

[Changes highlighted in yellow are revisions made between the January 2025 State Board Meeting and the February 2025 meeting. Changes in green were made in between the February meeting and the March state board meeting.]

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

### 1 CCR 301-8

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

#### 1.00 STATEMENT OF BASIS AND PURPOSE

These rules implement the Exceptional Children's Educational Act ("ECEA"), §§ 22-20-101, *et seq.*, C.R.S., under the rulemaking authority granted in § 22-20-104, C.R.S., [§ 22-20-123\(3\)\(b\)](#), and related statutes.

#### 2.00 DEFINITIONS USED IN THESE RULES

##### 2.01 **Abbreviated School Day**

*Abbreviated School Day* means any school day during which a child with disabilities receives instruction or educational services for fewer hours than the majority of other students who are in the same grade and school as the child with disabilities, whether the abbreviated school day was planned or unplanned. For purposes of the definitions in Rule 2.01 and 2.01(1) of these rules and the required AU policy regarding abbreviated school days, a child with disabilities means a child who has been determined eligible for services under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973, or for whom a request or referral for evaluation under either law has been made.

##### 2.01(1) **Abbreviated School Day Schedule**

*Abbreviated School Day Schedule* means a schedule designed and approved by the IEP Team or 504 Team that plans for the child with disabilities to regularly receive instruction or educational services for fewer hours than the majority of other students who are in the same grade and school as the child with a disability.

##### **2.021 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.

##### **2.032 Administrative Unit**

*Administrative Unit (AU)* means a school district, board of cooperative services, multi-district administrative unit, a charter school network, a charter school collaborative, 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, an entity shall meet all minimum standards established in Section 3.01 of these Rules. All administrative units shall be approved by the Department of Education.

**Commented [MB1]:** New language pursuant to HB24-1063, Concerning the Effect of Abbreviated School Days on Children with Disabilities in Public Schools

**2.032(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:

- 2.032(1)(a)** If a child with a disability is living at one of the regional centers, an approved facility school, a group home or group center, a mental health institute operated by the Department of Human Services, 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.
- 2.032(1)(b)** If a child has been placed by a Colorado public agency and lives in one of the regional centers, a mental health institute, a facility, or a group home or group center, and the AUR 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, are deceased, or the child is legally emancipated, the child shall be considered a resident of the administrative unit in which the regional center, mental health institute, facility or group home or group center is located, except as otherwise provided in Rule ~~2-022.03~~(1)(i) below.
- 2.032(1)(c)** If the child resides in a foster care home, the child shall be deemed to be a resident of the AU in which the foster care home is located, except as otherwise provided in Rule ~~2-022.03~~(1)(i) below.
- 2.032(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 AU in which the parent or guardian resides.
- 2.032(1)(e)** When a child attends a Charter School in another district, the child shall be considered a resident of the AU in which the parent or guardian resides (unless Rule ~~2-022.03~~(1)(h) applies).
- 2.362(1)(f)** When a child attends a public school on-line program in another district, the child shall be considered a resident of the AU in which the parent or guardian resides (unless Rule ~~2-022.03~~(1)(h) applies).
- 2.032(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.
- 2.032(1)(h)** If a child with a disability enrolls in a district or institute charter school that participates in an alternative administrative unit, the alternative administrative unit is deemed the administrative unit of residence and of attendance so long as the child is enrolled in the alternative administrative unit.
- 2.032(1)(i)** If a child with a disability is a student in out-of-home placement (as defined in section 22-32-138, C.R.S.), is enrolled in a school of origin (as defined in section 22-32-138, C.R.S.) other than an approved facility school or a state-licensed day treatment facility, and was considered a resident of the school district at the time

**Commented [MB2]:** Technical edit to cover new type of "Specialized Group Facility" that is licensed by CDHS. A Specialized Group Home is located in a house owned or otherwise controlled by the group home parents who are primarily responsible for the care of the children and reside at the home. A Specialized Group Center is located in a facility owned or controlled by a governing body that hires the group center parents or personnel who are primarily responsible for the care of the children.

the child became a student in out-of-home placement or at the time of enrollment in the school of origin (whichever is most recent), then the school of origin's administrative unit remains the student's administrative unit of residence regardless of the out-of-home placement's location.

**2.032(1)(j)** Disputes regarding residency

If there is a dispute as to which AU constitutes the AUR, 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.

**2.032(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 AUR when:

**2.032(2)(a)** The AUR does not have an adequate number of children with similar needs, and chooses to send the child to another AU for his or her special education program.

**2.032(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 AU other than the AUR.

**2.032(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 AU other than the AUR.

**2.032(3)** *Alternative Administrative Unit*

Alternative Administrative Unit means the state charter school institute acting in accordance with section 22-30.5-105.3 as the administrative unit, pursuant to section 22-20-106(1)(b), for a charter school authorized by a school district; a charter school network authorized and acting as an administrative unit pursuant to section 22-20-106(1)(b); or a charter school collaborative authorized and acting as an administrative unit pursuant to section 22-20-106(1)(b).

**2.032(4)** *Multi-district Administrative Unit*

Multi-district Administrative Unit means a group of two or more school districts that did not form a Board of Cooperative Services but were (a) parties to an agreement existing on January 1, 2011, to provide educational services to exceptional children and to be responsible for the local administration of these Rules, and (b) recognized by the Department as of January 1, 2011, as an administrative unit.

**2.043 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.

#### **2.054 Assistive Technology Service**

2.054(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-

- 2.054(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;
- 2.054(1)(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- 2.054(1)(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- 2.054(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;
- 2.054(1)(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- 2.054(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.

#### **2.065 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.

#### **2.076 Charter Schools**

2.076(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.

