standards established by Section 3.04(1)(d) of these Rules.
- 3.02 (1) (a) (viii) Development and implementation of an approved comprehensive plan including quality standards as set forth in guidelines developed by the Department of Education.
- 3.02 (1) (a) (ix) Agree to carry out the duties and responsibilities identified in Section 8.01(2) of these Rules.

- 3.02 (1) (b) Approval of facilities.

Any facility wishing to obtain state or federal funds to provide education services to children with disabilities shall be approved by the State Board of Education.

- 3.02 (1) (b) (i) Facilities wishing to establish an approved school program shall submit a letter of intent to the Department of Education, Special Education Services

Unit, at least 90 days prior to the day on which the facility is to begin its on-grounds school.

- 3.02 (1) (b) (ii) Facilities wishing to establish an approved school program shall submit to the Department of Education a comprehensive plan 30 days prior to the submission of its application for approval to the State Board of Education.
- 3.02 (1) (b) (iii) If the Department of Education determines that the facility meets state requirements as defined in Section 3.02(1) of these Rules, the Department shall notify the facility that it is being recommended to the State Board of Education for approval. If the Department of Education determines that the eligible facility is unable to meet requirements as defined in Section 3.02(1) of these Rules, it shall present its reasons for such findings in writing.
- 3.02 (1) (b) (iv) If within 30 days of the Department's disapproval, the facility is unable to negotiate a satisfactory resolution of differences with the Department of Education, it may utilize standard appeal procedures in accordance with Section 7.07 of these Rules.
- 3.02 (1) (c) Maintenance of approved status.
- 3.02 (1) (c) (i) In order to maintain approval of its school program, each facility shall:
- 3.02 (1) (c) (i) (A) Comply with required policies and procedures as set forth in these Rules.
- 3.02 (1) (c) (i) (B) Complete an annual self-assessment based on the Quality Standards for Eligible Facilities and develop a school improvement plan.
- 3.02 (1) (c) (i) (C) Notify the Colorado Department of Education, Exceptional Student Leadership Unit, in writing in the event that:
- 3.02 (1) (c) (i) (C) (I) The management or administration of the facility changes,
- 3.02 (1) (c) (i) (C) (II) The facility is purchased by or merged with another agency, or
- 3.02 (1) (c) (i) (C) (III) There is a change of educational coordinator.
- 3.02 (1) (c) (ii) The Colorado Department of Education will review the notification and determine whether the facility will retain its eligible status.
- 3.02 (1) (d) Review of approved status.

Each facility shall contact the Colorado Department of Education, Exceptional Student Leadership Unit, to request review and approval for changes in or expansions of the school program. The following require review and request for approval:

- 3.02 (1) (d) (i) Any application for a new or different license from the Department of Human Services,
- 3.02 (1) (d) (ii) A change in location or the addition of another location,
- 3.02 (1) (d) (iii) Change of program focus,
- 3.02 (1) (d) (iv) Change in the age of students served,

- 3.02 (1) (d) (v) Any increase in the number of students included in the PPOR billing above the number originally approved, or
- 3.02 (1) (d) (vi) Other factors unique to the program or situation.
- 3.02 (1) (e) Comprehensive plan.

Each facility seeking approval for an on-grounds school shall develop a comprehensive plan in which are stated the policies and procedures to be followed in order to be in compliance with all applicable state laws and regulations. At a minimum, the comprehensive plan shall include but not be limited to the following:
 - 3.02 (1) (e) (i) An explanation of the purpose of the eligible facility, especially as it relates to treatment, care and education of children with disabilities.
 - 3.02 (1) (e) (ii) A description of the population to be served by the facility.
 - 3.02 (1) (e) (iii) Policies and procedures to be followed to meet all appropriate federal and state statutes and regulations.
 - 3.02 (1) (e) (iv) A description of the education curriculum and how the treatment and care support that curriculum and the child's individualized educational program (IEP).
 - 3.02 (1) (e) (v) Approval of the facility's governing body.
- 3.02 (1) (f) Revocation of Approved Status.

Eligible facilities with approved school programs that no longer meet state requirements shall be notified in writing by the Department of the specific areas of noncompliance and be given a specified period of time in which to remediate the areas of noncompliance. PPOR payments will be delayed until compliance is demonstrated. Should the eligible facility fail to come into compliance, administrative units will be notified that the facility is out of compliance and that excess cost payments should be suspended and the Department of Education shall request that the State Board of Education revoke the facility's approval.
- 3.02 (2) State Operated Programs
- 3.02 (2) (a) Minimum Standards for State Operated Programs.

State Operated Programs shall satisfy the following standards.
 - 3.02 (2) (a) (i) Employment of sufficient instructional and related services staff to identify and assess children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.
 - 3.02 (2) (a) (ii) Each state-operated program shall employ or contract in writing, on at least a part-time basis, for a Director of Special Education who meets the qualification standards established by Section 3.04(1)(d) of these Rules.
 - 3.02 (2) (a) (iii) Development and implementation of an approved special education comprehensive plan.

- 3.02 (2) (a) (iv) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.
- 3.02 (2) (a) (v) Provision of special education and related services to all children with disabilities placed in or committed to the State Operated Program.

3.03 Resource Allocation

Sufficient personnel shall be available to provide for identification, referral, evaluation, determination of disability and eligibility for special education services and development and review of IEPs, and to provide appropriate special education instructional and related services to implement all IEPs for children with disabilities.

- 3.03 (1) Each administrative unit shall have a method or standards by which it determines the number and types of special education personnel required to meet the needs of children with disabilities. Such method or standard shall be a part of the local comprehensive plan.
- 3.03 (2) Each administrative unit shall assure that licensed/certificated personnel qualified in a child's identified area(s) of need will have diagnostic and ongoing instructional responsibilities and contact with the child and the child's other service providers and parents.

3.04 Personnel Qualifications

All personnel providing special education services to children with disabilities shall be qualified.

- 3.04 (1) Personnel qualifications.

- 3.04 (1) (a) Teachers

- 3.04 (1) (a) (i) Special education.

All special education teachers shall hold Colorado teacher's certificates or licenses with appropriate endorsements in special education. Special education teachers shall also be highly qualified, consistent with Section 2.20 of these Rules.

Each special education teacher will serve, at a minimum, a majority of special education students with the same identified area of need as that teacher's special education license or certification endorsement. The endorsement level must be appropriate for the age being taught.

- 3.04 (1) (a) (ii) Home-hospital.

Home-hospital teachers for children with disabilities shall hold Colorado teacher's certificates or licenses.

- 3.04 (1) (a) (iii) Specialty.

Specialty teachers in music, art, adapted physical education, home economics, industrial arts and vocational education shall possess Colorado teacher's certificates or licenses with endorsements in the area of instruction.

3.04 (1) (b) Related services personnel.

All related services personnel providing services to children with disabilities shall hold Colorado special services licenses or certificates with appropriate endorsements. For those areas for which Colorado special services licenses or certificates are not available, appropriate licenses from the state regulatory agency or professional organization registration are required.

3.04 (1) (c) Special education coordinators.

Special education coordinators shall have at least a Bachelor's degree and certification and/or licensure in a relevant field. Documentation of their expertise shall be submitted to the Department of Education.

3.04 (1) (d) Administrators.

Special education directors and assistant directors must possess a certificate or administrator's license with appropriate endorsement.

3.04 (1) (e) Paraprofessionals.

Each administrative unit or eligible facility will determine the qualifications and competencies required for paraprofessionals. Administrative units and eligible facilities shall assure and document that they meet the requirements for supervision of non-certificated personnel as mandated under Section 22-32-110(1)(ee), C.R.S.

3.04 (1) (f) Educational Interpreters

As of July 1, 2000, any person employed as an Educational Interpreter by an administrative unit or eligible facility on a full-time or part-time basis shall meet the following minimum standards, and documentation for meeting these standards must be renewed every five years:

3.04 (1) (f) (i) Demonstration of a rating of 3.5 (average) or better in the four areas of the Educational Interpreter Performance Assessment (EIPA).

3.04 (1) (f) (ii) Documented content knowledge in these areas: child development, language development, curriculum, teaching and tutoring methods, deafness and the educational process for deaf children.

The Colorado Department of Education will provide guidelines for the implementation of these minimum standards.

3.04 (2) Temporary Teacher Eligibility (TTE).

If an administrative unit or eligible facility is unable to employ an individual who is appropriately certificated/licensed and endorsed, the director of special education may apply to the Department of Education for temporary teacher eligibility. Approval shall be effective for five school years for TTEs issued through the 1998-99 school year, and beginning with 1999-2000, shall be effective for three school years. Temporary Teacher Eligibility is nonrenewable and subject to the following conditions:

3.04 (2) (a) The individual shall possess a Colorado certificate, educator's license, or emergency authorization.

- 3.04 (2) (b) The director of special education shall certify that, after reasonable efforts to hire an acceptable, appropriately endorsed individual, none could be found. Documentation of the search which was made to find an acceptable, appropriately endorsed individual shall be maintained by the administrative unit or eligible facility.
- 3.04 (2) (c) No later than 90 days after employment, the administrative unit or eligible facility shall provide to the Department of Education documentation of the individual's application to a program leading to endorsement in the area of request.
- 3.04 (2) (d) At least annually, the administrative unit or eligible facility shall secure evidence of satisfactory progress toward completion of the endorsement program within the specified time allowed.
- 3.04 (2) (e) If extenuating circumstances prevent the individual from meeting the requirements of Sections 3.04(2)(a) through 3.04(2)(d), the circumstances must be documented by the director of special education and submitted to the Department of Education for consideration before any decision to revoke the TTE is made.
- 3.04 (2) (f) Application for a second temporary teacher eligibility will not be approved for the same person unless the endorsement program referenced in the request for the first TTE has been completed, or both endorsement programs could be completed within the same period specified in the initial request.
- 3.04 (2) (g) Temporary teacher eligibility is issued to the administrative unit or eligibility facility for the individual. Before a TTE will be transferred for an individual by the Department of Education from one unit or eligible facility to another, the second unit or eligible facility shall submit to the Department of Education verification that satisfactory progress was made toward the required endorsement during the last school year the individual was employed on the basis of a TTE.
- 3.04 (2) (h) If an individual only needs recent credit and/or successful completion of the basic skills or content area examinations to qualify for the appropriate Colorado educator's license and endorsement, the administrative unit or eligible facility shall apply for both an emergency authorization and a TTE. Verification of enrollment in an appropriate university program is not required, but the Department of Education will only approve a TTE for one school year.

3.05 Staff Development

Administrative units and eligible facilities shall provide for staff development to assure opportunities for appropriate educational services to children with disabilities.

- 3.05 (1) Opportunities for staff development shall be provided to foster the continuing development of the awareness, skills and knowledge of each staff member.
- 3.05 (1) (a) Opportunities for staff development shall be furnished to all staff providing direct or indirect services to children with disabilities.
- 3.05 (1) (b) Opportunities for staff development activities shall be designed to bring about changes in knowledge, attitudes, actual performance skills and interpersonal relations of staff members.
- 3.05 (2) Staff development shall include an evaluation component to determine its effectiveness.

3.06 Program Evaluation

Each administrative unit or eligible facility shall maintain records of results of all qualitative and quantitative evaluations of special education services rendered. Evaluations of special education services shall occur annually and within a period of five years systematically cover aspects of services to children with disabilities. Such evaluations shall review:

- 3.06 (1) Extent to which quality special education policies and practices are in place and where improvements can occur.
- 3.06 (2) Degree to which children with disabilities are achieving their individual goals as well as school, district, and state standards and student outcomes.

CHILD FIND, EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

4.01 Parental Consent

Except for IDEA Part C Child Find, the parental consent requirements and procedures set forth in 34 CFR §300.300 shall apply in their entirety to this Section 4.00.

4.02 Child Identification Process

4.02 (1) General Requirements

4.02 (1) (a) Administrative Units.

Each administrative unit shall develop and implement procedures for locating, identifying and evaluating all children ages birth to 21 who may have a disability and are eligible for early intervention services under either IDEA Part C Child Find (birth through age 2); or are eligible for special education services under IDEA Part B (ages 3 to 21) even though such children are advancing from grade to grade. Such procedures shall be available throughout the year to all children including children who have not yet entered school, children who discontinue their education, children who are attending private schools, children whose parents choose home schooling, children who are wards of the State or children who are highly mobile (such as migrant or homeless children) and may be suspected of having a disability.

4.02 (1) (a) (i) IDEA Part C Child Find

4.02 (1) (a) (i) (A) For children ages birth through 2 years of age, each administrative unit of residence is responsible for certain child find activities under Part C of the IDEA consistent with Section 22-20-118 (2), C.R.S.

4.02 (1) (a) (i) (B) Screening and evaluation activities required by Section 22-20-118 (2)(b), C.R.S., shall be consistent with Part C of the IDEA and its implementing regulations at 34 CFR Part 303.

4.02 (1) (a) (ii) IDEA Part B Child Identification

Part B child identification shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education. Child identification shall be the responsibility of the administrative unit in which the child attends public or private school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. For children ages 3 to 21 under IDEA Part B, child identification shall be consistent with Sections 4.01 and 4.02 of these Rules.

4.02 (1) (b) State-Operated Programs – Part B Child Identification.

For children for whom a state-operated program is responsible, as established in Section 8.00 of these Rules, each state-operated program shall adopt and implement procedures for locating, identifying and evaluating all children who may have a disability and be eligible for special education, even though they are advancing from grade to grade. Child identification, when used in connection with

state-operated programs, includes relevant components of child find; special education referral; initial evaluation; and determination of disability and eligibility.

4.02 (2) IDEA Part B Child Find.

4.02 (2) (a) The IDEA Part B child find process shall:

4.02 (2) (a) (i) Be a process designed to inform the public and to identify children ages 3 to 21 who may be eligible to receive special education services. Notice shall be published or announced in newspapers or other media with adequate circulation to notify parents throughout the administrative unit.

4.02 (2) (a) (ii) Be designed to utilize available resources within the community.

4.02 (2) (a) (iii) Involve families and provide information to the families.

4.02 (2) (b) Each administrative unit and state-operated program shall have one person designated as the child find coordinator who shall be responsible for an ongoing child identification process.

4.02 (2) (c) The child find process shall include specific strategies for children 3 through five years of age, children in school, and children out of school who are discontinuers or dropouts. It shall be available throughout the year and shall include the following components:

4.02 (2) (c) (i) Planning and development in the areas of public awareness, community referral systems, community and building based screening, diagnostic evaluations, service coordination and staff development.

4.02 (2) (c) (ii) Coordination and implementation in the areas of interagency collaboration, public awareness, referral, screening and resource coordination.

4.02 (2) (c) (iii) Screening procedures for identifying from the total population of children ages 3 to 21 years those who may need more in-depth evaluation in order to determine eligibility for special education and related services.

Follow up to vision and hearing screening shall interface with the vision and hearing screenings which occur for all children in public preschool, kindergarten, grades 1, 2, 3, 5, 7 and 9 yearly in accordance with Section 22-1-116, C.R.S. Appropriate educational referrals shall be made if the child is suspected of having an educationally significant vision or hearing loss and parents shall be informed of any need for further medical evaluation.

4.02 (2) (c) (iv) A systematic procedure for considering those children ages 17 to 21 who are out of school and who may have a disability.

4.02 (2) (c) (v) Referral procedures to ensure that parents of children are given information about all public and private resources that can meet identified needs. This may include a process for a building level referral. The purpose of the building level process is to consider all pertinent information, the unique needs of the child and to generate alternative strategies, such as Response to Intervention (RtI), for meeting these needs in non-special education settings or to determine the need for special education referral. These procedures may include dropout prevention strategies and recruitment of special education discontinuers.

- 4.02 (2) (c) (vi) Evaluation of the effectiveness and efficiency of child identification procedures.
- 4.02 (3) Special Education Referral Process
- A special education referral shall be clearly distinguished from a building level referral or a referral for screening both of which are regular education processes. The administrative unit or state-operated program shall establish and follow procedures for referring a child for an initial evaluation to determine whether or not the child has a disability and needs special education and related services.
- 4.02 (3) (a) A special education referral may be initiated by either:
- 4.02 (3) (a) (i) An administrative unit or state-operated program as a result of a building level screening and/or referral process; or
- 4.02 (3) (a) (ii) The parent of the child.
- Any other interested person who believes that a child is in need of an initial evaluation must work with the parent or the appropriate administrative unit or state-operated program.
- 4.02 (3) (b) A parent of any child referred shall be informed of the referral and be provided with prior written notice consistent with Section 6.02(3) and 34 CFR §300.503 and a copy of the Procedural Safeguards Notice consistent with Section 6.02(4) and 34 CFR §300.504.
- 4.02 (3) (c) Once a written special education referral has been initiated, the initial evaluation, shall be completed within 60 calendar days from the point of initiation of the special education referral. The special education referral process is initiated when one of the following occurs:
- 4.02 (3) (c) (i) The parent is informed of the special education referral as a result of the building level process or screening and the parent provides written consent to conduct the initial evaluation; or
- 4.02 (3) (c) (ii) The request for an initial evaluation is received from the parent and the parent provides written consent to conduct the initial evaluation.
- 4.02 (3) (c) (iii) Exception. The time frame described in Section 4.02(3)(c) within which to conduct an initial evaluation shall not apply to the administrative unit or state-operated program if:
- 4.02 (3) (c) (iii) (A) The parent of a child repeatedly fails or refuses to produce the child for evaluation; or
- 4.02 (3) (c) (iii) (B) A child enrolls in a school of another AU or state-operated program after the relevant timeframe in Section 4.02(3)(c) of these Rules has begun, and prior to a determination by the child's previous AU or state-operated program as to whether the child is child with a disability under Section 2.08 of these Rules.
- 4.02 (3) (c) (iv) The exception in Section 4.02(3)(c)(iii) applies only if the subsequent AU or state-operated program is making sufficient progress to ensure a prompt

completion of the evaluation, and the parent and subsequent AU or state-operated program agree to a specific time when the evaluation will be completed.