2.076(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.

2.076(3) The term *charter school* includes both district charter schools and institute charter schools, but not charter schools authorized under section 22-80-102(4)(b), C.R.S., unless context otherwise requires.

2.076(4) *Charter school collaborative* means a charter school collaborative formed pursuant to section 22-30.5-603, C.R.S.

2.076(5) *Charter school network* means a charter school network formed pursuant to section 22-30.5-104.7, C.R.S.

### 2.087 Child Find

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

### 2.098 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. 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 ~~2-082.09~~. 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 ~~2-372.38~~ of these Rules) and not special education (as defined in Sections ~~2-432.44~~ and ~~2.521~~ 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.

2.098(1) A child with an Autism Spectrum Disorder (ASD) is a child with a developmental disability significantly affecting verbal and non-verbal social communication and social interaction, generally evidenced by the age of three. Other characteristics often associated with ASD are engagement in repetitive activities and stereotyped movements, resistance to environmental changes or changes in daily routines, and unusual responses to sensory experiences.

2.098(1)(a) The Autism Spectrum Disorder prevents the child from receiving reasonable educational benefit from general education as evidenced by at least one characteristic in each of the following three areas (i.e., subsections (a)(i) through (a)(iii), below):

2.098(1)(a)(i) The child displays significant difficulties or differences or both in interacting with or understanding people and events. Examples of qualifying characteristics include, but are not limited to: significant difficulty establishing and maintaining social-emotional reciprocal relationships, including a lack of typical back and forth social conversation; and/or

significant deficits in understanding and using nonverbal communication including eye contact, facial expression and gestures;

2.098(1)(a)(ii) The child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively. Examples of qualifying characteristics include, but are not limited to: an absence of verbal language or, if verbal language is present, typical integrated use of eye contact and body language is lacking; and/or significant difficulty sharing, engaging in imaginative play and developing and maintaining friendships; and

2.098(1)(a)(iii) The child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics.

2.098(1)(b) The following characteristics may be present in a child with ASD, but shall not be the sole basis for determining that a child is an eligible child with ASD if the child does not also meet the eligibility criteria set out in subsection (a) of this rule, above.

2.098(1)(b)(i) The child exhibits delays or regressions in motor, sensory, social or learning skills.

2.098(1)(b)(ii) The child exhibits precocious or advanced skill development, while other skills may develop at or below typical developmental rates.

2.098(1)(b)(iii) The child exhibits atypicality in thinking processes and in generalization. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverative thinking and impaired ability to process symbolic information is present.

2.098(1)(b)(iv) The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement.

2.098(1)(b)(v) The child's capacity to use objects in an age appropriate or functional manner is absent or delayed. The child has difficulty displaying a range of interests or imaginative activities or both.

2.098(1)(b)(vi) The child exhibits stereotypical motor movements, which include repetitive use of objects and/or vocalizations, echolalia, rocking, pacing or spinning self or objects.

2.098(2) A child with Hearing Impairment, Including Deafness 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 general education.

2.098(2)(a) A “deficiency in hearing sensitivity” shall be one of the following as measured by behavioral or electrophysiological audiological assessments:

2.098(2)(a)(i) Three frequency, pure tone average hearing loss in the speech range (500 – 4000 Hertz Hz) of at least 20 decibels Hearing Level (dBHL) in the better ear which is not reversible.

2.098(2)(a)(ii) A high frequency, pure tone average hearing loss of at least 35 dBHL in the better ear for two or more of the following frequencies: 2000, 3000, 4000 or 6000 Hz.

2.098(2)(a)(iii) A three frequency, pure tone average unilateral hearing loss in the speech range (500 – 4000Hz) of at least 35 dBHL which is not reversible.

2.098(2)(a)(iv) A transient hearing loss, meeting one of the criteria in (a)(i) – (a)(iii) above, that is exhibited for three (3) months cumulatively during a calendar year (i.e., any three months during the calendar year) and that typically is caused by non-permanent medical conditions such as otitis media or other ear problems.

2.098(2)(b) The Hearing Impairment, Including Deafness, as described above, prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

2.098(2)(b)(i) Delay in auditory skills and/or functional auditory performance including speech perception scores (in quiet or noise), which demonstrates the need for specialized instruction in auditory skill development or assistive technology use;

2.098(2)(b)(ii) Receptive and/or expressive language (spoken or signed) delay including a delay in syntax, pragmatics, semantics, or if there is a significant discrepancy between the receptive and expressive language scores and/or function which adversely impacts communication and learning;

2.098(2)(b)(iii) An impairment of speech articulation, voice and/or fluency;

2.098(2)(b)(iv) Lack of adequate academic achievement and/or sufficient progress to meet age or state-approved grade-level standards in reading, writing, and/or math;

2.098(2)(b)(v) Inconsistent performance in social and learning environments compared to typically developing peers; and/or

2.098(2)(b)(vi) Inability to demonstrate self advocacy skills or utilize specialized technology/resources to access instruction.

2.098(3) A child with a Serious Emotional Disability shall have emotional or social functioning which prevents the child from receiving reasonable educational benefit from general education.

- 2.098(3)(a) **Serious Emotional Disability** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree:
- 2.098(3)(a)(i) An inability to learn which is not primarily the result of intellectual, sensory or other health factors;
  - 2.098(3)(a)(ii) An inability to build or maintain interpersonal relationships which significantly interferes with the child's social development;
  - 2.098(3)(a)(iii) Inappropriate types of behavior or feelings under normal circumstances;
  - 2.098(3)(a)(iv) A general pervasive mood of unhappiness or depression; and/or
  - 2.098(3)(a)(v) A tendency to develop physical symptoms or fears associated with personal or school problems.
- 2.098(3)(b) As a result of the child's **Serious Emotional Disability**, as described above, the child exhibits one of the following characteristics:
- 2.098(3)(b)(i) Impairment in academic functioning as demonstrated by an inability to receive reasonable educational benefit from general education which is not primarily the result of intellectual, sensory, or other health factors, but due to the identified serious emotional disability.
  - 2.098(3)(b)(ii) Impairment in social/emotional functioning as demonstrated by 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 or her own welfare.
- 2.098(3)(c) In order to qualify as a child with a **Serious Emotional Disability**, all four of the following qualifiers shall be documented:
- 2.098(3)(c)(i) A variety of instructional and/or behavioral interventions were implemented within general education and the child remains unable to receive reasonable educational benefit from general education.
  - 2.098(3)(c)(ii) 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 or her cultural norms and the range of normal development expectations.
  - 2.098(3)(c)(iii) Indicators of social/emotional dysfunction are pervasive, and are observable in at least two different settings within the child's environment. For children who are attending school, one of the environments shall be school.

- 2.098(3)(c)(iv) 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.
- 2.098(3)(d) The term "Serious Emotional Disability" does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability under paragraph (3)(a) of this section ~~2.082.09~~.
- 2.098(4) A child with an Intellectual Disability shall have reduced general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which prevents the child from receiving reasonable educational benefit from general education.
- 2.098(4)(a) Criteria for Intellectual Disability preventing the child from receiving reasonable educational benefit from regular education shall include:
- 2.098(4)(a)(i) A full scale score of 2.0 or more standard deviations below the mean on individually administered measures of cognition.
- 2.098(4)(a)(ii) A comprehensive adaptive skills assessment based on a body of evidence that reflects the child's social, linguistic, and cultural background. The level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibility. This body of evidence shall include results from each of the following:
- 2.098(4)(a)(ii)(A) A full scale score of 2.0 or more standard deviations below the mean on a standard or nationally normed assessment of adaptive behavior;
- 2.098(4)(a)(ii)(B) Interview of parents; and
- 2.098(4)(a)(ii)(C) Observations of the child's adaptive behavior that must occur in more than one educational setting. A discrepancy must occur in two or more domains related to adaptive behavior in more than one educational setting.
- 2.098(4)(b) A deficiency in academic achievement, either as indicated by scores 2.0 or more standard deviations below the mean in formal measures of language, reading and math, or a body of evidence on informal measures when it is determined that reliable and valid assessment results are not possible due to the student's functioning level.
- 2.098(5) A child with Multiple Disabilities shall have two or more areas of significant impairment, one of which shall be an intellectual disability. The other areas of impairment include: Orthopedic Impairment; Visual Impairment, Including Blindness; Hearing Impairment, Including Deafness; Speech or Language Impairment; Serious Emotional Disability; Autism Spectrum Disorders; Traumatic Brain Injury; or Other Health Impaired. The combination of such impairments creates a unique condition that is evidenced through

a multiplicity of severe educational needs which prevent the child from receiving reasonable educational benefit from general education.

2.098(5)(a) In order to be eligible as a child with multiple disabilities, the child must satisfy all eligibility criteria for each individual disability, as described in these Rules. Documentation for each identified eligibility category must be included.

2.098(5)(b) The Multiple Disabilities, as described in section ~~2-082.09~~(5) above, prevents the child from receiving reasonable educational benefit from general education such that the child exhibits two or more of the following:

2.098(5)(b)(i) Inability to comprehend and utilize instructional information.

2.098(5)(b)(ii) Inability to communicate efficiently and effectively.

2.098(5)(b)(iii) Inability to demonstrate problem solving skills when such information is presented in a traditional academic curriculum.

2.098(5)(b)(iv) Inability to generalize skills consistently.

2.098(6) A child with an Orthopedic Impairment has a severe neurological/muscular/skeletal abnormality that impedes mobility, which prevents the child from receiving reasonable educational benefit from general education.

2.098(6)(a) Orthopedic Impairment may be a result of a congenital anomaly (e.g. spina bifida, osteogenesis imperfecta, clubfoot); effects of a disease (e.g. bone tumor, muscular dystrophy, juvenile arthritis); or from other causes (e.g. cerebral palsy, amputations, trauma, and/or fractures or burns that cause contractures).

2.098(6)(b) The Orthopedic Impairment, as described above, prevents the child from receiving reasonable educational benefit from general education because the disabling condition interferes with functions of daily living, including but not limited to, ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living, to such a degree that the child requires specialized instruction and related services, which may include special equipment.

2.098(7) Other Health Impaired (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, leukemia, kidney disease, sickle cell anemia or Tourette syndrome. As a result of the child's Other Health Impairment, as described above, the child is prevented from receiving reasonable educational benefit from general education, as evidenced by one or more of the following:

2.098(7)(a) Limited strength as indicated by an inability to perform typical tasks at school;

2.098(7)(b) Limited vitality as indicated by an inability to sustain effort or to endure throughout an activity; and/or

2.098(7)(c) Limited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

2.098(8) A child with a Specific Learning Disability shall have a learning disorder that prevents the child from receiving reasonable educational benefit from general education.