- 4.02 (3) (d) A record shall be maintained of the disposition of each special education referral.

- 4.02 (4) Initial Evaluation Process.

An initial evaluation process for children ages three to twenty-one shall be provided for the purposes of determining whether the child is a child with a disability under Section 2.08 of these Rules and what the educational needs of the child are. The requirements and procedures for initial evaluations shall be in accordance with 34 CFR §300.301, §300.304 and §300.305 and shall ensure that the initial evaluation is sufficiently comprehensive to appropriately 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.

- 4.02 (4) (a) Parental Consent.

Prior to conducting an initial evaluation, the administrative unit or state-operated program shall comply with the parental consent requirements set forth in 34 CFR §300.300.

- 4.02 (4) (b) Screening for instructional purposes is not an evaluation.

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

- 4.02 (4) (c) Personnel shall be appropriately licensed and endorsed.

Administrative unit and state-operated program personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed. For those areas where CDE licensure and endorsement are not available, appropriate professional licensure, registration or credentials is required.

- 4.02 (5) Reevaluations.

The requirements and procedures for conducting and completing reevaluations shall be consistent with 34 CFR §300.303 and Section 4.02(4) of these Rules. The additional procedures for identifying specific learning disability shall also be utilized consistent with Section 4.02(7) of these Rules.

- 4.02 (6) Determination of Disability and Eligibility.

Requirements and procedures for determining disability and eligibility shall be consistent with 34 CFR §300.306. Once a special education referral has been made and the initial evaluation has been completed, a meeting shall be held to determine if the child has a disability and if the child is eligible for special education. If the child is determined to have a disability and is eligible, an IEP shall be developed for the child in accordance with Section 4.03 of these Rules. These functions may occur at the same meeting or at different meetings.

- 4.02 (6) (a) Timeline.
- 4.02 (6) (a) (i) A meeting to discuss the initial evaluation of the child and to determine if the child has a disability and is eligible for special education shall be held within a reasonable period of time after the initial evaluation is completed.
- 4.02 (6) (a) (ii) Following a reevaluation, a meeting shall be held within a reasonable period of time to discuss the reevaluation of the child to determine if the child continues to be eligible for special education and/or to identify all of the child's special education and related services needs.
- 4.02 (6) (b) Participants.
- Meetings to determine if the child has a disability and is eligible for special education, whether held separately or in connection with a meeting to develop an IEP, must include:
- 4.02 (6) (b) (i) A multidisciplinary team knowledgeable about the child and about the meaning of the evaluation data. The multidisciplinary team shall include:
- 4.02 (6) (b) (i) (A) At least one teacher or other specialist with knowledge in the area of the child's suspected disability;
- 4.02 (6) (b) (i) (B) As necessary, other qualified professionals, e.g., an occupational therapist; a speech language pathologist; a physical therapist; and a school psychologist; and
- 4.02 (6) (b) (i) (C) The parent of the child.
- 4.02 (6) (b) (ii) At the discretion of the special education director for the administrative unit of residence, the special education director or designee for the administrative unit of residence.
- 4.02 (6) (c) Change of disability and/or eligibility.
- A change of disability and/or eligibility may only be made after reevaluation conducted in accordance with Section 4.02(5) of these Rules and at a meeting in which the results of reevaluation are considered in accordance with Section 4.02(6)(a)(ii). In addition, a change involving a specific learning disability shall be made consistent with the additional procedures set forth in Section 4.02(7) of these Rules.
- 4.02 (6) (c) (i) The evaluation described in Section 4.02(6)(c) is not required before the termination of a child's eligibility for special education due to graduation from secondary school with a regular diploma, or due to reaching age 21.
- 4.02 (6) (c) (ii) For a child whose eligibility terminates under circumstances described in Section 4.02(6)(c)(i), the administrative unit/state-operated program must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

- 4.02 (7) Additional procedures for identifying children with specific learning disabilities.

The definition and criteria for the *Specific Learning Disability* category are set forth in Section 2.08(6) of these Rules. The additional requirements and procedures for identifying children with specific learning disabilities shall be consistent with 34 CFR §300.307(b), §300.308, §300.309(b) – (c), §300.310 and §300.311.

- 4.02 (7) (a) Exception: The optional documentary statement contained in 34 CFR §300.311(a)(5)(ii)(B) shall not apply.

- 4.02 (8) Record of meeting.

If the determination of disability and eligibility occur at a separate meeting from the IEP meeting, a record of the meeting shall be maintained which must include, when applicable, a statement of the child's disability and the criteria utilized to determine eligibility as identified in Section 2.02 of these Rules.

4.03 Individualized Education Programs

The term “Individualized Education Program” or “IEP” means a written statement for each child with a disability that is developed, reviewed and/or revised in accordance with these Rules. Except as is otherwise set forth in this Section 4.03, the requirements regarding IEPs shall be consistent with 34 CFR §300.320 through §300.325.

- 4.03 (1) The requirements governing when IEPs must be in effect shall be consistent with 34 CFR §300.323. The topics addressed by 34 CFR §300.323 include:
- 4.03 (1) (a) The general requirement that an IEP for each child with a disability must be in effect at the beginning of each school year;
- 4.03 (1) (b) Options for utilizing an IEP or IFSP for children aged three through five;
- 4.03 (1) (c) The administrative unit of residence shall participate in meetings regarding the transition planning process from infant/toddler to special education preschool services consistent with the requirements of 34 CFR §300.124;
- 4.03 (1) (d) The initial provision of services, including timelines;
- 4.03 (1) (d) (i) Exception: The initial IEP for a child shall be developed within 90 calendar days of the date that parental consent was obtained to conduct the initial evaluation.
- 4.03 (1) (e) Accessibility of the child's IEP to teachers and others;
- 4.03 (1) (f) IEPs for children who transfer public agencies within the State;
- 4.03 (1) (g) IEPs for children who transfer from another State; and
- 4.03 (1) (h) Transmittal of records.
- 4.03 (2) The requirements for the development, review, and revision of the IEP shall be consistent with 34 CFR §300.324. The topics covered by 34 CFR §300.324 include:
- 4.03 (2) (a) General factors that the IEP Team must consider;

- 4.03 (2) (b) Special factors that the IEP Team must consider;
- 4.03 (2) (c) Requirements with respect to the general education teacher;
- 4.03 (2) (d) IEP changes mutually agreed to by the parent and the administrative unit or state-operated program after the annual IEP review meeting and without convening the IEP Team;
- 4.03 (2) (e) Consolidation of IEP Team meetings;
- 4.03 (2) (f) Amendments to the IEP;
- 4.03 (2) (g) Review and revision of the IEP;
- 4.03 (2) (h) Failure to meet transition objectives;
- 4.03 (2) (i) Rule of construction;
- 4.03 (2) (j) Children with disabilities in adult prisons;
- 4.03 (3) Meetings to review and revise each child's IEP and to determine the child's placement shall be initiated and conducted at least once every 365 days.
- 4.03 (4) Responsibility for IEP Meetings.

The relative responsibilities of administrative units, state-operated programs and eligible facilities for IEP development, review and revision are established in Rule 8.00.
- 4.03 (5) Participants in meetings.

Except as is otherwise provided for in this Section 4.03(5), the IEP Team requirements contained in 34 CFR §300.321 shall apply in their entirety to meetings held for the development of an initial IEP or for the review of an IEP.
- 4.03 (5) (a) The Director of special education or designee who is knowledgeable about the availability of resources of the administrative unit and has the authority to commit those resources shall be a required agency representative consistent with 34 CFR 300.321(a)(4). The requirements contained in 34 CFR §300.321(e) regarding the non-attendance or excusal of certain IEP Team members shall not apply to this IEP Team member.
- 4.03 (5) (b) If the meeting is not the responsibility of the administrative unit of residence, the special education director or designee for the administrative unit of residence may, at his/her discretion, participate in the meeting.
- 4.03 (5) (c) If the child has been publicly placed at an eligible facility or a private school, a representative of the eligible facility or private school must attend the IEP Team meeting. If the representative is unable to attend, his or her participation must be ensured through methods consistent with 34 CFR §300.328.
- 4.03 (6) Content of IEP/Record of Meeting.

The IEP must meet the IEP content requirements established by 34 CFR §300.320(a) and §300.320(c). In addition, the following IEP content is required:

- 4.03 (6) (a) The written IEP for each child with a hearing disability shall include a Communication Plan as developed by the IEP team. The Plan shall include the following:
- 4.03 (6) (a) (i) A statement identifying the child's primary communication mode as one or more of the following: Aural, Oral, Speech-based, English Based Manual or Sign System, American Sign Language. Further, there should be no denial of opportunity for instruction in a particular communication mode based on:
- 4.03 (6) (a) (i) (A) residual hearing,
- 4.03 (6) (a) (i) (B) the parents' inability to communicate in the child's communication mode or language, nor
- 4.03 (6) (a) (i) (C) the child's experience with another mode of communication or language.
- 4.03 (6) (a) (ii) A statement documenting that an explanation was given of all educational options provided by the school district and available to the child.
- 4.03 (6) (a) (iii) A statement documenting that the IEP team, in addressing the child's needs, considered the availability of deaf/hard of hearing adult role models and a deaf/hard of hearing peer group of the child's communication mode or language.
- 4.03 (6) (a) (iv) The communication-accessible academic instruction, school services, and extracurricular activities the student will receive must be identified.

The teachers, interpreters, and other specialists delivering the communication plan to the student must have demonstrated proficiency in, and be able to accommodate for, the child's primary communication mode or language.

- 4.03 (6) (b) The written IEP for each child with a vision disability shall include a Learning Media Plan as developed by the IEP team based on comprehensive assessment of the student's learning and literacy modalities by a licensed teacher endorsed in the area of visual impairment. Braille shall be the literacy medium selected unless the IEP team determines, based on the comprehensive literacy learning media assessment that instruction in Braille is not appropriate. The plan shall include the following:
- 4.03 (6) (b) (i) a statement of how the selected learning and literacy mode or modes will be implemented as the student's primary or secondary mode for achieving literacy and why such mode or modes have been selected,
- 4.03 (6) (b) (ii) a statement of how the student's instruction in the selected learning and literacy mode or modes will be integrated into educational activities.
- 4.03 (6) (b) (ii) the date on which the student's instruction in the selected mode or modes shall commence, the amount of instructional time to be dedicated to each learning and literacy mode, and the service provider responsible for each area of instruction, and
- 4.03 (6) (b) (iv) a statement of the level of competency in each selected learning and literacy mode or modes which the student should achieve by the end of the period covered by the IEP.

Colorado teachers licensed and endorsed in the area of Visual Impairment must have demonstrated competency in reading and writing literary Braille per the guidelines developed by the Colorado Department of Education.

- 4.03 (6) (c) Academic Content Standards
- 4.03 (6) (c) (i) The IEP for a child enrolled in a school district or the State Charter School Institute shall specify:
 - 4.03 (6) (c) (i) (A) Whether the child shall achieve the content standards adopted by the district in which the child is enrolled or by the State Charter School Institute; or
 - 4.03 (6) (c) (i) (B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP:
- 4.03 (6) (c) (ii) For each child attending school in an eligible facility or state-operated program, the IEP shall specify:
 - 4.03 (6) (c) (ii) (A) Whether the child shall achieve State or local content standards; or
 - 4.03 (6) (c) (ii) (B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP.
- 4.03 (6) (d) Exception: In lieu of 34 CFR §300.320(b), the IEP content requirement for transition services shall be as follows:
 - 4.03 (6) (d) (i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:
 - 4.03 (6) (d) (ii) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and;
 - 4.03 (6) (d) (iii) The transition services (as defined in Section 2.51 of these Rules and including courses of study) needed to assist the child in reaching those goals.
- 4.03 (6) (e) Beginning not later than one year before the child reaches the age of majority (i.e., age 21), the IEP must include a statement that the child has been informed of the child's rights under 6.02(9) of these Rules and 34 CFR §300.520.
- 4.03 (6) (f) Benchmarks and Short-Term Objectives.
 - 4.03 (6) (f) (i) Consistent with 34 CFR §300.320(a)(2)(ii), for students with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall contain a description of benchmarks or short-term objectives.
 - 4.03 (6) (f) (ii) Rule of construction: Nothing in these Rules shall be construed to prohibit an administrative unit or state-operated program from including benchmarks or short term objectives in a child's IEP.

- 4.03 (7) Parent Participation
- 4.03 (7) (a) The requirements for ensuring parent participation in the development of IEPs shall be consistent with 34 CFR §300.322.
- 4.03 (7) (b) Exception: In lieu of 34 CFR §300.322(b)(2), the requirements regarding parent participation at meetings involving postsecondary goals and services for a child shall be as follows:
- 4.03 (7) (b) (i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the notice of meeting must:
- 4.03 (7) (b) (i) (A) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services in accordance with Section 4.03(6)(d) of these Rules;
- 4.03 (7) (b) (i) (B) Indicate that the responsible administrative unit or state-operated program will invite the student; and
- 4.03 (7) (b) (i) (C) Identify any other agency that will be invited to send a representative. consistent with 34 CFR §300.321(b)(3), the administrative unit or state-operated program must obtain the consent of the parent to invite such representative.
- 4.03 (8) The requirements for parent involvement in educational placement decisions shall be consistent with 34 CFR §300.327 and §300.501(c).
- 4.03 (8) (a) The determination of placement must be based on the child's IEP and made by the IEP Team. The terms "placement" or "educational placement" are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child's IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee.
- 4.03 (8) (b) Change in placement.
- 4.03 (8) (b) (i) Nonsignificant change in program/services.
- When a child's educational program is altered, such as a change in the amount of a given service, the change in program/services is a nonsignificant change in program/services.
- 4.03 (8) (b) (i) (A) Prior written notice of such changes must be provided to the parent.
- 4.03 (8) (b) (i) (B) Consent is not required.
- 4.03 (8) (b) (i) (C) A non-significant change in program/services must be made by the IEP Team unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4). However, reevaluation is not required.

- 4.03 (8) (b) (ii) Significant change in placement:
- 4.03 (8) (b) (ii) (A) A significant change in placement for educational purposes includes placement or referral to a private school or eligible facility by the administrative unit, the addition or termination of an instructional or related service or any change which would result in the following:
- 4.03 (8) (b) (ii) (A) (I) The child having different opportunities to participate in nonacademic and extracurricular services,
- 4.03 (8) (b) (ii) (A) (II) The new placement option is a change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA.
- 4.03 (8) (b) (ii) (A) (III) The child transfers from a brick and mortar school to an on-line program or vice versa. The administrative unit for the entity sponsoring the on-line program is responsible for conducting the reevaluation and convening the IEP Team to determine whether the on-line program is an appropriate placement for the child.
- 4.03 (8) (b) (ii) (B) A significant change in placement shall be made upon consideration of reevaluation. Such change shall be made only by an IEP Team with the addition of those persons conducting such reevaluation unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4).
- 4.03 (8) (b) (iii) A change in building or location
- A change in building or location that is not a change in placement, as described in Section 4.03(8)(b), may be accomplished without convening the child's IEP Team or conducting a reevaluation. Decisions changing location or building should be made with due consideration for the impact on the child's total education program. A location or building decision that does not constitute a change in placement does not require prior written notice or an IEP Team meeting.
- 4.03 (8) (b) (iv) Public School Choice.
- When a student transfers to a new school or program, including an on-line program, under Public School Choice, the transfer requirements contained in 34 CFR §300.323(e) apply. If the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules, the administrative unit in which the receiving school or program is located must conduct a reevaluation consistent with Section 4.03(8)(b)(ii)(B) and also convene an IEP Team to ensure that the receiving school or program is an appropriate placement for the student. When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by this Rule, the charter school shall be responsible for the evaluation and IEP meeting. However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with all special education requirements.

4.03 (8) (c) The administrative unit or state-operated program shall consider the cost to the administrative unit or state-operated program when choosing between two or more appropriate placements.

4.03 (9) Participation of the Administrative Unit of Residence

If the administrative unit of residence is not responsible for a meeting, as set forth in Section 8.00 of these Rules, the administrative unit of attendance or state-operated program shall timely notify the Special Education Director/designee for the administrative unit of residence. Such notification shall be provided at the same time and in the same manner that the parent is notified of the meeting.

4.03 (10) Private Placements Made by Administrative Units and Public Agencies

Every administrative unit and every public agency, as that term is defined in Section 9.01(5) of these Rules, shall comply with the out-of-home and out-of-district placement requirements set forth in 34 CFR §300.325 and Section 9.00 of these Rules.

4.03 (11) Alternative Means of Meeting Participation

Alternative means of meeting participation and carrying out administrative matters involving procedural safeguards shall be consistent with 34 CFR §300.328.