2.098(8)(a) 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 impairment, including blindness; hearing impairment, including deafness; orthopedic impairment; intellectual disability; serious emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

2.098(8)(b) A child may be determined to have a Specific Learning Disability that prevents the child from receiving reasonable educational benefit from general education if a body of evidence demonstrates the following criteria are met:

2-082.09(8)(b)(i) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) 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:

2-082.09(8)(b)(i)(A) Oral expression;

2-082.09(8)(b)(i)(B) Listening comprehension;

2-082.09(8)(b)(i)(C) Written expression;

2-082.09(8)(b)(i)(D) Basic reading skill;

2-082.09(8)(b)(i)(E) Reading fluency skills;

2-082.09(8)(b)(i)(F) Reading comprehension;

2-082.09(8)(b)(i)(G) Mathematical calculation;

2-082.09(8)(b)(i)(H) Mathematics problem solving; and

2-082.09(8)(b)(ii) 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 [2-082.09\(8\)\(b\)\(i\)](#) when using a process based on the child's response to scientific, research-based intervention.

[2-082.09\(9\)](#) A child with a Speech or Language Impairment shall have a communicative disorder which prevents the child from receiving reasonable educational benefit from general education.

[2-082.09\(9\)\(a\)](#) Speech or Language Impairment 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:

[2-082.09\(9\)\(a\)\(i\)](#) 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);

[2-082.09\(9\)\(a\)\(ii\)](#) Auditory processing, including sensation (acuity), perception (discrimination, sequencing, analysis and synthesis), association and auditory attention;

[2-082.09\(9\)\(a\)\(iii\)](#) Deficiency of structure and function of oral peripheral mechanism;

[2-082.09\(9\)\(a\)\(iv\)](#) Articulation including substitutions, omissions, distortions or additions of sound;

[2-082.09\(9\)\(a\)\(v\)](#) Voice, including deviation of respiration, phonation (pitch, intensity, quality), and/or resonance;

[2-082.09\(9\)\(a\)\(vi\)](#) Fluency, including hesitant speech, stuttering, cluttering and related disorders; and/or

[2-082.09\(9\)\(a\)\(vii\)](#) Problems in auditory perception such as discrimination and memory.

[2-082.09\(9\)\(b\)](#) The Speech or Language Impairment, as set out above, prevents the child from receiving reasonable educational benefit from general education and shall include one or more of the following:

[2-082.09\(9\)\(b\)\(i\)](#) Interference with oral and/or written communication in academic and social interactions in his/her primary language;

[2-082.09\(9\)\(b\)\(ii\)](#) Demonstration of undesirable or inappropriate behavior as a result of limited communication skills; and/or

[2-082.09\(9\)\(b\)\(iii\)](#) The inability to communicate without the use of assistive, augmentative/alternative communication devices or systems.

[2-082.09\(10\)](#) A child with a Traumatic Brain Injury (TBI) is a child with an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, which impairment adversely affects the child's ability to

receive reasonable educational benefit from general education. A qualifying Traumatic Brain Injury is an open or closed head injury resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term “traumatic brain injury” under this rule does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

~~2-082.09~~(10)(a) To be eligible as a child with a Traumatic Brain Injury, there must be evidence of the following criteria:

~~2-082.09~~(10)(a)(i) Either medical documentation of a traumatic brain injury, or a significant history of one or more traumatic brain injuries reported by a reliable and credible source and/or corroborated by numerous reporters; and

~~2-082.09~~(10)(a)(ii) The child displays educational impact most probably and plausibly related to the traumatic brain injury.

~~2-082.09~~(10)(b) Additionally, to be eligible as a child with a Traumatic Brain Injury, the traumatic brain injury prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

~~2-082.09~~(10)(b)(i) A limited ability to sustain attention and/or poor memory skills, including but not limited to difficulty retaining short-term memory, long-term memory, working memory and incidental memory;

~~2-082.09~~(10)(b)(ii) An inefficiency in processing, including but not limited to a processing speed deficit and/or mental fatigue;

~~2-082.09~~(10)(b)(iii) Deficits in sensory-motor skills that affect either one, or both, visual or auditory processing, and may include gross motor and/or fine motor deficits;

~~2-082.09~~(10)(b)(iv) Delays in acquisition of information including new learning and visual-spatial processing;

~~2-082.09~~(10)(b)(v) Difficulty with language skills, including but not limited to receptive language, expressive language and social pragmatics;

~~2-082.09~~(10)(b)(vi) Deficits in behavior regulation, including but not limited to impulsivity, poor judgment, ineffective reasoning and mental inflexibility;

~~2-082.09~~(10)(b)(vii) Problems in cognitive executive functioning, including but not limited to difficulty with planning, organization and/or initiation of thinking and working skills;

~~2-082.09~~(10)(b)(viii) Delays in adaptive living skills, including but not limited to difficulty with activities of daily living (ADL); and/or

~~2-082.09~~(10)(b)(ix) Delays in academic skills, including but not limited to reading, writing, and math delays that cannot be explained by any other disability. They may also demonstrate an extremely uneven pattern in cognitive and achievement testing, work production and academic growth.

~~2-082.09~~(11) A child with a Visual Impairment, Including Blindness has an impairment in vision that, even with correction, adversely affects the child's educational performance and that requires specialized instruction. The term includes low vision, blindness and/or progressive vision loss.

~~2-082.09~~(11)(a) A determination that a child is an eligible child with a Visual Impairment, Including Blindness may include but not be limited to:

~~2-082.09~~(11)(a)(i) Visual acuity of no better than 20/70 in the better eye after correction;

~~2-082.09~~(11)(a)(ii) Visual field restriction to 20 degrees or less; and/or

~~2-082.09~~(11)(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 cortical visual impairment and/or a progressive visual loss where field and/or acuity deficits alone may not meet the aforementioned criteria.