REQUIREMENTS FOR FUNDING ELIGIBILITY

5.01 State Eligibility

The State of Colorado ("State") is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the State has in effect policies and procedures to ensure that the State meets the conditions of 34 CFR §§300.101 through 300.176 as follows:

- 5.01 (1) FAPE requirements as established by:
 - 5.01 (1) (a) 34 CFR §300.101 which addresses the following topics:
 - 5.01 (1) (a) (i) General requirements for FAPE;
 - 5.01 (1) (a) (ii) FAPE for children beginning at age 3; and
 - 5.01 (1) (a) (iii) Children advancing from grade to grade.
 - 5.01 (1) (b) 34 CFR §300.102 which establishes the limitations and exceptions to FAPE requirements including:
 - 5.01 (1) (b) (i) Children who do not meet the State's age requirements for FAPE;
 - 5.01 (1) (b) (ii) Children incarcerated in adult correctional facilities;
 - 5.01 (1) (b) (iii) Children with disabilities who have graduated from high school with a regular diploma; and
 - 5.01 (1) (b) (iv) Children who are eligible under Subpart 34 CFR §300.800 through §300.818 (preschool grants for children with disabilities);
 - 5.01 (1) (c) 34 CFR §300.103 - Methods and payments;
 - 5.01 (1) (d) 34 CFR §300.104 - Residential placement;
 - 5.01 (1) (e) 34 CFR §300.105 - Assistive technology;
 - 5.01 (1) (f) 34 CFR §300.106 - Extended school year services;
 - 5.01 (1) (g) 34 CFR §300.107 – Nonacademic services;
 - 5.01 (1) (h) 34 CFR §300.108 – Physical education;
 - 5.01 (1) (i) 34 CFR §300.109 – Full educational opportunity goal;
 - 5.01 (1) (j) 34 CFR §300.110 – Program options;
 - 5.01 (1) (k) 34 CFR §300.111 –Child find;
 - 5.01 (1) (l) 34 CFR §300.112 – IEPs;
 - 5.01 (1) (m) 34 CFR §300.113 – Routine checking of hearing aids and external components of surgically implanted medical devices;

- 5.01 (2) Least restrictive environment (LRE) requirements as established by:
 - 5.01 (2) (a) 34 CFR §300.114 –General requirements;
 - 5.01 (2) (b) 34 CFR §300.115 – Continuum of alternative placements;
 - 5.01 (2) (c) 34 CFR §300.116 – Placements;
 - 5.01 (2) (d) 34 CFR §300.117 – Nonacademic settings;
 - 5.01 (2) (e) 34 CFR §300.118 – Children in public or private institutions;
 - 5.01 (2) (f) 34 CFR §300.119 – Technical assistance and training activities; and
 - 5.01 (2) (g) 34 CFR §300.120 – Monitoring activities.
- 5.01 (3) Requirements for procedural safeguards as established by 34 CFR §300.121 and §300.500 through §300.536 except as is otherwise provided for in Section 6.02 of these Rules.
- 5.01 (4) Requirements for evaluation as established by 34 CFR §300.122 and §300.300 through §300.311 except as is otherwise provided for in Section 4.03 of these Rules.
- 5.01 (5) Requirements for safeguarding the confidentiality of personally identifiable information as established by 34 CFR §300.123 and §300.610 through §300.626 and Section 6.01 of these Rules.
- 5.01 (6) Requirements regarding the transition of children from Part C programs to preschool programs under Part B of IDEA as established by 34 CFR §300.124.
- 5.01 (7) Requirements regarding children with disabilities enrolled by their parents in private schools as established by 34 CFR §300.129 through §300.144.
- 5.01 (8) Requirements regarding children with disabilities placed in or referred to private schools or facilities by an administrative unit or a state-operated program as means of providing special education services as established by 34 CFR §300.145 through §300.147.
- 5.01 (9) Requirements regarding children with disabilities enrolled by their parents in private schools when FAPE is at issue as established by 34 CFR §300.148.
- 5.01 (10) Requirements regarding the Department's responsibilities for general supervision as established by 34 CFR §300.149 and §300.150.
- 5.01 (11) Requirements regarding State complaint procedures as established by 34 CFR §300.151 through §300.153 and the Department's specific procedures.
- 5.01 (12) Requirements regarding methods for ensuring services as established by 34 CFR §300.154.
- 5.01 (13) Requirements regarding hearings related to LEA eligibility as established by 34 CFR §300.155 and Section 7.07 of these Rules.
- 5.01 (14) Requirements regarding personnel qualifications as established by 34 CFR §300.156 and Sections 2.20 and 3.04 of these Rules.
- 5.01 (15) Requirements regarding performance goals and indicators as established by 34 CFR §300.157.

- 5.01 (16) Requirements regarding the supplementation of state, local and other federal funds as established by 34 CFR §300.162 through §300.164 and §300.166.
- 5.01 (17) Requirements regarding public participation as established by 34 CFR §300.165.
- 5.01 (18) Requirements regarding the Colorado Special Education Advisory Committee as established by 34 CFR §300.168 and §300.169.
- 5.01 (19) Requirements regarding suspension and expulsion rates as established by 34 CFR §300.170.
- 5.01 (20) Requirements regarding an annual description of Part B funds as established by 34 CFR §300.171.
- 5.01 (21) Requirements regarding access to instructional materials, including the Department's adoption of the National Instructional Materials Accessibility Standard (NIMAS) as established by 34 CFR §300.172.
 - 5.01 (21) (a) The Department adopts the NIMAS, published as Appendix C to Part 300 of 34 CFR.
 - 5.01 (21) (b) The Department shall coordinate with the National Instructional Materials Access Center (NIMAC) for purposes of providing instructional materials in a timely manner to children with disabilities who may qualify to receive books and other publications in specialized formats.
 - 5.01 (21) (c) Definitions applicable to this subsection and Section 5.02(10) of these Rules:
 - 5.01 (21) (c) (i) "In a timely manner" means that all reasonable steps have been taken to provide children with disabilities instructional materials at the same time that instructional materials are provided to nondisabled peers;
 - 5.01 (21) (c) (ii) When used in 34 CFR §300.172, the term "blind persons or other persons with print disabilities" has the meaning given it in 34 CFR §300.172(e)(1)(ii);
 - 5.01 (21) (c) (iii) "National Instructional Materials Access Center" or "NIMAC" has the meaning given the term in 34 CFR §300.172(e)(1)(ii);
 - 5.01 (21) (c) (iv) "National Instructional Materials Accessibility Standard" or "NIMAS" has the meaning given the term in 34 CFR §300.172(e)(1)(iii).
- 5.01 (22) Requirements regarding overidentification and disproportionality as established in 34 CFR §300.173.
- 5.01 (23) Requirements, including the rule of construction, regarding the prohibition on mandatory medication as established by 34 CFR §300.174.
 - 5.01 (23) (a) Personnel of the Department, an administrative unit, a school district or a state-operated program are prohibited from requiring parents to obtain a prescription for substances identified in 34 CFR §300.174(a) as a condition of attending school, receiving an evaluation under Section 4.02 of these Rules, or receiving special education services.

5.02 Administrative Unit Eligibility

An administrative unit is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the administrative unit submits a plan that provides assurance to the Department that the administrative unit meets each of the conditions established by 34 CFR §300.200 through §300.213 as follows:

- 5.02 (1) Consistency with State policies established under the relevant subsections of Section 5.01 of these Rules and 34 CFR §300.101 through §300.163, and §300.165 through §300.174 and §300.201;
- 5.02 (2) Requirements regarding the use of amounts of Part B funds as established in 34 CFR §300.202;
- 5.02 (3) Requirements regarding maintenance of effort as established in 34 CFR §300.203;
- 5.02 (4) Requirements regarding exceptions to maintenance of effort established in 34 CFR §300.204;
- 5.02 (5) Requirements regarding adjustment of local fiscal efforts in certain fiscal years as established in 34 CFR §300.205;
- 5.02 (6) Requirements regarding schoolwide programs under Title I of the ESEA as established in 34 CFR §300.206;
- 5.02 (7) Requirements regarding personnel development as established in 34 CFR §300.207;
- 5.02 (8) Requirements regarding permissive use of funds as established in 34 CFR §300.208;
- 5.02 (9) Requirements regarding the treatment of charter schools as established in 34 CFR §300.209;
- 5.02 (10) Requirements regarding the purchase of instructional materials as established in 34 CFR §300.210;
- 5.02 (11) Requirements regarding the provision of information to the department as established in 34 CFR §300.211;
- 5.02 (12) Requirements regarding the accessibility of all Part B Eligibility Documents to parents and the general public as established in 34 CFR §300.212;
- 5.02 (13) Requirements regarding records pertaining to migratory children with disabilities as established in 34 CFR §300.213;
- 5.02 (14) Requirements regarding prior local plans as established by 34 CFR §300.220;
- 5.02 (15) Requirements regarding administrative unit and state-operated compliance with 34 CFR §§300.200 through 300.221; and
- 5.02 (16) Requirements regarding early intervening services.

5.03 State-Operated Program Eligibility

A state-operated program is eligible for assistance under Part B of the IDEA if the state-operated program demonstrates to the satisfaction of the Department that it meets the requirements set forth in 34 CFR §300.228.

5.04 Additional Funding and Reporting Requirements

- 5.04 (1) In order to be receive funding under Part B of the IDEA, administrative units and state-operated units must timely provide the information required by Section 618 of the Act, 20 USC §1418.
- 5.04 (2) In order to receive funding under the Exceptional Children's Educational Act, administrative units and state-operated programs must timely provide the information required by Section 22-20-114(4) and (6), C.R.S.

CONFIDENTIALITY OF INFORMATION AND PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

6.01 Confidentiality of Information

Procedures regarding the confidentiality of information shall be consistent with 34 CFR §300.611 through §300.626 which address the following topics:

- 6.01 (1) 34 CFR §300.611—Definitions;
- 6.01 (2) 34 CFR §300.612—Notice to parents;
- 6.01 (3) 34 CFR §300.613—Parent access to records;
- 6.01 (4) 34 CFR §300.614—Record of access;
- 6.01 (5) 34 CFR §300.615—Records on more than one child;
- 6.01 (6) 34 CFR §300.616—List of types and locations of information;
- 6.01 (7) 34 CFR §300.617—Fees;
- 6.01 (8) 34 CFR §300.618—Amendment of records at parent's request;
- 6.01 (9) 34 CFR §300.619—Opportunity for a hearing;
- 6.01 (10) 34 CFR §300.620—Result of hearing;
- 6.01 (11) 34 CFR §300.621—Hearing procedures;
- 6.01 (12) 34 CFR §300.622—Consent;
- 6.01 (13) 34 CFR §300.623—Safeguards;
- 6.01 (14) 34 CFR §300.624—Destruction of information;
- 6.01 (15) 34 CFR §300.625—Children's rights; and
- 6.01 (16) 34 CFR §300.626—Enforcement.

6.02 Procedural Safeguards and Due Process Procedures for Parents and Children

Except as otherwise provided for in this Section 6.02, each administrative unit and state-operated program shall establish, maintain, and implement procedural safeguards that meet the requirements of 34 CFR §§300.500 through 300.536. The topics addressed by such regulations include:

- 6.02 (1) 34 CFR §300.501—Opportunity to examine records and parent participation in meetings.
- 6.02 (2) 34 CFR §300.502—Independent educational evaluation.
- 6.02 (3) 34 CFR §300.503—Prior written notice and content of prior written notice.

6.02 (4) 34 CFR §300.504—Procedural Safeguards Notice.

6.02 (5) 34 CFR §300.505—Electronic mail.

6.02 (6) 34 CFR §300.506—Mediation.

6.02 (7) Due Process Complaints and Appeals

6.02 (7) (a) General.

Except as is otherwise provided for in this Section 6.02(7), the requirements regarding resolution meetings, due process hearings and appeals shall be consistent with 34 CFR §300.507 through §300.515.

6.02 (7) (a) (i) Procedures regarding the due process complaint, including the content of the due process complaint and filing requirements, shall be consistent with 34 CFR §300.507 and §300.508.

6.02 (7) (a) (ii) Consistent with 34 CFR §300.509, a parent or the administrative unit or state-operated program may use the model due process complaint form developed by the Department, or another form or other document, so long as the form or document that is used meets the due process complaint content requirements set forth in 34 CFR §300.508(B).

6.02 (7) (a) (iii) Upon receipt of the first due process complaint filed by a parent in a school year, the Special Education Director of the administrative unit or state-operated program must provide the parent with a copy of the procedural safeguards available to parents consistent with 34 CFR §300.504.

6.02 (7) (b) Due Process Complaint – specific filing requirements.

6.02 (7) (b) (i) The party filing a due process complaint shall file a copy of the due process complaint with the Department at the same time that the due process complaint is filed with the opposing party to ensure that the Department timely assigns an impartial hearing officer to the case.

6.02 (7) (b) (ii) If the party filing the complaint is a parent, the party shall file the due process complaint with the Special Education Director of the affected administrative unit or state-operated program.

6.02 (7) (b) (iii) Regardless of whether the administrative unit/state-operated program or the parent has initiated the due process complaint, when the Special Education Director of the administrative unit or state-operated program knows that a due process complaint has been filed, it is the responsibility of the Special Education Director to:

6.02 (7) (b) (iii) (A) By phone, immediately notify the Department of the existence of the due process complaint; and

6.02 (7) (b) (iii) (B) By facsimile, immediately provide a copy of the due process complaint to the Department accompanied by a written statement documenting the date when the due process complaint was filed.

6.02 (7) (b) (iv) Under no circumstance may the party receiving a due process complaint unilaterally determine that the due process complaint is insufficient or that it

fails to state a claim under federal or state special education law. A notice of insufficiency may be presented to the impartial hearing officer pursuant to 34 CFR §300.508(d).

- 6.02 (7) (c) Assignment of an impartial hearing officer.

The Department shall assign an impartial hearing officer from the registry of impartial hearing officers on a rotating basis, depending on availability, within two business days after the Department's receipt of a due process complaint.
- 6.02 (7) (d) Timelines applicable to resolution meetings and mediation.
- 6.02 (7) (d) (i) Resolution Meeting
- 6.02 (7) (d) (i) (A) Within 15 days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing, the administrative unit or state-operated program must convene a resolution 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 that—
 - 6.02 (7) (d) (i) (A) (I) Includes a representative of the administrative unit or state-operated program who has decision-making authority on behalf of that agency; and
 - 6.02 (7) (d) (i) (A) (II) May not include an attorney of the administrative unit or state-operated program unless the parent is accompanied by an attorney.
 - 6.02 (7) (d) (i) (B) 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 administrative unit or state-operated program has the opportunity to resolve the dispute that is the basis for the due process complaint.
 - 6.02 (7) (d) (i) (C) The resolution meeting described need not be held if—
 - 6.02 (7) (d) (i) (C) (I) The parent and the administrative unit or state-operated program agree in writing to waive the resolution meeting; or
 - 6.02 (7) (d) (i) (C) (II) The parent and the administrative unit or state-operated program agree to use the mediation process described in 34 CFR §300.506 and Section 6.02(6) of these Rules.
 - 6.02 (7) (d) (i) (D) The parent and the administrative unit or state-operated program determine the relevant members of the IEP Team to attend the resolution meeting.
- 6.02 (7) (d) (ii) Resolution Period
- 6.02 (7) (d) (ii) (A) If the administrative unit or state-operated program 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.

- | | | | | | |
|------|-----|-----|-------|-----|--|
| 6.02 | (7) | (d) | (ii) | (B) | Except as provided in Section 6.02(7)(d)(ii)(C), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period. |
| 6.02 | (7) | (d) | (ii) | (C) | Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. |
| 6.02 | (7) | (d) | (ii) | (D) | If the administrative unit or state-operated program is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (using the procedures in 34 CFR §300.322(d)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the impartial hearing officer dismiss the parent's due process complaint. |
| 6.02 | (7) | (d) | (ii) | (E) | If the administrative unit or state-operated program fails to hold the resolution meeting 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 the impartial hearing officer to begin the due process hearing 45-day timeline. |
| 6.02 | (7) | (d) | (iii) | | Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events: |
| 6.02 | (7) | (d) | (iii) | (A) | Both parties agree in writing to waive the resolution meeting; |
| 6.02 | (7) | (d) | (iii) | (B) | 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; |
| 6.02 | (7) | (d) | (iii) | (C) | If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the administrative unit or state-operated program withdraws from the mediation process. |
| 6.02 | (7) | (e) | | | Timelines applicable to due process hearings and convenience of hearings. |
| 6.02 | (7) | (e) | (i) | | The administrative unit or state-operated program must ensure that not later than 45 days after the expiration of the 30 day resolution period, or the adjusted time periods described in Section 6.02(7)(d)(iii), above— |
| 6.02 | (7) | (e) | (i) | (A) | A final decision is reached in the hearing; and |
| 6.02 | (7) | (e) | (i) | (B) | A copy of the decision is mailed to each of the parties. |
| 6.02 | (7) | (e) | (ii) | | At the request of either party, the impartial hearing officer may grant specific extensions of time beyond the 45 day due process hearing period, or the adjusted time periods described in Section 6.02(7)(d)(iii), above. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7)(f)(v), below. |
| 6.02 | (7) | (e) | (iii) | | Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved. |

6.02 (7) (f) Conduct of due process hearings

The procedures regarding the conduct of due process hearings shall be consistent with the requirements established by 34 CFR §300.511. The topics addressed in 34 CFR §300.511 include:

6.02 (7) (f) (i) The qualifications of impartial hearing officers.

The department shall maintain a registry of persons trained by the Department who may serve as due process hearing officers. The registry shall include a statement of the qualifications of each impartial hearing officer. At a minimum, an impartial hearing officer must meet the qualifications established by 34 CFR §300.511(c). The Department, at its discretion, may require additional qualifications.

6.02 (7) (f) (ii) The subject matter of due process hearings; and

6.02 (7) (f) (iii) The timeline and exceptions to the timeline for requesting a hearing.

6.02 (7) (f) (iv) Specific procedures

The hearing officer shall:

6.02 (7) (f) (iv) (A) Consistent with the timelines in Section 6.02(7)(e), above, establish the procedures and timelines to be followed during the hearing.

6.02 (7) (f) (iv) (B) Schedule the time and place for the hearing.

6.02 (7) (f) (iv) (C) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined.

6.02 (7) (f) (iv) (D) At the request of either party, secure subpoenas from the Department of Personnel and Administration, Office of Administrative Courts, to compel attendance of witnesses at the hearing.

6.02 (7) (f) (iv) (E) Ensure that a written or electronic verbatim account of the hearing is kept.

6.02 (7) (f) (iv) (F) Provide, to the Department a copy of any order or decision issued.