~~2-082.09~~(12) A child with Deaf-blindness has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. A child may qualify as an eligible child with Deaf-blindness by meeting one of the following criteria:

~~2-082.09~~(12)(a) The child shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech, as specified in section ~~2-082.09~~(2)(a) and (b); and a deficiency in visual acuity and/or visual field and/or visual functioning, as specified in section ~~2-082.09~~(11)(a) and (b), where, even with the help of amplification and/or use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from general education; or

~~2-082.09~~(12)(b) The child has documented hearing and/or visual impairment that, if considered individually per section ~~2-082.09~~(2)(a) and (b) and section ~~2-082.09~~(11)(a) and (b), may not meet the requirements for Hearing Impairment, Including Deafness or Visual Impairment, Including Blindness, but the combination of such losses adversely affect the student's educational performance; or

~~2-082.09~~(12)(c) The child has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses.

**2-082.09(13)** A child with a Developmental Delay shall be three through eight years of age and who is experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and as a result is unable to receive reasonable educational benefit from general education and requires special education and related services.

**2-082.09(13)(a)** For children ages three through eight efforts will be made to identify a child's primary disability under one of the other Part B eligibility criteria. A child shall be determined to be eligible under the Developmental Delay category only in those situations in which a clear determination cannot be made under any other category as measured by developmentally appropriate diagnostic instruments and procedures. In order for a child to be deemed a child with a Developmental Delay, multiple sources of information must be used to determine if a child meets one or more of the following criteria:

**2-082.09(13)(a)(i)** A score in the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (77 if the mean is 100 and the standard deviation is 15) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: physical development, cognitive development, communication development, social or emotional development, or adaptive development as one of the multiple sources of evaluation information;

**2-082.09(13)(a)(ii)** Empirical data showing a condition known to be associated with significant delays in development; or

**2-082.09(13)(a)(iii)** A body of evidence indicating that patterns of learning are significantly different from age expectations across settings and there is written documentation by the evaluation team which includes the parent(s).

**2-082.09(14)** An Infant / Toddler with a Disability shall be a child from birth through two years of age meeting the definition and criteria described in 2 CCR 503-1, 16.920 D.

### **2.0910 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:

**2.1009(1)** American Sign Language;

**2.1009(2)** English-based manual or sign systems; or

**2.1009(3)** Oral, aural, or speech-based training.

### **2.110 Consent**

*Consent* means that:

- 2.119(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;
- 2.119(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
- 2.119(3)(a) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
- 2.119(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).
- 2.119(3)(c) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

**2.121 Day; Business Day; School Day**

- 2.121(1) *Day* means calendar day unless otherwise indicated as business day or school day.
- 2.121(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)).
- 2.121(3) *School Day* has the same meaning for all children in school, including children with and without disabilities and shall mean any day, including a partial day that children are in attendance at school for instructional purposes.

**2.132 Department**

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

**2.143 Department of Early Childhood Programs**

- 2.143(1) *Department of Early Childhood (CDEC)* means the department of early childhood created in 26.5-1.104, C.R.S.
- 2.143(2) *Local Coordinating Organization (LCO)* means an entity as defined in 26.5-2-102(5), C.R.S.
- 2.143(3) *Preschool Provider* means an entity as defined in 26.5-4-203(14), C.R.S.
- 2.143(4) *Universal Preschool Program or Preschool Program* means the preschool program created in 26.5-4-201 et. seq., C.R.S. As defined in 26.5-4-203(4), C.R.S., Preschool Program includes all participating Preschool Providers.

**2.154 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.

**2.165 Equipment**

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

**2.176 ESEA**

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

**2.187 Evaluation**

2.187(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.

**2.198 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:

2.198(1) Amounts received:

- 2.198(1)(a) Under Part B of the Act;
- 2.198(1)(b) Under Part A of Title I of the ESEA; and
- 2.198(1)(c) Under Parts A and B of Title III of the ESEA and;

2.198(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.)

2.198(3) This definition for “Excess Costs” is different from the term “Tuition Costs” as defined in Section 9.00 of these Rules.

**2.2019 Facility**

**Facility** means a day treatment center, residential child care facility, or other facility licensed by the department of human services pursuant to section 26-6-104, C.R.S., or a hospital licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S.

**2.2019(1)** *Approved Facility School* means an educational program that is operated by a facility or a specialized day school authorized by CDE's Office of Facility Schools to provide educational services to students placed in the facility, including special education services to children with disabilities, and that has been placed, pursuant to section 22-2-407, C.R.S., on the list of facility schools that are approved to receive reimbursement for providing those educational services. An educational program provided by an administrative unit at a facility is not an approved facility school, but rather is an educational program of the administrative unit that does not require approval by the Department.

### **2.210 Free Appropriate Public Education**

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

- 2.2119(1)** Are provided at public expense, under public supervision and direction, and without charge;
- 2.2119(2)** Meet the standards of the Department, including the requirements of these Rules;
- 2.2119(3)** Include an appropriate preschool, elementary school, or secondary school education in the State; and
- 2.2119(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~~ **[Deleted]**

### **2.221 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.

### **2.232 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.

### **2.243 Include**

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

### **2.254 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.

**2.265 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.

**2.276 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 Early Childhood..

**2.287 Institution of Higher Education**

*Institution of Higher Education* -

2.287(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

2.287(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.

**2.298 Least Restrictive Environment**

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

2.298(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

2.298(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.

**2.3029 Limited English Proficient**

*Limited English Proficient* has the meaning given the term in ~~20 U.S.C. § 1401(18)~~~~Section 9101(25)~~ of the ESEA.

**2.310 Literacy Mode**

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

- 2.310(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.
- 2.310(2) Braille means the system of reading and writing by means of raised points, commonly known as Standard English Braille.
- 2.310(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.
- 2.310(4) Regular Print Mode means any method or system of achieving literacy that depends upon the apprehension of regular-sized printed material.