6.02 (7) (f) (v) Extension of timelines

6.02 (7) (f) (v) (A) Any request by a party to extend a due process hearing decision timeline shall be made within a reasonable period of time prior to the expiration of the 45 day period or previously extended time period;

6.02 (7) (f) (v) (B) The impartial hearing officer's decision regarding the requested extension of a due process decision timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and

6.02 (7) (f) (v) (C) The impartial hearing officer shall provide a copy of such written order to the parties and to the Department.

- 6.02 (7) (f) (v) (D) Exception. In the case of an expedited due process hearing requested as a result of a disciplinary change of placement pursuant to 34 CFR § 300.532(c), the timelines established in Section 6.02(7)(i)(ii), below, shall apply.
- 6.02 (7) (g) Hearing Rights
- Generally, hearing rights accorded to parties shall be consistent with 34 CFR §300.512.
- 6.02 (7) (h) Hearing Decisions
- 6.02 (7) (h) (i) General. Due process hearing decisions shall be consistent with the requirements established by 34 §300.513. The topics addressed by 34 CFR §300.513 include:
- 6.02 (7) (h) (i) (A) The decision of the hearing officer on the provision of FAPE;
- 6.02 (7) (h) (i) (B) Separate request for a due process hearing; and
- 6.02 (7) (h) (i) (C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.
- 6.02 (7) (h) (ii) Specific requirements for due process decisions.
- 6.02 (7) (h) (ii) (A) The impartial hearing officer shall render, in writing, all findings of fact and the decision based upon the evidence.
- 6.02 (7) (h) (ii) (B) The hearing officer shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7)(i)(ii).
- 6.02 (7) (h) (ii) (C) The hearing officer shall include with the decision mailed to the parties a copy of Section 6.02(7)(j) of these Rules regarding state level review (i.e., appeal) of the decision.
- 6.02 (7) (h) (ii) (D) Except for the caption of the case, the decision shall be written such that it does not disclose personally identifiable information of the child or the parent(s).
- 6.02 (7) (h) (ii) (E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the tape recording of the hearing, if available. The record shall be forwarded to the department within 45 days after the conclusion of all preceedings if no appeal is taken.
- 6.02 (7) (i) Expedited Due Process Hearings
- 6.02 (7) (i) (i) General.
- Consistent with 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an administrative unit or state-operated program that believes that maintaining the current placement of the child is substantially likely to

result in injury to the child or others, may appeal the decision by requesting a hearing, and must have the opportunity for an expedited hearing. The requirements for expedited due process hearings, including timelines, shall be in accordance with 34 CFR §300.532.

6.02 (7) (i) (ii) Specific Timelines

6.02 (7) (i) (ii) (A) The administrative unit or state-operated program is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

6.02 (7) (i) (ii) (B) Unless the parents and administrative unit or state-operated program agree in writing to waive the resolution meeting, or agree to use the mediation process described in 34 CFR §300.506—

6.02 (7) (i) (ii) (B) (I) The resolution meeting must occur within seven days of receiving notice of the due process complaint; and

6.02 (7) (i) (ii) (B) (II) 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.

6.02 (7) (i) (iii) The requirements and procedures contained in this Section 6.02(7)(a) through 6.02(7)(h) shall apply to expedited due process hearings to the extent that such requirements and procedures are not in conflict with 34 CFR §300.532.

6.02 (7) (j) Appeals

6.02 (7) (j) (i) Right to appeal decision of impartial hearing officer.

6.02 (7) (j) (i) (A) General.

The procedures governing the appeal of a due process hearing decision, including a decision rendered in an expedited due process hearing, shall be consistent with 34 CFR §300.514.

6.02 (7) (j) (i) (B) Specific Requirements.

Either party may obtain state level review of the decision of the impartial hearing officer including a decision rendered in an expedited due process hearing. The state level review shall be conducted on behalf of the Commissioner of Education by an administrative law judge of the Colorado Department of Personnel and Administration, Office of Administrative Courts.

6.02 (7) (j) (ii) Procedure for appealing the decision of an impartial hearing officer.

6.02 (7) (j) (ii) (A) Any party who seeks to appeal the decision of an impartial hearing officer shall file with or mail to the Office of Administrative Courts within 30 days after receipt of the impartial hearing officer's decision:

6.02 (7) (j) (ii) (A) (I) A notice of appeal.

- | | | | | | | |
|------|-----|-----|------|-----|-------|---|
| 6.02 | (7) | (j) | (ii) | (A) | (II) | A designation of the transcript. A party may designate a portion of the tape recorded record or arrange for a transcript of the tape recorded record. |
| 6.02 | (7) | (j) | (ii) | (B) | | Simultaneously with mailing or filing the notice of appeal and designation of transcript with the Office of Administrative Courts, the appealing party shall mail copies of these documents to the Department and to all other parties in the proceeding before the impartial hearing officer at their last known addresses. |
| | | | | | | Within five days of receipt of a notice of appeal, any other party may file a cross appeal. |
| 6.02 | (7) | (j) | (ii) | (C) | | The notice of appeal shall contain the following: |
| 6.02 | (7) | (j) | (ii) | (C) | (I) | The caption of the case, including case number and names of all parties. |
| 6.02 | (7) | (j) | (ii) | (C) | (II) | The party or parties initiating the appeal. |
| 6.02 | (7) | (j) | (ii) | (C) | (III) | A brief description of the nature of the case and the order being appealed. |
| 6.02 | (7) | (j) | (ii) | (C) | (IV) | A list of the issues to be raised on appeal. |
| 6.02 | (7) | (j) | (ii) | (C) | (V) | A copy of the findings of fact and decision of the impartial hearing officer being appealed. |
| 6.02 | (7) | (j) | (ii) | (C) | (VI) | A certificate of service showing the date that the copy of the notice of appeal was mailed to the Department and to all parties in the proceeding before the impartial hearing officer. All subsequent documents and pleadings filed with the Office of Administrative Courts shall similarly contain a certificate of service showing that a copy was mailed to all parties. |
| 6.02 | (7) | (j) | (ii) | (D) | | A notice of cross appeal shall contain those items listed in Section 6.02(7)(j)(ii)(C) of these Rules, along with a certificate of service. |
| 6.02 | (7) | (j) | (ii) | (E) | | At the time that the notice of appeal is filed or mailed, the appealing party shall also file with or mail to the Office of Administrative Courts a statement that no transcript is necessary for the appeal and a review of the tape recorded record is sufficient; or a designation of all portions of the transcript necessary for resolution of the appeal. No transcript is required if the issues on appeal are limited to pure questions of law. |
| 6.02 | (7) | (j) | (ii) | (F) | | Within five days after the receipt of the notice of appeal and designation of transcript or tape recording, the other party may file with the Office of Administrative Courts a designation of any additional portions of the transcript which the party believes are necessary for resolution of the appeal. |

- | | | | | | | |
|------|-----|-----|-------|-----|-------|--|
| 6.02 | (7) | (j) | (ii) | (G) | | Whichever party appeals the decision shall insure that such transcript is filed with the Office of Administrative Courts within 15 days of the date the notice of appeal is mailed or filed. |
| 6.02 | (7) | (j) | (ii) | (G) | (I) | Whichever party appeals the decision shall, simultaneously with filing or mailing the notice of appeal and designation of record, contact the court reporter and order the transcript or arrange for the transcription of a tape recorded record or submit the entire tape recorded record. |
| 6.02 | (7) | (j) | (ii) | (G) | (II) | Immediately upon filing any additional designations pursuant to Section 6.02(7)(j)(ii)(A)(II) of these Rules, any party submitting designations shall order from the court reporter the transcript or arrange for transcription in the case of a tape recorded record and shall insure that such transcript is filed with the Office of Administrative Courts within 15 days, or submit the entire tape recording. |
| 6.02 | (7) | (j) | (ii) | (G) | (III) | A party requesting a written transcript is responsible for paying for it. A party requesting parts of a written transcript by filing an additional designation is responsible to pay for those portions of the transcript. Parent(s) shall not be required to pay for the cost of a copy of the tape recorded record for an appeal. The transcript or portions thereof shall be made available to any party at reasonable times for inspection or copying at the copier's expense. |
| 6.02 | (7) | (j) | (ii) | (H) | | Upon receipt of the notice of appeal, the administrative law judge assigned to hear the appeal shall direct the impartial hearing officer to certify and transmit to the administrative law judge, within seven days, all pleadings and documents filed with the impartial hearing officer, all exhibits and the decision of the impartial hearing officer. |
| 6.02 | (7) | (j) | (iii) | | | State level review procedures. |
| 6.02 | (7) | (j) | (iii) | (A) | | Unless otherwise ordered by the administrative law judge, briefs shall be filed and oral argument held within 20 days after the filing or mailing of the notice of appeal. |
| 6.02 | (7) | (j) | (iii) | (B) | | In conducting a state level review, the administrative law judge shall: |
| 6.02 | (7) | (j) | (iii) | (B) | (I) | Examine the entire hearing record including the certified record received from the impartial hearing officer. |
| 6.02 | (7) | (j) | (iii) | (B) | (II) | Ensure that the procedures used at the due process hearing were consistent with the requirements of due process; |
| 6.02 | (7) | (j) | (iii) | (B) | (III) | Seek additional evidence, if necessary. If a hearing is held to receive evidence, the rights in 34 CFR §300.512 apply; |
| 6.02 | (7) | (j) | (iii) | (B) | (IV) | Afford the parties an opportunity for oral or written argument, or both, at the discretion of the administrative law judge. Each appeal involving an evidentiary hearing or oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. |

- | | | | | | | |
|------|-----|-----|-------|-----|-------|---|
| 6.02 | (7) | (j) | (iii) | (B) | (V) | Make an independent decision and mail such to all parties within 30 days after the request for a review is received. |
| 6.02 | (7) | (j) | (iii) | (B) | (VI) | Prior to issuing the decision, the administrative law judge shall transmit a copy of the decision to the Department. |
| 6.02 | (7) | (j) | (iii) | (B) | (VII) | Give a copy of the written, or, at the option of the parents, electronic findings of fact and decision to the parties. |
| 6.02 | (7) | (j) | (iii) | (C) | | The Department shall transmit the findings and decisions to the Colorado State Advisory Committee and the general public consistent with the requirements of 34 CFR §300.514(c). |
| 6.02 | (7) | (j) | (iii) | (D) | | The decision made by the administrative law judge is final unless a party brings a civil action pursuant to 34 CFR §300.516 and Section 6.02(7)(k) of these Rules. |
| 6.02 | (7) | (j) | (iv) | | | Timelines applicable to appeals and convenience of appeals. |
| | | | | | | The Department must ensure that not later than 30 days after the receipt of a timely appeal— |
| 6.02 | (7) | (j) | (iv) | (A) | | A final decision is reached in the appeal; and |
| 6.02 | (7) | (j) | (iv) | (B) | | A copy of the decision is mailed to each of the parties. |
| 6.02 | (7) | (j) | (v) | | | Extension of appeal timelines. At the request of either party the administrative law judge may grant specific extensions of time beyond the 30 day appeal period for the issuance of a decision. Any such extension of time shall be made in accordance with Section 6.02(7)(j)(vi), below. |
| 6.02 | (7) | (j) | (vi) | | | Extension of timelines |
| 6.02 | (7) | (j) | (vi) | (A) | | Any request by a party to extend an appeal decision timeline shall be made within a reasonable period of time prior to the expiration of the 30 day appeal period or previously extended time period; |
| 6.02 | (7) | (j) | (vi) | (B) | | The administrative law judge's decision regarding the requested extension of an appeal timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and |
| 6.02 | (7) | (j) | (vi) | (C) | | The administrative law judge shall provide a copy of such written order to the parties and to the Department. |
| 6.02 | (7) | (k) | | | | Civil Action. |
| | | | | | | Any party aggrieved by the findings and decision of the administrative law judge has the right to bring a civil action consistent with the requirements set forth in 34 CFR §300.516. |

6.02 (7) (l) Attorneys' fees.

Reasonable attorneys' fees may be awarded to a prevailing party by a court of competent jurisdiction consistent with the requirements established by 34 CFR §300.517.

6.02 (7) (m) Child's status during proceedings

The child's status during the pendency of any administrative or judicial proceeding shall be governed by the requirements established by 34 CFR §300.518 unless the due process complaint involves the disciplinary placement of the child, in which case 34 CFR §300.533 applies.

6.02 (8) 34 CFR §300.519—Educational Surrogate Parents

6.02 (8) (a) General.

The administrative unit of attendance and each state-operated program must ensure that the rights of a child are protected when—

6.02 (8) (a) (i) No parent (as defined in Section 2.33 of these Rules) can be identified;

6.02 (8) (a) (ii) The administrative unit of attendance or the state-operated program, after reasonable efforts, cannot locate a parent;

6.02 (8) (a) (iii) The child is a ward of the State; or

6.02 (8) (a) (iv) The child is a homeless child as defined in Section 22-1-102.5, C.R.S.

6.02 (8) (b) Educational Surrogate Parent Registry

The Department shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child. The purpose of the registry is to track those students for whom an educational surrogate parent has been assigned through the procedures established in this Section 6.02(8).

6.02 (8) (c) Duties of the administrative unit of attendance or state-operated program.

The duties of an administrative unit of attendance or a state-operated program under Section 6.02(8) include the assignment of an individual to act as an educational surrogate parent for the child. This must include a method-

6.02 (8) (c) (i) For determining whether a child needs an educational surrogate parent; and

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

6.02 (8) (d) Children placed in the legal custody of the Colorado Department of Human Services.

In the case of a child who is placed in the legal custody of the Colorado Department of Human Services, the educational surrogate parent alternatively may be appointed by the court overseeing the child's case, provided that the educational surrogate parent meets the requirements in Section 6.02(8)(e)(iii).

- 6.02 (8) (e) Criteria for selection of educational surrogate parents.
- 6.02 (8) (e) (i) The Special Education Director of the administrative unit of attendance or state-operated program shall assign educational surrogate parents.
- 6.02 (8) (e) (ii) After determining that a child needs an educational surrogate parent but before the educational surrogate parent is assigned, the Special Education Director must contact the Department to verify that there is no existing educational surrogate assignment for the child.
- 6.02 (8) (e) (iii) The Special Education Director must ensure that a person selected and assigned as an educational surrogate parent—
- 6.02 (8) (e) (iii) (A) Is not an employee of the Department, the administrative unit of residence, the administrative unit of attendance (if different from the administrative unit of residence), or state-operated program, or any other public agency that is involved in the education or care of the child;
- 6.02 (8) (e) (iii) (B) Has no personal or professional interest that conflicts with the interest of the child whom the educational surrogate parent represents; and
- 6.02 (8) (e) (iii) (C) Has knowledge and skills that ensure adequate representation of the child.
- 6.02 (8) (f) Requirement for written certification
- The Special Education Director shall document in writing, on a form approved by the Department of Education, each assignment of an educational surrogate parent, including a written certification that the requirements of Section 6.02(8)(e)(iii) have been met. The Special Education Director shall provide a copy of the written assignment to the Department within three (3) business days of the date of the assignment.
- 6.02 (8) (g) Non employee requirement; compensation.
- A person otherwise qualified to be an educational surrogate parent under Section 6.02(8)(e)(iii) is not an employee of the administrative unit of attendance or state-operated program solely because he or she is paid by such administrative unit or state-operated program to serve as an educational surrogate parent.
- 6.02 (8) (h) Homeless children.
- In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to Section 6.02(8)(e)(iii), above, until an educational surrogate parent can be appointed that meets all of the requirements of Section 6.02(8)(e)(iii).
- 6.02 (8) (i) Educational surrogate parent responsibilities.
- The educational surrogate parent may represent the child in all matters relating to—
- 6.02 (8) (i) (i) The identification, evaluation, and educational placement of the child; and

- 6.02 (8) (i) (ii) The provision of FAPE to the child.
- 6.02 (8) (j) Responsibility of the Department.

The Department must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than 30 days after the responsible administrative unit or state-operated program determines that the child needs an educational surrogate parent.
- 6.02 (8) (k) Eligible Facilities.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an eligible facility needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the eligible facility is not located within the boundaries of the administrative unit of residence, the administrative unit in which the eligible facility is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.
- 6.02 (9) 34 CFR §300.520—Transfer of parental rights at age of majority. The age of majority for educational purposes in the State of Colorado is age 21;
- 6.02 (10) 34 CFR §300.530 through §300.537—Student discipline procedures.

Student discipline procedures and protections for children with disabilities shall be in consistent with the requirements set forth 34 CFR §300.530 through §300.537. The topics addressed by those requirements include:
 - 6.02 (10) (a) Authority of school personnel—34 CFR §300.530
 - 6.02 (10) (b) Removals for not more than ten (10) consecutive school days and patterns of removal—34 CFR §300.530(b)(1);
 - 6.02 (10) (c) Removals cumulating to more than ten (10) school days in a school year—34 CFR §300.530(b)(2);
 - 6.02 (10) (d) Removals exceeding 10 consecutive schools days – 34 CFR §300.530(c);
 - 6.02 (10) (e) Required provision of services for students suspended or expelled for more than ten cumulative school days in a school year—34 CFR §300.530(b)(2) and 34 CFR §300.530(d);
 - 6.02 (10) (f) Manifestation determinations—34 CFR §300.530(e) and 34 CFR §300.530(f);
 - 6.02 (10) (g) Special circumstances—34 CFR §300.530(g);
 - 6.02 (10) (h) Requirements regarding notification to parents—34 CFR §300.530(h);
 - 6.02 (10) (i) Applicable definitions—34 CFR §300.530(i)
 - 6.02 (10) (j) Determination of setting—34 34 CFR §300.531;
 - 6.02 (10) (k) Appeal (including expedited due process hearings)—34 CFR §300.532;
 - 6.02 (10) (l) Placement during appeals—34 CFR §300.533;

- 6.02 (10) (m) Protections for children not determined eligible for special education and related services—34 CFR §300.534;
- 6.02 (10) (n) Referral to and action by law enforcement and judicial authorities—34 CFR §300.535; and
- 6.02 (10) (o) Change of placement because of disciplinary removals—34 CFR §300.536.

COORDINATION BETWEEN SEA AND LEAs

7.01 Record Keeping

To meet the requirements of Sections 22-20-104(4), C.R.S., an administrative unit shall maintain a management and information system which provides for the collection, documentation, aggregation, and reporting of student, staff, revenue and expenditure data.

- 7.01 (1) Student data.
- 7.01 (1) (a) Administrative units should maintain an individual student data base of the following information:
 - 7.01 (1) (a) (i) Student name.
 - 7.01 (1) (a) (ii) Date of birth.
 - 7.01 (1) (a) (iii) Primary disability.
 - 7.01 (1) (a) (iv) Student's gender and ethnicity.
 - 7.01 (1) (a) (v) Primary educational setting.
 - 7.01 (1) (a) (vi) Date of the most recent meeting at which the child was determined to have a disability.
 - 7.01 (1) (a) (vii) Date of the most recent meeting at which the IEP was reviewed.
 - 7.01 (1) (a) (viii) Individual staff who are providing special education programs and services identified in the student's IEP.
- 7.01 (1) (b) Administrative units, community centered boards, and eligible facilities should maintain individual student records that contain the following:
 - 7.01 (1) (b) (i) Information about the disposition of each referral.
 - 7.01 (1) (b) (ii) Signed permission forms for initial assessment and initial placement.
 - 7.01 (1) (b) (iii) Verification that parent(s) were advised of and understood their due process rights.
 - 7.01 (1) (b) (iv) Any written assessment reports.
 - 7.01 (1) (b) (v) Documentation that appropriate written notice was given to parent(s).
 - 7.01 (1) (b) (vi) Documentation that required participants were in attendance at meetings.
 - 7.01 (1) (b) (vii) Records of all meetings at which the child was determined to have a disability.
 - 7.01 (1) (b) (viii) A copy of all IEPs.

- 7.01 (1) (b) (ix) Any additional information which documents that the child is eligible for special education services.
- 7.01 (1) (c) Individually identifiable information shall be held confidential and protected in accordance with Section 6.01 of these Rules.
- 7.01 (1) (d) Destruction of records shall be in compliance with Section 6.01(14) of these Rules and 34 CFR §300.624.
- 7.01 (2) Staff data.

Administrative units should maintain the following data for all special education services staff:
 - 7.01 (2) (a) Name.
 - 7.01 (2) (b) Special education position assignment.
 - 7.01 (2) (c) FTE and salary attributable to special education, and source of funds supporting that salary.
 - 7.01 (2) (d) Documentation of time spent with students with disabilities for each staff member who is employed part-time in special education and part-time in regular education.
- 7.01 (3) Revenue and expenditure data.
 - 7.01 (3) (a) Administrative units shall maintain auditable records of all special education expenditures and of the state, federal, local and other revenues which are received in support of those expenditures.
 - 7.01 (3) (b) Using the accrual basis of accounting, administrative units shall operate a budgeting and accounting procedure which records the objects of expenditure for each special education instructional and support service area.
 - 7.01 (3) (c) Community centered boards and eligible facilities shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

7.02 Reporting

Each administrative unit shall submit to the Department of Education annual student, staff, revenue and expenditure data according to the instructions and on forms or computer programs provided by the Department of Education. If accurate data are not submitted according to deadlines established by the Department, the disbursement of state and federal funds to that particular unit shall be delayed.

7.03 SPECIAL EDUCATION FUNDING

- 7.03 (1) Federal funds.
 - 7.03 (1) (a) Administrative units shall obtain prior approval from the Department of Education for the use of federal funds in support of special education services.
 - 7.03 (1) (b) The approval criteria and procedures for the use of federal funds shall be governed by relevant rules and regulations promulgated pursuant to state and federal laws.

7.03 (1) (c) Federally funded programs shall be considered supplementary to the basic program required by the Exceptional Children's Educational Act (ECEA).

7.03 (2) ECEA funds.

Under the requirements of Section 22-20-104(4), C.R.S., an administrative unit shall use its state ECEA funds only on special education services and programs, as outlined in Section 2.44 of these Rules.

7.03 (3) Payments of ECEA funds.

ECEA funds shall be distributed in accordance with Sections 22-20-114 and 22-20-114.5, C.R.S.

7.04 (Reserved)

7.05 Monitoring

Each administrative unit, State Operated Program and eligible facility shall comply with all state statutes and regulations regarding the identification and/or education of children with disabilities.

7.05 (1) Each administrative unit, State Operated Program or eligible facility shall be subject to ongoing monitoring by the Department of Education of its policies, procedures and practices relating to the identification and/or education of children with disabilities.

7.05 (1) (a) Monitoring procedures shall include:

7.05 (1) (a) (i) A determination of compliance with statutes according to the administrative unit on-site checklist developed by the Department of Education.

7.05 (1) (a) (ii) An assessment of program quality based on the standards established by the Department of Education.

7.05 (1) (b) Monitoring activities shall be determined by the Department of Education and shall include:

7.05 (1) (b) (i) Review of the comprehensive plan of the administrative unit, state-operated program or eligible facility,

7.05 (1) (b) (ii) A review of the data routinely collected by the Department of Education,

7.05 (1) (b) (iii) A planned comprehensive or targeted on-site process to identify and verify compliance with and implementation of policies and procedures as well as delivery of services,

7.05 (1) (b) (iv) Count audits consisting of periodic checks of student eligibility criteria through verification of documentation as found in students' files and on individual education programs.

7.05 (1) (c) Follow-up to assure non-compliance issues have been rectified shall be ongoing. Follow-up of non compliance issues identified from the count audits will occur as part of the comprehensive on-site monitoring process.

- 7.05 (2) Within 90 days from the completion of any monitoring procedure or activity, the Department of Education shall provide a written report based on the administrative unit on-site checklist, to the administrative unit, state-operated program or eligible facility which shall include findings, non-compliance items, directives for corrective action, and recommendations for improvement.
- 7.05 (2) (a) Should the Department of Education determine that an administrative unit, state-operated Program or eligible facility is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such administrative unit, state-operated program or eligible facility with the legal citation of the statute or regulation it is found to have violated and the directive for corrective action or request for a corrective action plan.
- 7.05 (2) (b) Should the Department of Education determine that an administrative unit, state-operated Program or eligible facility does not reasonably satisfy quality standards or guidelines established by the Department of Education, recommendations will be made.
- 7.05 (3) Within 90 days following any report of non-compliance, the administrative unit, state-operated Program or eligible facility shall provide the Department of Education with a corrective action plan including timelines, or sufficient documentation that corrective actions ordered by the Department have been made, whichever is applicable.
- 7.05 (4) Within 20 days following the receipt of the corrective action plan of the administrative unit, state-operated Program or eligible facility, the Department of Education shall acknowledge receipt of such and indicate whether or not it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.
- 7.05 (5) If the administrative unit, state-operated Program or eligible facility does not agree with any findings or directives for corrective action it may appeal in accordance with Section 7.07 of these Rules.
- 7.05 (6) If the Department of Education is unable to secure voluntary compliance through the actions described above, the administrative unit, state-operated program or eligible facility shall be notified of the noncompliance and the subsequent steps to be taken by the Department of Education which may include any of the following or any other appropriate means of enforcing compliance requirements:
- 7.05 (6) (a) disapproval or failure to approve in whole or part, the application of the administrative unit, state-operated program or eligible facility for funding;
- 7.05 (6) (b) order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;
- 7.05 (6) (c) withhold and/or terminate further financial assistance to the administrative unit, state-operated program or eligible facility;
- 7.05 (6) (d) suspend payments, under an approved project, to the administrative unit, state-operated program or eligible facility.
- 7.05 (7) Information regarding monitoring findings and resolutions shall be forwarded to the appropriate Department of Education staff for consideration in the accreditation process for a school district or the Colorado School for the Deaf and the Blind.

7.06 Variance

- 7.06 (1) If a school district or administrative unit believes that noncompliance with any portion of these Rules is justified and would affect their approval or status as an administrative unit or receipt of acceptable monitoring reports, it may file a written request for variance with the Department of Education. These variance requests are to be distinguished from requests to the State Board of Education for waivers of state law pursuant to section 22-2-117, C.R.S. Neither the variance process nor the waiver process applies to federal law or regulations. A variance request shall:
 - 7.06 (1) (a) Specify the section of these Rules from which a variance is requested.
 - 7.06 (1) (b) Identify those conditions unique to the unit/facility or other needs or rationale justifying such request.
 - 7.06 (1) (c) Specify methods by which the unit/facility will evaluate and report the educational effectiveness of the variance proposal.
- 7.06 (2) A written notice of approval or denial of the request shall be made by the Department of Education to the unit/facility within 30 days of its receipt of such request.
 - 7.06 (2) (a) The approval process shall consider the improved educational effectiveness of such request as demonstrated by the following factors:
 - 7.06 (2) (a) (i) Administrative efficiency.
 - 7.06 (2) (a) (ii) Cost effectiveness.
 - 7.06 (2) (a) (iii) Noninterference with rights and/or procedural safeguards.
 - 7.06 (2) (a) (iv) Nonadverse impact on contiguous areas.
 - 7.06 (2) (b) If the initial request is approved, the variance shall be in effect for no longer than one school year at which time the unit may request a continuance. Approval of subsequent requests shall take into consideration the above factors.
 - 7.06 (2) (c) If the initial request or a continuance is denied, the unit may appeal that decision in accordance with Section 7.07 of these Rules.

7.07 Appeals

- 7.07 (1) Any decision of the Department relating to an administrative unit, a state-operated program or an eligible facility may be appealed by the affected entity to the state board within 60 days of the entity's receipt of the written notice from the Department.
- 7.07 (2) The State Board of Education will conduct a hearing and make a determination concerning the appeal within 60 days from the date of request. The decision of the State Board shall be final.
- 7.07 (3) A written notice of denial or approval shall be prepared and delivered to the administrative unit, state-operated program or eligible facility.

RESPONSIBILITIES OF ADMINISTRATIVE UNITS, STATE-OPERATED PROGRAMS AND ELIGIBLE FACILITIES

8.01 General Responsibilities

8.01 (1) Duties and Responsibilities of Administrative Units.

An administrative unit shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for:

- 8.01 (1) (a) The development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:
 - 8.01 (1) (a) (i) Financial commitments and agreements of the unit and of the participating districts for special education programs and services.
 - 8.01 (1) (a) (ii) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.
 - 8.01 (1) (a) (iii) Procedures for regular, periodic evaluation of programs, services and student progress.
- 8.01 (1) (b) Resource allocation and management to assure adequate personnel, facilities, materials and equipment in accordance with the provisions of Section 3.03 of these Rules to meet the needs of children with disabilities.
- 8.01 (1) (c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
- 8.01 (1) (d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.
- 8.01 (1) (e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00, 5.00, and 8.00 of the Rules.
- 8.01 (1) (f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.
- 8.01 (1) (g) Staff development in accordance with Section 3.05 of these Rules.
- 8.01 (1) (h) Program evaluation in accordance with Section 3.06 of these Rules.
- 8.01 (2) Duties and responsibilities of eligible facilities.

An eligible facility with an on-grounds school approved by the State Board of Education in accordance with Section 3.02(1) of these Rules shall be responsible for:

- 8.01 (2) (a) Development of a Comprehensive Plan in accordance with the provisions of Sections 3.02(1)(a)(viii) and 3.02(1)(e) of these Rules.
- 8.01 (2) (b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.

- 8.01 (2) (c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
- 8.01 (2) (d) Maintenance and access to student records in accordance with Section 7.01 of these Rules.
- 8.01 (2) (e) IEP planning, in collaboration with the responsible administrative unit, and the delivery of services in accordance with the provisions of Sections 4.00, 5.00 and 8.00 of these Rules.
- 8.01 (2) (f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.
- 8.01 (2) (g) Staff development in accordance with Section 3.05 of these Rules.
- 8.01 (2) (h) Program evaluation in accordance with Section 3.06 of these Rules.
- 8.01 (3) Duties and Responsibilities of State-Operated Programs.

A state-operated program shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for the development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:

- 8.01 (3) (a) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.
- 8.01 (3) (b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.
- 8.01 (3) (c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
- 8.01 (3) (d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.
- 8.01 (3) (e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of the Rules.
- 8.01 (3) (f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.
- 8.01 (3) (g) Staff development in accordance with Section 3.05 of these Rules.
- 8.01 (3) (h) Program evaluation in accordance with Section 3.06 of these Rules.

8.02 Specific Responsibilities for Special Education Functions and Services

- 8.02 (1) Except as is otherwise provided for in these Rules, the administrative unit of attendance is responsible for child identification, as defined by Section 4.02 of these Rules, IEP planning, delivery of special education services, and the provision of a free appropriate public education to each child with a disability attending public school within the administrative unit, including convening and conducting required meetings related to such special education functions.

- 8.02 (1) (a) A child with a disability attending public school is entitled to all special education services specified by the child's IEP and to a free appropriate public education.
- 8.02 (1) (b) Consistent with 34 CFR §§300.129 through 300.144, each administrative unit is responsible for conducting child identification and serving designated parentally placed private school students with disabilities in elementary and secondary private schools located within the boundaries of the administrative unit, including developing a services plan for such designated students.
- 8.02 (1) (c) The administrative unit of attendance is not responsible for the delivery of special education services or the provision of a free appropriate public education to a child with a disability placed in an eligible facility approved by the State Board of Education. It is, however, responsible for certain other special education functions identified in this Rule 8.00.
- 8.02 (2) If a child with a disability is not enrolled in school, the administrative unit of residence is responsible for the provision of child find identification services.

8.03 Responsibility for Special Education Tuition

- 8.03 (1) Pursuant to Section 9.03 of these Rules, the district of residence is responsible for the payment of special education tuition as that term is defined by Section 9.01(8) of these Rules.
- 8.03 (2) The relative responsibilities of administrative units, districts of residence, eligible facilities, charter schools and on-line programs for public out-of-district placement of students, school choice placement of students, and special education tuition are established in Section 9.00 of these Rules. Each BOCES and its member districts shall jointly develop procedures and/or cooperative agreements that will ensure compliance with such Rules.
- 8.03 (3) If the child's district of attendance is not the child's district of residence but is within the same administrative unit as the child's district of residence, the payment of tuition, if any, shall be determined by the administrative unit and the two districts involved.

8.04 Responsibility for Initial Assessment and Reevaluation

- 8.04 (1) Responsibility for initial assessment and reevaluation shall be with the administrative unit in which the child attends school, or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. The administrative unit of attendance shall invite the Special Education Director or designee of the administrative unit of residence to participate in the process of the initial assessment or re-evaluation. State-operated programs and eligible facilities shall be excepted from this Rule as follows:
 - 8.04 (1) (a) Initial assessment and re-evaluation for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes or the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.
 - 8.04 (1) (b) Initial assessment and re-evaluation for incarcerated children shall be the responsibility of the Department of Corrections.
 - 8.04 (1) (c) Re-evaluation for children at eligible facilities shall be the responsibility of the administrative unit of residence.
 - 8.04 (1) (d) When the charter contract between a charter school and its authorizer allows the charter school to provide initial evaluations and reevaluations, the charter school

shall be responsible for conducting such evaluations and complying with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all such evaluations meet the requirements of Section 4.02.

8.05 Meetings During Which a Disability or Eligibility is Initially Considered

- 8.05 (1) Meetings during which a disability or eligibility is initially considered shall be the responsibility of the administrative unit in which the child attends school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.
- 8.05 (1) (a) If the administrative unit in which the parent resides would be different from the administrative unit of attendance, the administrative unit of attendance shall notify the Special Education Director of the administrative unit in which the child's parent resides prior to the assessment process so that the administrative unit of residence may choose to participate in the process.
- 8.05 (1) (b) If the administrative unit in which the parent resides disagrees with the determination of eligibility, the administrative unit of residence may elect to initiate an informal process such as negotiation or mediation or it may request the Commissioner of Education to review the process of determination. Disagreements subject to this informal dispute resolution option are limited to those involving allegations that the administrative unit of attendance failed to comply with the evaluation and eligibility determination procedures established by Section 4.02 of these Rules, including the requirement that the administrative unit of residence be invited to participate in the evaluation of the child consistent with Section 8.05(1)(a) of these Rules.
- 8.05 (1) (c) Except for state-operated programs and eligible facilities, review meetings in which the determination of disability and eligibility is reconsidered shall be the responsibility of the administrative unit of attendance. This includes review meetings for children with disabilities attending on-line programs within the administrative unit of attendance. For state-operated programs, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the state-operated programs. For eligible facilities, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the administrative unit of residence.
- 8.05 (1) (d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the eligibility determination meetings required by these Rules, the charter school shall be responsible for meeting the eligibility determination requirements in compliance with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all eligibility determinations and related meetings comply with the requirements of Section 4.02.

8.06 Meetings to Initially Develop or to Subsequently Review the Child's Individualized Educational Program (IEP)

- 8.06 (1) If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the Special Education Director of the administrative unit of residence to participate as an IEP Team member. This includes on-line programs operated within the administrative unit of attendance. Exceptions to this Rule are as follows:

- 8.06 (1) (a) All meetings for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes and the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.
- 8.06 (1) (b) All meetings for incarcerated children at the Department of Corrections shall be the responsibility of that agency.
- 8.06 (1) (c) Meetings to develop the initial individualized educational program (IEP) for children at eligible facilities shall be the responsibility of the administrative unit of attendance (the administrative unit in which the facility is located). Thereafter IEP review meetings and re-determination of eligibility shall be the responsibility of the administrative unit of residence.
- 8.06 (1) (d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the meetings required by these Rules, the charter school shall be responsible for meetings to initially develop and subsequently review the IEP in compliance with Section 4.03 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that IEP planning and related meetings comply with the requirements of Section 4.03.