**2.321 Local Educational Agency**

When used in 34 CFR Part B, the term *Local Educational Agency* means an administrative unit, as defined in Section 2.022.03 of these Rules, or a state-operated program as defined in Section 2.5049 of these Rules.

**2.332 Native Language**

- 2.332(1) *Native Language*, when used with respect to an individual who is limited English proficient, means the following:
- 2.332(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.
- 2.332(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.
- 2.332(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).

**2.343 Parent**

- 2.343(1) *Parent* means-
- 2.343(1)(a) A biological or adoptive parent of a child;
- 2.343(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;
- 2.343(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);

- 2.343(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
- 2.343(1)(e) An educational surrogate parent who has been assigned in accordance with Section 6.02(8) of these Rules.
- 2.343(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 2.343 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.
- 2.343(2)(b) If a judicial decree or order identifies a specific person or persons under Sections (1)(a) through (d) of this Rule 2.343 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.

#### 2.354 Personally Identifiable

*Personally Identifiable* means information that contains-

- 2.354(1) The name of the child, the child's parent, or other family member;
- 2.354(2) The address of the child;
- 2.354(3) A personal identifier, such as the child's social security number or student number;  
or
- 2.354(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

#### 2.365 Public Agency

The term "*Public Agency*":

- 2.365(1) When used in connection with out of district placements, shall have the meaning given it in Section 9.01(5) of these Rules.
- 2.365(2) When used in 34 CFR Part 300, shall mean an administrative unit, as defined in Section ~~2.022.03~~ of these Rules, and a state-operated program as defined in Section 2.49 50 of these Rules. In addition, the term "public agency" also includes the Department in the following circumstances: when used in 34 CFR 300.33 to define a public agency, in 34 CFR 300.151-153, Section 7.06 of these Rules, and the Department's procedures to define a party subject to state complaint procedures, and in 34 CFR 300.507 and Section 6.02(7.5) of these Rules to define a party subject to due process complaint procedures.

**Commented [MB3]:** Added based on feedback from OSEP.

#### 2.376 Public Placement

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

**2.387 Related Services****2.387(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.

**2.387(2) Exception.**

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

**2.387(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.

**2.387(2)(b) Nothing in Section 2.387(2)(a)-**

**2.387(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.

**2.387(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

**2.387(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).

**2.387(3) Individual related services terms defined.**

The terms used in this definition are defined as follows:

**2.387(3)(a) Audiology includes-**

~~2.372.38~~**2.387(3)(a)(i)** Identification of children with hearing loss;

~~2.372.38~~**2.387(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;

- 2-372.38(3)(a)(iii)** Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- 2-372.38(3)(a)(iv)** Creation and administration of programs for prevention of hearing loss;
- 2-372.38(3)(a)(v)** Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- 2-372.38(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.
- 2-372.38(3)(b)** Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- 2-372.38(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.
- 2-372.38(3)(d)** Interpreting services that includes-
- 2-372.38(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
- 2-372.38(3)(d)(ii)** Special interpreting services for children who are deaf-blind.
- 2-372.38(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.
- 2-372.38(3)(f)** Occupational therapy-
- 2-372.38(3)(f)(i)** Means services provided by a qualified occupational therapist; and
- 2-372.38(3)(f)(ii)** Includes-
- 2-372.38(3)(f)(ii)(A)** Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- 2-372.38(3)(f)(ii)(B)** Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- 2-372.38(3)(f)(ii)(C)** Preventing, through early intervention, initial or further impairment or loss of function.

**2-372.38(3)(g)** Orientation and mobility services-

**2-372.38(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

**2-372.38(3)(g)(ii)** Includes teaching children the following, as appropriate:

**2-372.38(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);

**2-372.38(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;

**2-372.38(3)(g)(ii)(C)** To understand and use remaining vision and distance low vision aids; and

**2-372.38(3)(g)(ii)(D)** Other concepts, techniques, and tools.

**2-372.38(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.

**2-372.38(3)(i)** Physical therapy means services provided by a qualified physical therapist.

**2-372.38(3)(j)** Psychological services includes-

**2-372.38(3)(j)(i)** Administering psychological and educational tests, and other assessment procedures;

**2-372.38(3)(j)(ii)** Interpreting assessment results;

**2-372.38(3)(j)(iii)** Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

**2-372.38(3)(j)(iv)** Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological test interviews, direct observation, and behavioral evaluations;

**2-372.38(3)(j)(v)** Planning and managing a program of psychological services, including psychological counseling for children and parents; and

**2-372.38(3)(j)(vi)** Assisting in developing positive behavioral intervention strategies.

**2-372.38(3)(k)** Recreation includes-

- 2-372.38(3)(k)(i)** Assessment of leisure function;
- 2-372.38(3)(k)(ii)** Therapeutic recreation services;
- 2-372.38(3)(k)(iii)** Recreation programs in schools and community agencies;  
and
- 2-372.38(3)(k)(iv)** Leisure education.

**2-372.38(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.

**2-372.38(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.

**2-372.38(3)(n)** Social work services in schools includes-

- 2-372.38(3)(n)(i)** Preparing a social or developmental history on a child with a disability;
- 2-372.38(3)(n)(ii)** Group and individual counseling with the child and family;
- 2-372.38(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;
- 2-372.38(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
- 2-372.38(3)(n)(v)** Assisting in developing positive behavioral intervention strategies.

**2-372.38(3)(o)** Transportation includes-

- 2-372.38(3)(o)(i)** Travel to and from school and between schools;
- 2-372.38(3)(o)(ii)** Travel in and around school buildings; and

~~2-372.38~~(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.