8.07 Transfers Under Public School Choice Involving a Significant Change in Placement

- 8.07 (1) When a child seeks to transfer to a new school or program, including an on-line program under public school choice, and the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules:
- 8.07 (1) (a) A reevaluation consistent with Section 4.03(8)(b)(ii)(B) must be conducted by the administrative unit in which the school or program is located, and an IEP Team convened by such administrative unit. The purpose of the IEP Team meeting is to ensure that the receiving school or program is an appropriate placement for the student. Consistent with this Section 8.00, if the administrative unit of the receiving school or program is different from the administrative unit of residence, the Special Education Director of the administrative unit of residence shall be notified of the reevaluation and also invited to the IEP meeting.
- 8.07 (1) (b) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by Section, the charter school shall be responsible for the reevaluation and the IEP meeting in compliance with this section and Section 4.03(8)(b)(ii). However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with this section and Section 4.03(8)(b)(ii).

8.08 Responsibility for IDEA Part C Child Find

The administrative unit of residence is responsible for IDEA Part C child find consistent with Section 22-20-118, C.R.S.

2220-R-9.00

OUT OF DISTRICT PLACEMENTS

9.01 DEFINITIONS

- 9.01 (1) **“Applicable Revenues”** means:

- 9.01 (1) (a) The Per Pupil Operating Revenue (PPOR) or the Per Pupil Revenue (PPR), whichever is applicable, as follows:
- 9.01 (1) (a) (i) The state average PPOR when an administrative unit of residence initiates a placement of a child with a disability into an eligible facility for its day treatment or residential program, and the eligible facility also provides the child's educational program;
- 9.01 (1) (a) (ii) The PPOR of the district of residence when an administrative unit of residence places a child with a disability into an eligible facility for the educational program only;
- 9.01 (1) (a) (iii) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., not including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S.;
- 9.01 (1) (a) (iv) The PPR of the accounting district, as defined under Section 22-30.5-513 (1)(a), C.R.S., when a child with a disability enrolls in and attends an institute charter school pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.
- 9.01 (1) (a) (v) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., and the school does not provide the child an on-line program and the school is not a charter school;
- 9.01 (1) (a) (vi) The PPOR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or
- 9.01 (1) (a) (vii) The state minimum PPR when a child with a disability enrolls in and attends a public on-line program pursuant to section 22-33-104.6, C.R.S., including an on-line program provided by a charter school.
- 9.01 (1) (b) For three- and four-year old children with disabilities, and for five-year old children with disabilities who are not enrolled in kindergarten, 50 percent PPOR shall be considered applicable revenue.
- 9.01 (1) (c) Monies available from federal sources.
- 9.01 (1) (d) Monies received under ECEA.
- 9.01 (1) (e) Monies received from other state agencies.
- 9.01 (1) (f) Monies received from other administrative units, not including tuition.
- 9.01 (1) (g) Monies received through grants and donations.
- 9.01 (2) **"Charter School"** means a charter school authorized under Article 30.5 of Title 22, C.R.S. **"District Charter School"** means a charter school authorized by a school district pursuant to Part 1 of Article 30.5, C.R.S. **"Institute Charter School"** means a charter school authorized by the state Charter School Institute pursuant to Part 5 of Article 30.5, C.R.S.

- 9.01 (3) **“Eligible Facility”** means a group care facility (e.g., a psychiatric residential treatment facility and a therapeutic treatment facility), group home, community-centered board, hospital, or state-licensed day treatment facility that offers a school program providing special education services to children with disabilities that has been approved by the State Board of Education.
- 9.01 (4) **“On-line Program”** means an alternative on-line education program as defined in Section 22-33-104.6(2)(b), C.R.S.
- 9.01 (5) **“Public Agency”**, for purposes of this Rule 9.00, means a public agency that is not an administrative unit and is legally authorized to place a child in an eligible facility or another out-of-home placement.
- 9.01 (6) **“Public Placement”** means the placement of a child with a disability in an eligible facility or another out-of-home placement by a court or public agency.
- 9.01 (7) **“Special Education Expenditures”** means the expenditures as defined in Section 2.00 of these Rules.
- 9.01 (8) **“Tuition Costs”** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an eligible facility, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

9.02 OUT OF HOME PLACEMENT

- 9.02 (1) If it becomes necessary for a court or a public agency to place a child in a public placement (e.g., placements in eligible facilities and foster care homes):
- 9.02 (1) (a) Non-emergency placement: prior to the public placement, the court or public agency shall work cooperatively with the child's then current administrative unit of residence and the administrative unit in which the placement is to be made to ensure that appropriate special education services are available for the child. The receiving agency, institution, administrative unit, state-operated program, or eligible facility providing the services shall cooperate in the development of the IEP.
- 9.02 (1) (b) Emergency placement: if an emergency placement for the safety of the child is required, the placing court or placing public agency may make the emergency placement without first cooperating with the child's then current administrative unit of residence or the administrative unit in which the placement is to be made.
- 9.02 (2) In no event shall a child be placed in an eligible facility or an administrative unit that is unable to ensure the provision of special education services that are appropriate for the child.

9.03 RESPONSIBILITY FOR TUITION COSTS

9.03 (1) Criteria for School Choice Placements

Tuition shall be owed to the charter school, district of attendance, or on-line program for a child who has a disability identified under 9.03(1)(a) and meets one of the factors set forth in 9.03(1)(b):

9.03 (1) (a) Eligible Disabilities

The child has been identified as having one or more of the following disabilities, as defined by Section 2.00 of these Rules:

9.03 (1) (a) (i) A Vision Disability;

9.03 (1) (a) (ii) A Hearing Disability;

9.03 (1) (a) (iii) A Concomitant Hearing and Visual Impairment, the combination of which causes severe communication and other developmental and educational needs to the extent that the child cannot be accommodated in a special education program solely for children with deafness or children with blindness;

9.03 (1) (a) (iv) A Significant Identifiable Emotional Disability;

9.03 (1) (a) (v) Autism;

9.03 (1) (a) (vi) A Traumatic Brain Injury;

9.03 (1) (a) (vii) Multiple Disabilities; or

9.03 (1) (a) (viii) Significant Limited Intellectual Capacity.

9.03 (1) (b) Indicators of Intensity and Duration of Services

9.03 (1) (b) (i) For schools or programs serving a broad range of children with and without disabilities, tuition shall be owed only for those children with disabilities identified in Section 9.03(1)(a) whose program intensity and duration of services differ significantly from the intensity and duration of services provided by the school or program to children with disabilities not included in Section 9.03(1)(a).

9.03 (1) (b) (ii) For schools or programs designed primarily to serve children with disabilities which provide an intensity and duration of services that differ significantly from other programs in the administrative unit of attendance, tuition shall be owed for all students listed in Section 9.03(1)(a).

9.03 (2) Type of Tuition Placements

9.03 (2) (a) Placement in Eligible Facilities

9.03 (2) (a) (i) When a child with a disability is placed, by a public agency, into an eligible facility, the district of residence is responsible for paying the educational costs over and above applicable revenues, also known as tuition costs. The district of residence shall count the child as a child in an eligible facility on the

October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The tuition costs shall be determined by the Department of Education for each eligible facility in accordance with Section 9.06(1) of these Rules. Such tuition costs shall be the maximum amount the district of residence shall be obligated to pay for the special education program. The district of residence may pay a higher tuition cost than the cost established and approved by the Department of Education for children in need of specialized services, if these services were included in a child's IEP but were not included in the approved tuition cost. The district of residence is not responsible for paying tuition costs for extended school year services for a child unless the child's IEP specifies the need for extended school year services. The Department of Education does not set the amount of tuition costs the administrative unit of attendance may charge the district of residence for children in group homes served by the administrative unit of attendance.

- 9.03 (2) (a) (ii) Any court of record, the Department of Human Services, or any other public agency authorized by law to place a child with a disability in an eligible facility shall notify in writing the child's administrative unit of residence, the administrative unit in which the eligible facility is located and the Department of the placement within fifteen calendar days after the placement. If a court or public agency makes a public placement but fails to provide the required written notice, such court or public agency shall be responsible for the tuition costs for the child until such time as the required notification is made. If the child's administrative unit of residence does not provide written notice of disapproval of the child's placement in an eligible facility by a court or public agency within fifteen calendar days after the required notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the administrative unit of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined in accordance with Sections 5.04(1) and (2) of these Rules.
- 9.03 (2) (a) (ii) (A) If an administrative unit of residence initiates a placement of a child with a disability into an eligible facility for its day treatment or residential program, and the eligible facility also provides the child's educational program, the district of residence shall count the child as a child in an eligible facility on the October 1 Count, and the administrative unit of residence shall count the child on its December 1 Special Education Count. The eligible facility shall bill the department for the state average per pupil operating revenue, and the administrative unit of residence shall pay the eligible facility all remaining day treatment or residential costs, as well as any additional educational costs agreed to by the parties.
- 9.03 (2) (a) (ii) (B) If an administrative unit of residence places a child with a disability into an eligible facility for the educational program only, the district of residence must count the child on the October 1 Count as being in a private school placement, and the administrative unit of residence shall count the child on its December 1 Special Education Count as being in a private school placement. The eligible facility shall not bill the Department for the state average PPOR for the child. Instead the eligible facility shall bill the administrative unit of residence for the total

cost of the child's educational program, as agreed to by the eligible facility and the administrative unit of residence.

9.03 (2) (b) Placement in Charter Schools

When a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S., the district of residence shall be responsible for paying to the charter school or the chartering authority, whichever is providing the special education services, the tuition costs incurred in educating the child. The chartering authority shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The amount of the tuition costs shall be determined pursuant to Section 9.06(2) of these Rules. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. Nothing in this subsection shall be construed to apply to the charter contract entered into between a charter school and its chartering authority or to allow a charter school to seek tuition costs from its chartering authority. The tuition responsibility shall be reflected in a contract among the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, in a form approved by the chartering authority, and consistent with Section 9.05(1) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03 (2) (b) (i) Tuition shall be owed to the charter school for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03 (2) (b) (ii) The provisions in Section 9.03(2)(b) also apply when:

9.03 (2) (b) (ii) (A) A child is already enrolled in the charter school and is subsequently identified as a child with a disability in connection with the child find process; or

9.03 (2) (b) (ii) (B) A charter school, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03 (2) (b) (iii) The provisions in Section 9.03(2)(b) apply only if the charter school complies with the Rules herein governing tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with Sections 9.03(2)(b), 9.05(1), 9.06(2) and 9.07(2) of the Rules. Section 9.04(2) of these Rules applies regardless of whether the charter school intends to bill the district of residence for tuition costs. This subsection in no way relieves the charter school or the administrative unit of attendance, depending on the charter contract, from the obligation to provide a free appropriate public education to the children with disabilities attending the charter school.

9.03 (2) (c) Placement in Traditional Schools of Choice

When a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to the provisions of Section 22-36-101, C.R.S., and the school does not provide the child an on-line program pursuant to Section 22-33-104.6, C.R.S., and the school is not a charter school pursuant to Article 30.5 of Title 22, C.R.S., the district of residence shall be responsible for paying the tuition costs for educating the child to the district of

attendance. The district where the child attends shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, must negotiate a contract which does not need to be approved by the Department of Education. No written approval for the placement is required from the administrative unit of residence and/or the district of residence. The administrative unit of attendance shall provide notice in accordance with Section 9.04(1) of these Rules.

9.03 (2) (c) (i) Tuition shall be owed to the district of attendance for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03 (2) (c) (ii) The provisions in Section 9.03(2)(c) of these Rules also apply when:

9.03 (2) (c) (ii) (A) A child is already enrolled in the district of attendance under public schools of choice and is subsequently identified as a child with a disability in connection with the child find process; or

9.03 (2) (c) (ii) (B) A district of attendance, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03 (2) (c) (iii) The provisions in Section 9.03(2)(c) of these Rules apply only if the district of attendance complies with the Rules herein governing tuition costs. Likewise, if the district of attendance does not intend to seek tuition costs, neither it nor the administrative unit of attendance is required to comply with Sections 9.03(2)(c), 9.06(3) and 9.07(1) of these Rules. Section 9.04(1) of these Rules applies regardless of whether the district of attendance intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance from the obligation to provide a free appropriate public education to the children with disabilities attending school in the administrative unit under public schools of choice.

9.03 (2) (d) Placement in On-line Programs

When a child with a disability enrolls in and attends a public on-line program pursuant to Section 22-33-104.6, C.R.S., that is not provided by a charter school, the district of residence shall be responsible for paying to the provider of the on-line program the tuition costs incurred in educating the child. The district where the child attends school shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The tuition responsibility shall be reflected in a contract among the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, in accordance with Section 9.04(3) of these Rules, and in a form approved by the Department of Education. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. The on-line provider shall provide notice in accordance with these Rules when a child with a disability applies to enroll in the on-line program. The amount of the tuition costs shall be determined pursuant to Section 9.06(4) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03 (2) (d) (i) Tuition shall be owed to the on-line program for those children based on the criteria set forth in Section 9.03(1) of these Rules.

- 9.03 (2) (d) (ii) The provisions in Section 9.03(2)(d) of these Rules also apply when:
- 9.03 (2) (d) (ii) (A) A child is already enrolled in the on-line program and is subsequently identified as a child with a disability in connection with the child find process; or
- 9.03 (2) (d) (ii) (B) An on-line program, which has not been billing for tuition costs for a child with a disability enrolled in its program, decides to initiate a tuition contract.
- 9.03 (2) (d) (iii) The provisions in Section 9.03(2)(d) of these Rules apply only if the on-line program complies with the Rules herein governing tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, Sections 9.03(2)(d), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply. Section 9.04(3) of these Rules applies regardless of whether the on-line program intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance for the on-line program from the obligation to provide a free appropriate public education to the children with disabilities attending the on-line program.
- 9.03 (2) (d) (iv) The provisions in Section 9.03(2)(d), 9.04(3), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply to any on-line program that is providing services that are supplemental to the curriculum of a school district.
- 9.03 (2) (e) Placement by Administrative Units
- An administrative unit may purchase services from one or more administrative units where an appropriate special education program exists. The district of residence shall count the child for the October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The two administrative units must negotiate a contract, including the cost of the program, which does not need to be approved by the Department of Education.

9.04 SCHOOLS OF CHOICE NOTIFICATION REQUIREMENTS

9.04 (1) Notice - Public Schools Of Choice That Are Not Charter Schools Or On-line Programs

The district of attendance shall provide written notice to the district of residence when a child applies to enroll or is enrolled in one of its schools and the principal of the school knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

- 9.04 (1) (a) Applies to Enroll
- “Applies to enroll” means that the district of attendance has offered a space to the child and the parent(s) has accepted the offer.
- 9.04 (1) (b) Content of Notice
- The written notice by the district of attendance shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04 (1) (c) Manner

The notice shall be in writing, shall be signed by the school principal and shall be sent to the superintendent of the district of residence, if the district of residence is not an administrative unit, and to the special education directors of the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04 (1) (d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04 (1) (d) (i) The child has applied to enroll, as that term is defined in this section, or is enrolled in the district of attendance; and

9.04 (1) (d) (ii) Upon exercising timely and due diligence, the school principal knows that the child is a child with a disability.

9.04 (1) (e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(1) must be followed. In addition, the district of attendance must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director of the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04 (2) Notice - Charter Schools

The charter school shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the charter school and the charter school's administrator knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04 (2) (a) Applies to Enroll

"Applies to enroll" shall mean that the charter school has offered a space to the child and the parent(s) has accepted the offer.

9.04 (2) (b) Content of Notice

The written notice by the charter school shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04 (2) (c) Manner

The notice shall be in writing, shall be signed by the charter school administrator and shall be sent to the superintendent of the district of residence, if the district of residence is not an administrative unit, and to the directors of special education for

both the administrative units of residence and attendance. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04 (2) (d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04 (2) (d) (i) The child has applied to enroll, as defined in this section, or is enrolled in the charter school; and

9.04 (2) (d) (ii) Upon exercising timely and due diligence, the charter school administrator knows that the child is a child with a disability.

9.04 (2) (e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(2) must be followed. In addition, the charter school must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04 (3) NOTICE - Public On-line Programs Under Section 22-33-104.6, C.R.S.

The on-line program shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the on-line program and the on-line program's director knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04 (3) (a) Applies to Enroll

"Applies to enroll" shall mean that the on-line program has offered a space to the child and the parent(s) has accepted the offer.

9.04 (3) (b) Content of Notice

The written notice by the on-line program director shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; the date of the enrollment application; the anticipated date of admission; and that the child has been identified as a child with a disability.

9.04 (3) (c) Manner

The notice shall be signed by the director of the on-line program and shall be sent to the superintendent of the district of residence, if the district of residence is not the administrative unit of residence, and to the directors of special education for the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04 (3) (d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04 (3) (d) (i) The child has applied to enroll or is enrolled in the on-line program, as defined in this Section; and

9.04 (3) (d) (ii) Upon exercising timely and due diligence, the on-line program director knows that the child is a child with a disability.

9.04 (3) (e) Change in District of Residence

If there is a change in the child's district of residence the same notification and timelines set forth in this Section 9.04(3) must be followed. In addition, the on-line program must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05 CONTRACT FOR TUITION RESPONSIBILITY

9.05 (1) Charter School

9.05 (1) (a) Contract Elements

The charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the chartering authority. The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

9.05 (1) (a) (i) The name of the district of residence;

9.05 (1) (a) (ii) The name of the administrative unit of residence, if different from the district of residence;

9.05 (1) (a) (iii) The name of the charter school;

9.05 (1) (a) (iv) The name of the chartering authority;

9.05 (1) (a) (v) The name of the administrative unit of attendance, if different from the chartering authority;

9.05 (1) (a) (vi) The name of the child;

9.05 (1) (a) (vii) The child's date of birth;

9.05 (1) (a) (viii) The child's address;

9.05 (1) (a) (ix) The child's primary disability;

- 9.05 (1) (a) (x) Whether the child will be attending full-time or part-time;
- 9.05 (1) (a) (xi) The charter school's tuition cost rate as approved by the state board, or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the state board approved rate will be charged;
- 9.05 (1) (a) (xii) The number of school days (student contact days) covered by the contract;
- 9.05 (1) (a) (xiii) The schedule for billing and payment, which should be on a monthly basis;
- 9.05 (1) (a) (xiv) A statement that the charter school will notify the directors of special education for the administrative units of residence and attendance, as well as the superintendent of the district of residence, if the district is not an administrative unit, within 15 calendar days of the date of the child's withdrawal from the charter school or when the child is otherwise no longer attending the charter school. If the charter school is an on-line program, this section shall not apply. Instead, Section 9.05(2)(a)(xiii) shall apply.
- 9.05 (1) (a) (xv) A statement that the charter school will not bill the district of residence for more than 5 consecutive days of unexcused absences or for more than 10 cumulative days of unexcused absences during the school year;
- 9.05 (1) (a) (xvi) A statement that the charter school or the administrative unit of attendance, whichever is responsible according to the charter contract, will timely notify the director of special education for the administrative unit residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);
- 9.05 (1) (a) (xvii) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commence, unless the child's IEP team determines that the charter school is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14) of these Rules; and
- 9.05 (1) (a) (xviii) Signature lines for the individuals who are legally authorized to sign the contract on behalf of the charter school, the administrative unit of residence, and the district of residence if it is not an administrative unit.
- 9.05 (1) (b) Additional Contract Elements for Children Enrolled in Charter School On-line Programs
- If the charter school sponsors an on-line program, the costs of direct speech language instruction and related services will not be included in the charter school's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech/language instruction and/or related services, the contract between the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, must contain the following additional elements:
- 9.05 (1) (b) (i) A statement that the child's IEP specifies speech/language instruction and/or related services and a description of the nature and duration of such services;

- 9.05 (1) (b) (ii) A statement identifying which entity (i.e., the charter school, the chartering school authority, the administrative unit of attendance, if different from the chartering authority, the administrative unit of residence or a third party) will deliver such services;
- 9.05 (1) (b) (iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of residence is failing or has failed to provide appropriate services as specified by the child's IEP;
- 9.05 (1) (b) (iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of attendance is failing or has failed to provide appropriate services as specified by the child's IEP;
- 9.05 (1) (b) (v) A statement describing whether the costs of providing the speech-language instruction and/or related services will be an add-on to the tuition cost rate approved by the State Board that will be billed and an identification of what those costs will be;
- 9.05 (1) (b) (vi) If the speech-language instruction and/or a related service are to be provided by the charter school or a third party contractor with the charter school that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the service in the amount of time specified on the child's IEP. If such services are to be provided by the charter school or a third party contractor of the charter school, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the charter school or its third party contractor is failing or has failed to provide appropriate services as specified by the child's IEP; and
- 9.05 (1) (b) (vii) If speech-language instruction and/or related services associated with child find are being claimed, then such services must be included in the charter school's tuition cost rate.
- 9.05 (1) (c) Change in District of Residence
- If there is a change in the child's district of residence the charter school must notify the new district of residence in accordance with Section 9.04(2) of these Rules. The charter school must also enter into a tuition contract with the new district of residence in accordance with Section 9.05(1) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.
- 9.05 (1) (d) Extended School Year Services
- If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the charter school, the administrative unit of residence, and the district of residence, if it is not an administrative unit.
- 9.05 (1) (e) Contract Timelines

- 9.05 (1) (e) (i) The charter school shall send the proposed tuition contract to the special education director of the administrative unit of residence, and to the district of residence, if it is not an administrative unit, within 15 calendar days following the date it is determined that the charter school is an appropriate placement for the child.
- 9.05 (1) (e) (ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(5), C.R.S., even though a contract has not been executed.

9.05 (2) On-line Programs (Excluding Charter School On-line Programs)

9.05 (2) (a) Contract elements

The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the Department of Education. The provisions of this section shall apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, the administrative unit of attendance and the district of attendance, if it is not an administrative unit, is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

- 9.05 (2) (a) (i) The name of the district of residence;
- 9.05 (2) (a) (ii) The name of the administrative unit of residence, if different from the district of residence;
- 9.05 (2) (a) (iii) The name of the on-line program;
- 9.05 (2) (a) (iv) The name of the sponsoring district(s) and/or the board of cooperative services;
- 9.05 (2) (a) (v) The name of the child;
- 9.05 (2) (a) (vi) The child's date of birth;
- 9.05 (2) (a) (vii) The child's address;
- 9.05 (2) (a) (viii) The child's primary disability;
- 9.05 (2) (a) (ix) Whether the child will be attending full-time or part-time;
- 9.05 (2) (a) (x) The on-line program's tuition cost rate as approved by the state board or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the State Board approved rate will be charged;

- 9.05 (2) (a) (xi) The number of school days (student contact days) covered by the contract;
- 9.05 (2) (a) (xii) The schedule for billing and payment, which should be on a monthly basis;
- 9.05 (2) (a) (xiii) A statement that when a child with a disability withdraws from the on-line program, or is otherwise not attending the on-line program, the on-line program shall provide notice to the special education directors of the administrative units of residence and attendance, and to the superintendent of the district of residence if the district is not an administrative unit. This contract element shall not be interpreted to relieve the on-line program of its obligations regarding truancy pursuant to Section 22-33-107, C.R.S. Notice pursuant to this rule for unexcused nonattendance shall be provided upon the earliest occurrence of the following:
 - 9.05 (2) (a) (xiii) (A) The child is absent for 10 consecutive school days from the on-line program's regular education program; or
 - 9.05 (2) (a) (xiii) (B) The child is absent for 3 consecutive sessions of scheduled direct special education services, or the parent is absent for 3 consecutive sessions of consultative special education services; or
 - 9.05 (2) (a) (xiii) (C) The child is absent for scheduled direct special education services during 10 cumulative school days or the parent is absent for consultative special education services for 10 cumulative school days.
- 9.05 (2) (a) (xiv) A statement that the on-line program will not bill the district of residence for unexcused absences in excess of the earliest occurrence of the circumstances defined above in Section 9.05(2)(a)(xiii);
- 9.05 (2) (a) (xv) A statement that the on-line program will timely notify the special education director of the administrative unit of residence—when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);
- 9.05 (2) (a) (xvi) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commences, unless the child's IEP team determines that the on-line program is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14)(a) of these Rules; and
- 9.05 (2) (a) (xvii) Signature lines for the individuals who have legal authority to sign the contract on behalf of the administrative unit of attendance, the district of attendance if it is not an administrative unit, the administrative unit of residence, and the district of residence if it is not an administrative unit.

9.05 (2) (b) Transfer of Special Education Revenues

If the administrative unit of attendance and the district of attendance, if it is not an administrative unit, on behalf of the on-line program, contracts with the administrative unit of residence for all special education and related services, then all state and federal special education funds shall be forwarded to the administrative unit of residence for those services.

9.05 (2) (c) Additional Contract Elements for Contracts Involving Speech-language Instruction and/or Related Services.

The costs of direct speech-language instruction and related services shall not be included in the on-line program's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech-language instruction and/or related services, the tuition contract must contain the following additional elements:

9.05 (2) (c) (i) A statement that the child's IEP specifies speech-language instruction and/or related services, and a description of the nature and duration of such services as specified by the IEP;

9.05 (2) (c) (ii) A statement identifying which entity (i.e., the administrative unit of attendance, the administrative unit of residence or a third party) will deliver such services;

9.05 (2) (c) (iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of residence is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05 (2) (c) (iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services and the district of residence will pay the tuition costs for such services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of attendance is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05 (2) (c) (v) If the on-line program is providing the speech-language instruction and/or related services, a statement describing whether the costs of providing the speech-language instruction and/or related service will be an add-on to the tuition cost rate approved by the State Board and an identification of what those costs will be;

9.05 (2) (c) (vi) If the speech-language instruction and/or a related service are to be provided by the on-line program through a third party contractor that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the services for the amount of time specified on the child's IEP. If such services are to be provided by the on-line program or a third party contractor of the on-line program, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the service provider is failing, or has failed, to provide appropriate services as specified by the child's IEP; and

- 9.05 (2) (c) (vii) If speech-language instruction and/or related services associated with child find are being claimed, then such instruction and/or related services must be included in the on-line program's tuition cost rate.
- 9.05 (2) (d) Change in District of Residence
- If there is a change in the child's district of residence the on-line program must notify the new district of residence in accordance with Section 9.04(3) of these Rules. The on-line program must also enter into a tuition contract with the new district of residence in accordance with Section 9.05(2) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.
- 9.05 (2) (e) Extended School Year Services
- If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit.
- 9.05 (2) (f) Contract Timelines
- 9.05 (2) (f) (i) The district of attendance shall send the proposed tuition contract to the district of residence within 15 calendar days following the date that the child's IEP team determines that the on-line program is an appropriate placement for the child.
- 9.05 (2) (f) (ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(6), C.R.S., even though a contract has not been executed.

9.06 DOCUMENTATION OF TUITION COSTS

9.06 (1) Eligible Facilities

- 9.06 (1) (a) Annually, eligible facilities must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs charged to an administrative unit of residence for special education services provided to a child with disabilities who is determined to be the responsibility of the administrative unit of residence.
- 9.06 (1) (b) The documentation must be submitted on forms developed by the Department of Education, and must include the following:
- 9.06 (1) (b) (i) Special education expenditures defined in Section 2.00 of these Rules;
- 9.06 (1) (b) (ii) The number of days in the school year during which the eligible facility offers the program; and

- 9.06 (1) (b) (iii) A separate set of proposed costs for services that differ from those offered during the regular academic year.
- 9.06 (1) (c) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.
- 9.06 (1) (d) A percentage of the per pupil operating revenue, to be determined annually by the Department of Education, shall be applied as revenue toward indirect costs of the special education program, such as utilities, maintenance, administrative support services, regular education, and other items that may be determined by the Department.
- 9.06 (1) (e) In no instance shall the total revenues received by the eligible facility for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services. Based on this information, the Department will recommend to the State Board of Education tuition rates for eligible facilities. Costs for additional services required by an individual child, and documented on an IEP may be negotiated with the administrative unit of residence.

9.06 (2) Charter Schools, Excluding Charter Schools That Are On-line Programs

The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section.

- 9.06 (2) (a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.
- 9.06 (2) (b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:
 - 9.06 (2) (b) (i) Special education expenditures defined in Section 2.00 of these Rules;
 - 9.06 (2) (b) (ii) The number of days in the school year during which the charter school offers the program;
 - 9.06 (2) (b) (iii) Expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and
 - 9.06 (2) (b) (iv) The average number of children enrolled in the charter school, and the number of those children with disabilities.
- 9.06 (2) (c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering authority, and shall be reasonably consistent with the ratios of the chartering authority, for serving students with comparable disabilities.

- 9.06 (2) (d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.
- 9.06 (2) (e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.
- 9.06 (2) (f) If the charter school accepts a child for which it has not received PPR funding, the PPR amount must still be included as an applicable revenue for purposes of establishing tuition costs.
- 9.06 (2) (g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.
- 9.06 (2) (h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.
- 9.06 (2) (i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.
- 9.06 (2) (j) A percentage of the per pupil revenue, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.
- 9.06 (2) (k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for charter schools.
- 9.06 (2) (l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.06 (3) School Districts

Special Education tuition costs involving two school districts should be negotiated between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, and do not need to be submitted to the Department of Education for approval. This includes costs for children with disabilities who are attending school outside their district of residence under the Public Schools of Choice law. In establishing the tuition cost, all applicable revenues as defined in Section 9.01(1) of these Rules shall be deducted.

9.06 (4) On-line Programs, Including Charter Schools That Are On-line Programs

The provisions of this section apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, it is not required to comply with this section.

- 9.06 (4) (a) Annually, on-line programs must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to children with disabilities who are enrolled in the on-line program. The special education director of the administrative

unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

- 9.06 (4) (b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:
 - 9.06 (4) (b) (i) Special education expenditures defined in Section 2.00 of these Rules;
 - 9.06 (4) (b) (ii) The number of days in the school year during which the on-line program offers the program;
 - 9.06 (4) (b) (iii) Expenditures for the regular education program, administration, personnel costs, occupancy, and business services; and
 - 9.06 (4) (b) (iv) The average number of children enrolled in the on-line program, and the number of those children with disabilities.
- 9.06 (4) (c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the administrative unit of attendance, and shall be reasonably consistent with that unit's ratios for serving students with comparable disabilities.
- 9.06 (4) (d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.
- 9.06 (4) (e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.
- 9.06 (4) (f) If the on-line program accepts a child for which it has not received the state minimum PPR funding, the state minimum PPR must still be included as an applicable revenue for purposes of establishing tuition costs.
- 9.06 (4) (g) If the on-line program provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.
- 9.06 (4) (h) In no case shall the total revenues received by the on-line program for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.
- 9.06 (4) (i) In no case shall regular education and other education costs exceed the per pupil revenue received by the on-line program.
- 9.06 (4) (j) A percentage of the per pupil revenue, as documented on the rate setting form for each on-line program, shall be applied as revenue toward the special education costs submitted on the rate setting form by the program.
- 9.06 (4) (k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for on-line programs.
- 9.06 (4) (l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of

residence, and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.07 PROCEDURES FOR RESOLVING DISAGREEMENTS

The following procedures shall be available for resolving disputes involving tuition charges:

9.07 (1) School Districts

- 9.07 (1) (a) If a district of attendance determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(4), C.R.S., the district of attendance may seek a determination from the State Board in accordance with the following provisions:
- 9.07 (1) (a) (i) If a district of attendance determines that the district of residence has not forwarded to the district of attendance the amount due to it in accordance with the terms of the tuition contract and these rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. A district of attendance that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the district of attendance to complete any requirements prior to seeking a determination from the State Board, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the district of attendance completes said requirements.
- 9.07 (1) (a) (ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to it, the State Board shall direct the Department of Education to review the terms of the tuition contract and the relevant information of the district of attendance and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. The Department shall request from the district of residence and the district of attendance all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the districts of attendance and residence.
- 9.07 (1) (a) (iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the district of attendance. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the district of attendance, the district of residence shall pay to the district of attendance, within thirty days after issuance of the decision, the amount improperly withheld.
- 9.07 (1) (a) (iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the district of attendance may notify the department. The department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount

improperly withheld by the district of residence and pay the unpaid portion directly to the district of attendance.

9.07 (1) (a) (v) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

- 9.07 (1) (b) The dispute resolution procedure established in Section 9.07(1)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the district of attendance, or who otherwise has not been attending the district of attendance, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07 (2) Charter Schools

- 9.07 (2) (a) If a charter school determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(5), C.R.S., the charter school may seek a determination from the State Board in accordance with the following provisions:

- 9.07 (2) (a) (i) If a charter school determines that the district of residence has not forwarded to the charter school the amount due to the charter school in accordance with the terms of the tuition contract and these Rules, the charter school may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. A charter school that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the charter school to complete any requirements prior to seeking a determination from the State Board, the charter school shall submit the request no later than the end of the next fiscal year following the fiscal year in which the charter school completes said requirements.

- 9.07 (2) (a) (ii) Upon receipt from a charter school of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to the charter school, the State Board shall direct the Department to review the terms of the tuition contract and the relevant information of the charter school and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. The Department shall request from the district of residence and the charter school all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence and the charter school.

- 9.07 (2) (a) (iii) At the next State Board meeting following receipt of the recommendation of the Department of Education, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of

the amount due to the charter school. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the charter school, the district of residence shall pay to the charter school, within thirty days after issuance of the decision, the amount improperly withheld. In addition, the district of residence shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation. If the State Board finds that the district of residence did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07 (2) (a) (iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the charter school may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the charter school.

9.07 (2) (a) (v) If the State Board finds that the district did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07 (2) (a) (vi) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition cost disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07 (2) (b) The dispute resolution procedure established in Section 9.07(2)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying tuition costs for a child who withdrew from the charter school, or who otherwise has not been attending the charter school, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07 (3) On-line Programs

9.07 (3) (a) If an on-line program determines that the district of residence has not paid the tuition charge for excess cost incurred in educating a child with a disability, as required in Section 22-20-109(6), C.R.S., the district of attendance, on behalf of the on-line program, may seek a determination from the State Board in accordance with the following provisions:

9.07 (3) (a) (i) If the district of attendance determines that the district of residence has not forwarded to the on-line program the amount due to the on-line program in accordance with the terms of the tuition contract and the provisions of these Rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. A district of attendance that chooses to request a determination of the issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the on-line program and/or the district of attendance to

complete any requirements prior to seeking a determination from the department, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the on-line program and/or the district of attendance completes said requirements.