### **2.398 Scientifically Based Research**

*Scientifically Based Research* has the meaning given the term in ~~20 USC § 9501(18) Section 9101(37) of the ESEA.~~

### **2.4039 School**

~~2.4039~~(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.

### **2.4039(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.

### **2.410 School District**

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

### **2.421 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.

### **2.432 Secretary**

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

### **2.443 Special Education**

~~2.432.44~~(1) General.

~~2.432.44~~(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 -

~~2.432.44~~(1)(a)(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

2-432.44(1)(a)(ii) Instruction in physical education.

2-432.44(1)(b) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (1)(a) of this Section -

2-432.44(1)(b)(i) Speech-language pathology services that includes -

2-432.44(1)(b)(i)(A) Identification of children with speech or language impairments;

2-432.44(1)(b)(i)(B) Diagnosis and appraisal of specific speech or language impairments;

2-432.44(1)(b)(i)(C) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

2-432.44(1)(b)(i)(D) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

2-432.44(1)(b)(i)(E) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

2-432.44(1)(b)(i)(F) Rule of construction: A child with a disability, as defined in Section 2-082.09 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.

2-432.44(1)(b)(ii) Travel training; and

2-432.44(1)(b)(iii) Vocational education.

2-432.44(2) Individual special education terms defined.

The terms in this definition are defined as follows:

2-432.44(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.

2-432.44(2)(b) *Physical education* means -

2-432.44(2)(b)(i) The development of -

2-432.44(2)(b)(i)(A) Physical and motor fitness;

2-432.44(2)(b)(i)(B) Fundamental motor skills and patterns; and

2-432.44(2)(b)(i)(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

**2-432.44(2)(b)(ii)** Includes special physical education, adapted physical education, movement education, and motor development.

**2-432.44(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 -

**2-432.44(2)(c)(i)** To address the unique needs of the child that result from the child's disability; and

**2-432.44(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.

**2-432.44(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 -

**2-432.44(2)(d)(i)** Develop an awareness of the environment in which they live; and

**2-432.44(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).

**2-432.44(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.

#### **2-442.45 Special Education Expenditures**

*Special Education Expenditures* are those costs which are incurred by an administrative unit, state-operated program or approved facility school for professional services associated with special education referrals and evaluations 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. Special Education expenditures shall be supplemental to the general education program and shall be above what is provided by the administrative unit, state-operated program, or approved facility school for general education students and staff and may include:

**2-442.45(1)** Special education teachers;

**2-442.45(2)** Home-hospital teachers for students with disabilities;

**2-442.45(3)** Speech-language pathologists and speech-language pathology assistants;

- 2.442.45(4) Specialty teachers (e.g., adapted physical education teachers, music teachers, art teachers, family and consumer education teachers, and industrial/technical education teachers);
- 2.442.45(5) Special education instruction paraprofessionals;
- 2.442.45(6) Educational interpreters;
- 2.442.45(7) School nurses;
- 2.442.45(8) Occupational therapists and occupational therapy assistants;
- 2.442.45(9) Physical therapists and physical therapy assistants;
- 2.442.45(10) School psychologists;
- 2.442.45(11) School social workers;
- 2.442.45(12) Audiologists;
- 2.442.45(13) Orientation and mobility specialists;
- 2.442.45(14) Other special education professionals;
- 2.442.45(15) Special education administrators and office support;
- 2.442.45(16) Other noncertified or nonlicensed support;
- 2.442.45(17) Employee benefits for special education staff;
- 2.442.45(18) Supplies, materials, and equipment used for individual students' special education programs and services;
- 2.442.45(19) Purchased service contracts for personal services;
- 2.442.45(20) Tuition to other administrative units and approved tuition rates to approved facility schools for special education;
- 2.442.45(21) Staff travel related to special education;
- 2.442.45(22) Professional development for special education staff, or all staff, if the content of the professional development is specific to services for children with disabilities;
- 2.442.45(23) Other purchased services related to special education;
- 2.442.45(24) Dues, fees and other expenditures specific to the special education program; and
- 2.442.45(25) Parent counseling and training, as defined by the IDEA and its implementing regulations.

**2.465 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.

**2.476 State Board**

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

**2.487 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.

**2.498 State Educational Agency**

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

**2.5049 State-Operated Program**

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

- 2.5049(1) The Colorado School for the Deaf and the Blind, including any schools authorized under Section 22-80-102(4)(b), C.R.S.;
- 2.5049(2) The Department of Corrections; or
- 2.5049(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.

**2.510 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.

**2.521 Transition Services**

- 2.521(1) *Transition Services* means a coordinated set of activities for a child with a disability that –
  - 2.521(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;
  - 2.521(1)(b) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes -
    - 2.521(1)(b)(i) Instruction;

- 2.524(1)(b)(ii) Related services;
- 2.524(1)(b)(iii) Community experiences;
- 2.524(1)(b)(iv) The development of employment and other post-school adult living objectives; and
- 2.524(1)(b)(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2.524(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.

### 2.532 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.

### 2.543 Ward of the State

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

- 2.543(1) General. Subject to 2.543(2) of this Section, ward of the State means a child who, as determined by the State where the child resides, is -
- 2.543(1)(a) A foster child;
  - 2.543(1)(b) A ward of the State; or
  - 2.543(1)(c) In the custody of a public child welfare agency.
- 2.543(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 2.343 of these Rules.