- 9.07 (3) (a) (ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence improperly withheld any portion of the amount due to the on-line program, the State Board shall direct the Department to review the terms of the tuition contract and other relevant information of the on-line program, and the Department shall make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. The Department shall request from the district of residence, the district of attendance and the on-line program, all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence, the district of attendance and the on-line program.
- 9.07 (3) (a) (iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the on-line program, the district of residence shall pay to the on-line program, within thirty days after issuance of the decision, the amount improperly withheld.
- 9.07 (3) (a) (iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the on-line program may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the on-line program.
- 9.07 (3) (a) (v) Third Party Facilitation
- The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.
- 9.07 (3) (b) The dispute resolution procedure established in Section 9.07(3)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the on-line program, or who otherwise has not been attending the on-line program, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

2220-R-10.00 (reserved)

2220-R-11.00 (reserved)

2220-R-12.00 GIFTED AND TALENTED STUDENT PROGRAMMING

12.01 Definitions.

- 12.01 (1) **“Administrative Unit”** means a school district, a board of cooperative services, or the state Charter School Institute that: oversees and/or provides educational services to exceptional children; is responsible for the local administration of Article 20 of Title 22, C.R.S.; and meets the criteria established in Section 3.01 of these Rules.
- 12.01 (2) **“Advanced Learning Plan” OR “ALP”** means a written record of gifted and talented programming utilized with each gifted child and considered in educational planning and decision making.
- 12.01 (3) **“Affective Development”** means social and emotional programming intended to:
- 12.01 (3) (a) assist gifted and talented students in understanding themselves as gifted learners, and the implications of their abilities, talents, and potential for accomplishment (intrapersonal skills); and
- 12.01 (3) (b) assist gifted and talented students in developing and/or refining interpersonal skills.
- 12.01 (4) **“Articulation”**, for purposes of this Rule 12.00, means the communication that occurs as students move or transition through the school system, grade by grade and school level to school level.
- 12.01 (5) **“Board of Cooperative Services”** means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S., and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.
- 12.01 (6) **“Commensurate Growth”** means the academic and affective progress that can be measured and should be expected of a gifted student given the student’s level of achievement, learning needs, and abilities matched with the appropriate instructional level.”
- 12.01 (7) **“Early Childhood Special Educational Services”** means those instructional strategies, curriculum, affective and programming options that nurture and develop exceptional abilities or potential for gifted students, including but not limited to an early entrance strategy or advanced level pre-school interventions.
- 12.01 (8) **“Early Entrance”** means a gifted student is placed in a grade level above other same aged peers based upon the following conditions:
- 12.01 (8) (a) the student is formally identified as gifted as specified in 12.01(9); and
- 12.01 (8) (b) the student meets requirements for accelerated placement as determined in an auditable body of evidence (e.g., achievement, ability, social-emotional factors, school learning skills, developmental characteristics, and family and school support).
- 12.01 (9) **“Gifted and Talented Children”** means those persons between the ages of five and twenty-one whose abilities, talents, and potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs. Gifted and talented children are hereafter referred to as gifted students. Children under five who are gifted may also be provided with early childhood special educational services. Gifted students include gifted students with disabilities (i.e. twice exceptional) and students with exceptional abilities or potential from all socio-

economic and ethnic, cultural populations. Gifted students are capable of high performance, exceptional production, or exceptional learning behavior by virtue of any or a combination of these areas of giftedness:

12.01 (9) (a) General or Specific Intellectual Ability.

12.01 (9) (a) (i) Definition

Intellectual ability is exceptional capability or potential recognized through cognitive processes (e.g., memory, reasoning, rate of learning, spatial reasoning, ability to find and solve problems, ability to manipulate abstract ideas and make connections, etc.).

12.01 (9) (a) (ii) Criteria

Intellectual ability is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized cognitive tests.

12.01 (9) (b) Specific Academic Aptitude

12.01 (9) (b) (i) Definition

Specific academic aptitude is exceptional capability or potential in an academic content area(s) (e.g., a strong knowledge base or the ability to ask insightful, pertinent questions within the discipline, etc.).

12.01 (9) (b) (ii) Criteria

Specific academic aptitude is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized achievement tests.

12.01 (9) (c) Creative or Productive Thinking

12.01 (9) (c) (i) Definition

Creative or productive thinking is exceptional capability or potential in mental processes (e.g., critical thinking, creative problem solving, humor, independent/original thinking, and/or products, etc.).

12.01 (9) (c) (ii) Criteria

Creative or productive thinking is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized tests of creative/critical skills or creativity/critical thinking.

12.01 (9) (d) Leadership Abilities.

12.01 (9) (d) (i) Definition

Leadership is the exceptional capability or potential to influence and empower people (e.g., social perceptiveness, visionary ability, communication skills, problem solving, inter and intra-personal skills and a sense of responsibility, etc.).

- 12.01 (9) (d) (ii) Criteria
- Leadership is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized leadership tests.
- 12.01 (9) (e) Visual Arts, Performing Arts, Musical or Psychomotor Abilities.
- 12.01 (9) (e) (i) Definition
- Visual arts, performing arts, musical or psychomotor abilities are exceptional capabilities or potential in talent areas (e.g., art, drama, music, dance, body awareness, coordination and physical skills, etc.).
- 12.01 (9) (e) (ii) Criteria
- Visual arts, performing arts, musical or psychomotor abilities are demonstrated by advanced level on performance talent-assessments or ninety-fifth percentile and above on standardized talent-tests.
- 12.01 (10) **“Parent”** for purposes of this Rule 12 means the natural or adoptive parent, or legal guardian, unless the gifted student is also a child with a disability in which case parent shall be defined consistent with federal special education law.
- 12.01 (11) **“Performance Assessment”** means systematic observation of a student's performance, examples of products, tasks, or behaviors based upon established criteria, scoring rubric or rating scale norms.
- 12.01 (12) **“Pre-Collegiate”** means a variety of programs to help students plan, apply and pay for college. Programs may be offered through middle and high schools, colleges and universities or community organizations and businesses.
- 12.01 (13) **“Pre-Advanced Placement”** means a variety of programs and strategies that prepare students to take advanced placement courses beginning in the early grades, through middle school and high school. **“Advanced Placement”** means college-level courses and/or exams offered and certified through the college board.
- 12.01 (14) **“Qualified Personnel”** or **“Qualified Person”** means a licensed, content endorsed teacher who also has an endorsement or higher degree in gifted education; or who is working toward an endorsement or higher degree in gifted education.
- 12.01 (15) **“Special Educational Services”** or **“Special Educational Programs”** means the services or programs provided to exceptional children including children with disabilities and gifted students.
- 12.01 (16) **“Special Provisions”** means the programming options, strategies and services necessary to implement the gifted student's ALP.
- 12.01 (17) **“Twice Exceptional”** means a student who is:
- 12.01 (17) (a) Identified as a gifted student pursuant to Section 12.01(9) of these Rules; and
- 12.01 (17) (b) (1) Identified as a child with a disability pursuant to Section 4.02 of these Rules;
or

- 12.01 (17) (b) (2) A qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794.

12.02 Administrative Unit Gifted Education Program Plan.

In order to be eligible for funding under these Rules, an administrative unit shall submit a gifted education program plan (program plan) for educating gifted students to the Department on an annual basis. Filing of the program plan shall constitute application for funding. Plans shall be filed by April 30 of the fiscal year prior to the funding year. The Department will review all program plans for completeness. A program plan shall be deemed complete if it addresses all elements specified in Section 12.02(1)(a) through 12.02(1)(f) of these Rules.

12.02 (1) Elements of the program plan.

A program plan for the education of gifted students submitted to the Department for funding purposes shall contain the following elements:

12.02 (1) (a) Communication Outreach.

The program plan shall describe how the administrative unit will communicate to parents and educators about available gifted programming options within the administrative unit and how those options may be accessed.

12.02 (1) (b) Definition of “gifted and talented student”.

The program plan shall include a written definition that is the same as or substantially similar to the definition of “gifted and talented student” specified in section 12.01(9) of these Rules. This definition shall serve as the basis for the implementation of all other program plan elements described below.

12.02 (1) (c) Identification procedure.

The program plan shall describe the assessment process used by the administrative unit for identifying students who meet the definition specified in section 12.01(9) and for identifying the educational needs of gifted students. The assessment process shall recognize a student’s exceptional abilities or potential, interests, and needs in order to guide student instruction and individualized programming. The assessment process shall include, but need not be limited to:

- 12.02 (1) (c) (i) A method(s) to ensure equal and equitable access for all students. The program plan shall describe the efforts the administrative unit will make to identify gifted students from all populations, including preschool (if applicable) through twelfth grade students, minority students, economically diverse students, culturally diverse students, students with limited English proficiency and children with disabilities;
- 12.02 (1) (c) (ii) Referral and screening procedures;
- 12.02 (1) (c) (iii) Multiple sources of data in a body of evidence (i.e. qualitative and quantitative);
- 12.02 (1) (c) (iv) Criteria for determining exceptional ability or potential;
- 12.02 (1) (c) (v) A review team procedure; and

- 12.02 (1) (c) (vi) A communication procedure by which parents are made aware of the assessment process for their student, gifted determination, and development and review of the student's ALP.
- 12.02 (1) (d) **Programming.**
- The program plan shall describe the programming components, options, and strategies that will be implemented by the administrative unit and schools to appropriately address the educational needs of gifted students. Programming shall match the strengths and interests of the gifted student. Other educational needs shall be addressed according to the individual student's profile. The program plan components, options, and strategies shall include, but need not be limited to:
- 12.02 (1) (d) (i) Alignment of assessment data to programming options in the areas of giftedness;
- 12.02 (1) (d) (ii) Structures by which gifted students are served at the different school levels (e.g., the general classroom, resource, and/or pullout);
- 12.02 (1) (d) (iii) Support in differentiated instruction and methods (e.g., acceleration, cluster grouping and higher order thinking skills);
- 12.02 (1) (d) (iv) Affective and guidance support systems (e.g., social skills training, early college and career planning);
- 12.02 (1) (d) (v) Diverse content options provided for gifted students in their areas of strength (e.g., mentorship, socratic seminars, advanced math, honors courses);
- 12.02 (1) (d) (vi) The means by which articulation for preschool (if applicable) through grade 12 is planned and implemented;
- 12.02 (1) (d) (vii) Pre-collegiate and/or pre-advanced placement support;
- 12.02 (1) (d) (viii) ALP development and annual review conducted through the collaborative efforts of the teacher(s), other school personnel (as needed), parents and the student (as appropriate); and
- 12.02 (1) (d) (ix) Post secondary options available to gifted students.
- 12.02 (1) (e) **Evaluation and Accountability.**
- The administrative unit program plan shall describe:
- 12.02 (1) (e) (i) Methods by which student achievement is monitored and measured for continual learning progress and how such methods align with the state accreditation process (e.g., intervention progress monitoring data sources, advanced learning plan goals, and performance, district, and state assessment data);
- 12.02 (1) (e) (ii) Methods by which student affective growth is monitored and measured for continual development (e.g., rubrics for personal journals and anecdotal data, student surveys, demonstration of self-advocacy, and student career and/or college plans);
- 12.02 (1) (e) (iii) Methods for ensuring that gifted student achievement and reporting are

consistent with accreditation requirements (i.e., disaggregation of state assessment data for gifted students, identification of discrepancies in the data, goal setting and demonstration of growth); and

- 12.02 (1) (e) (iv) Methods for self-evaluation of the gifted program including a schedule for periodic feedback and review (e.g., review of gifted policy, goals, identification process, programming components, personnel, budget and reporting practices, and the impact of gifted programming on student achievement and progress); and
- 12.02 (1) (e) (v) Methods by which parents, educators, and other required persons are informed about the methods described in 12.02(1)(e)(i-iv) above.
- 12.02 (1) (f) **Personnel.**
- 12.02 (1) (f) (i) The program plan shall describe the personnel who provide instruction, counseling, coordination and other programming for gifted students. Personnel shall be knowledgeable in the characteristics, differentiated instructional methods and competencies in the special education of gifted students. Qualified personnel with endorsement or an advanced degree in gifted education are preferred in specific programs and classrooms consisting of mainly gifted students. Beginning with the 2010-2011 school year, every administrative unit shall employ or contract with a person who is responsible for:
 - 12.02 (1) (f) (i) (A) Management of the program plan; and
 - 12.02 (1) (f) (i) (B) Professional development activities, the purposes of which are:
 - 12.02 (1) (f) (i) (B) (I) To improve and enhance the skills, knowledge and expertise of teachers and other personnel who provide instruction and other supportive services to gifted students; and
 - 12.02 (1) (f) (i) (B) (II) To increase, to the extent practicable, the number of qualified personnel providing instruction to gifted students.
 - 12.02 (1) (f) (ii) Administrative units are highly encouraged to collaborate with universities and colleges for the development of qualified personnel.
 - 12.02 (1) (f) (iii) Personnel responsible for the instruction and learning of gifted students in core academic areas must meet the requirements under federal law for highly qualified teachers.
 - 12.02 (1) (f) (iv) Paraprofessionals may serve in supportive roles, but may not be the sole instructional provider, nor may such paraprofessionals be funded using state gifted education funds.
 - 12.02 (1) (f) (v) The program plan shall also indicate the content of and means by which the administrative unit supports the acquisition and/or improvement of the knowledge and competencies of personnel through appropriate professional development relating to the instruction, programming and counseling for gifted students. (e.g., induction and inservice programs, job-embedded training and coaching, gifted education workshops or institutes and college coursework). Key topics should include, but need not be limited to, gifted characteristics and myths, differentiated instruction, affective needs,

counseling, content instructional options and advanced curricular strategies (e.g., higher order thinking strategies).

12.02 (1) (g) **Budget.**

The program plan shall propose a budget for gifted education which reflects the collaborative efforts of the administrative unit and cost of implementing the programming, goals and objectives stated in the program plan. The budget shall detail the funding committed by the administrative unit and funding requested from the Department. Funding committed by the administrative unit shall be equal to or greater than the amount requested from the Department. Funds requested from the Department may be used for:

- 12.02 (1) (g) (i) salaries for appropriately certified, endorsed, or licensed personnel serving primarily gifted students (e.g., gifted education directors, coordinators, resource teachers, counselors and teachers of gifted classrooms);
- 12.02 (1) (g) (ii) professional development and training relating to gifted education;
- 12.02 (1) (g) (iii) activities associated with gifted programming options specific to gifted students and their advanced learning plans;
- 12.02 (1) (g) (iv) supplies and materials used in instructional programming for gifted education; and
- 12.02 (1) (g) (v) technology and equipment necessary for the education of gifted students, not to exceed twenty-five percent of the total amount requested from the Department.

12.03 Reports.

Any administrative unit receiving funding under the provision of Section 12.00 shall submit to the Department by September 30 a report for the prior fiscal year, including:

- 12.03 (1) a detailed report of financial income and expenditures;
- 12.03 (2) the number of formally identified gifted students served through gifted student programming reported by:
 - 12.03 (2) (a) each grade level, preschool (if applicable) through grade 12;
 - 12.03 (2) (b) gender and ethnicity;
 - 12.03 (2) (c) twice exceptional; and
 - 12.03 (2) (d) gifted preschoolers served through early entrance per local policies and procedures, if applicable;
- 12.03 (3) the number of non-identified students served through gifted student programming;
- 12.03 (4) the percent of students in the administrative unit who have been identified as gifted and talented through a formal identification procedure;
- 12.03 (5) the number of qualified personnel;

- 12.03 (6) the types of programming strategies utilized most commonly at each school level to address the needs of gifted students reported by:
- 12.03 (6) (a) programming options for each area of giftedness as specified in 12.01(9) of these Rules;
- 12.03 (6) (b) methods of articulation through the grades; and
- 12.03 (6) (c) methods and tools used in accountability to monitor gifted student achievement and commensurate growth related to the implementation of the programming components; and
- 12.03 (7) administrative units and their member districts, if any, shall comply with the requirements of accreditation, pursuant to Article 11 of Title 22, C.R.S., with regard to gifted student achievement, identification of disparities in the data, instructional goals, growth and reporting.

12.04 Audits.

All programs receiving funding under the provisions of the Exceptional Children's Educational Act are subject to monitoring by the Department as is more fully described in Section 12.07 of these Rules.

12.05 Record Keeping.

Any administrative unit receiving funding will have the following record keeping and reporting responsibilities:

12.05 (1) Financial Records.

Financial records shall be kept in accordance with generally accepted principles of governmental accounting. Recommended accounting principles are listed in the Financial Policies and Procedures Handbook.

12.05 (2) Inventory.

An inventory shall be maintained of all equipment for which funding was received. These records shall be maintained throughout the useful life of the equipment.

12.05 (3) Student Education Records

The ALP shall record programming options, and strategies utilized with individual students and shall be part of the student's record. The ALP shall be considered in educational planning and decision-making concerning subsequent programming for that student and be used in the articulation process, preschool (if applicable) through grade 12. Gifted student records shall describe the body of evidence that identifies strengths, interests and needs, and the ongoing programming and student achievement results.

12.05 (4) Confidentiality of Student Education Records

Individually identifiable records of students referred, assessed, evaluated, and/or served through programming for gifted and talented students in any administrative unit shall be held to be confidential and protected in accordance with applicable federal and state laws and regulations.

12.05 (5) **Maintenance and Destruction of Student Education Records**

Gifted student education records and ALPs shall be maintained, retained and destroyed consistent with the ongoing system of student record keeping established in the administrative unit, including its member districts or the Charter School Institute for student records, preschool (if applicable) through grade 12.

12.06 **Dispute Resolution**

The program plan shall describe a dispute resolution process to be used for resolving disagreements about the identification and programming for gifted students. The dispute resolution process shall, at a minimum, afford the aggrieved individual notice of the decision giving rise to the dispute and an opportunity to be heard before the decision is implemented.

12.07 **Monitoring**

- 12.07 (1) Each administrative unit shall comply with all applicable state and federal laws and regulations regarding the program plan, identification and special educational services for gifted students.
- 12.07 (2) Each administrative unit shall be subject to ongoing monitoring by the Department concerning implementation of the program plan.
- 12.07 (3) Monitoring procedures shall include:
 - 12.07 (3) (a) A determination of compliance with all applicable state and federal laws and regulations, and
 - 12.07 (3) (b) An assessment of program quality based on the standards established by the Department of Education.
- 12.07 (4) Monitoring activities shall include:
 - 12.07 (4) (a) A review of the program plan;
 - 12.07 (4) (b) A review of the annual report;
 - 12.07 (4) (c) A planned comprehensive on-site process integrated with the continuous improvement and monitoring process in the Department of Education; and
 - 12.07 (4) (d) Follow-up activities including the provision of technical assistance in areas of non-compliance and verification that areas of non-compliance have been corrected.