## 3.00 ADMINISTRATION

### 3.01 Standards For Administrative Units

3.01(1) A special education AU shall satisfy the following standards:

- 3.01(1)(a) The AU ~~shall be deemed to~~ must be of sufficient size and geographic makeup ~~if it~~to fulfills the requirements of the IDEA, the ECEA, and their implementing regulations. ~~Administrative unit compliance with these requirements~~Whether an AU is of sufficient size and geographic makeup shall be measured by the AU's ~~compliance or ability to comply with the standards and responsibilities of AUs in these rules and:~~
- 3.01(1)(a)(i) The AU's performance as determined by monitoring activities conducted by the Department including: desk audits; focused and comprehensive on-site monitoring; dispute resolution findings; and verification activities to ensure timely correction of noncompliance;

**Commented [MB4]:** Changes recommended by the Department to improve the process for changes to administrative units (e.g. new or reorganized AUs) to ensure that all students with disabilities in Colorado are served by an AU that is capable of complying with the requirements in law and rule for students with disabilities.

- 3.01(1)(a)(ii) The AU's performance as determined by its annual determination issued by the Department consistent with 34 CFR § 300.604 and related indicators under Colorado's IDEA Part B State Performance Plan;
- 3.01(1)(a)(iii) A federal application, approved by the Department, for IDEA Part B and Preschool grant funds;
- 3.01(1)(a)(iv) Compliance with all federal and state reporting requirements, including fiscal and data reporting requirements;
- 3.01(1)(a)(v) Compliance with IDEA Part B and IDEA Preschool grant fiscal requirements, including maintenance of effort, excess costs and "supplement not supplant" requirements; **and**
- 3.01(1)(a)(vi) Maintaining auditable documentation to track expenditures of state and federal special education funds, to ensure that the funds are used solely for allowable uses, as defined by federal and state law;
- 3.01(1)(b) Provide for 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 with disabilities as defined by ECEA Rule **2-082.09**.
- 3.01(1)(c) Employment of a properly licensed and endorsed professional who will function at least half time as director of special education and who has the authority and responsibility to assure that all the duties and responsibilities of the AU as specified in these Rules are carried out.
- 3.01(1)(d) Development and implementation of compliant special education comprehensive plan as required by IDEA and approved by the Department.
- 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 board as follows:
- 3.01(1)(f)(i) In the case of a single district AU, the local board of education;
- 3.01(1)(f)(ii) In the case of an AU that is a board of cooperative services, the board of cooperative services;
- 3.01(1)(f)(iii) In the case of a multi-district AU, governance consistent with the AU's operating agreement;
- 3.01(1)(f)(iv) In the case of the Charter School Institute, the Institute Board; and
- 3.01(1)(f)(v) In the case of a charter school collaborative or charter school network, governance consistent its governing charter or agreement.

3.01(2) Organization of Administrative Units

Every school district and Board of Cooperative Services that provides services to children with disabilities ~~shall~~**must** be an administrative unit or a part of an administrative unit. Every charter school shall be part of an administrative unit, which may be an alternative administrative unit.

3.01(2)(a) Districts that do not meet the qualifications of an administrative unit ~~shall~~**must** enter into an operating agreement to become part of an approved administrative unit that is a board of cooperative services and ~~shall~~**must** abide by all policies and procedures contained in that unit's comprehensive plan. Multi-district administrative units ~~must~~ ~~shall~~ have signed operating agreements entered into by the administrative unit with its member districts. Such operating agreements ~~shall~~**must** clearly set out the special education responsibilities of the administrative unit and each member district and ~~shall~~ ~~must~~ be binding throughout the period of the operating agreement, regardless of change in governance of the member school districts, change in composition of the administrative unit, or personnel changes in a member district or the administrative unit. The operating agreement ~~shall~~**must** also address the special education fiscal arrangement between the AU and its member districts.

~~3.01(2)(a)(i) In addition to any other contractual remedies that may be set forth in the operating agreement, the AU shall be authorized to retain all or any portion of the IDEA and ECEA fund allocation attributable to a particular member district as necessary to cover the costs of meeting special education responsibilities to students within the member district.~~

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 ~~and until such time when the Department approves new or reorganized administrative units that serve all students in the current administrative unit.~~

3.01(2)(c) Existing units that 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.

### 3.01(3) Applications for new or reorganized Administrative Units

3.01(3)(a) Administrative units or member school districts of administrative units desiring to form new or reorganized administrative units ~~shall~~**must** ~~submit an application~~**apply** to the State Director of Special Education and, ~~if applicable,~~ the AU of which the district is currently a member ~~pursuant to the timelines set forth below. by September 1 (or the next business day, if September 1 falls on a weekend or holiday) of the year preceding the fiscal year in which the new administrative unit proposes to begin operation.~~This application ~~will~~**must** demonstrate ~~it that the applicant has the capacity to~~ meet the standards of 3.01. ~~In addition, the application must include the following: and shall include:~~

3.01(3)(a)(i) A letter of intent that:

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

~~3.01(3)(a)(i)(B) States the positions of the entities impacted by the application (e.g. existing BOCES and member districts), based on a conferral that occurred prior to filing the application;~~

~~3.01(3)(a)(i)(C) States whether any entity has requested a third-party review of the application, based on a conferral that occurred prior to filing the application and confirms that the parties agreed upon the third-party.~~

~~3.01(3)(a)(ii)(B) Outlines how the proposed administrative unit will comply with the requirements of the ECEA Rules, including the operating agreement requirement for multi-district administrative units;~~

~~3.01(3)(a)(ii)(C) Includes a proposed compliant comprehensive plan for the newly reorganized administrative unit(s);~~

~~3.01(3)(b) — For any applicant(s) that has not met its current maintenance of effort requirement, the application must demonstrate that the current and the proposed administrative units will satisfy the maintenance of effort requirement; 3.01(3)(a)(ii) — If a BOCES is seeking to dissolve and all districts are seeking to join another reorganized AU or become a new AU, applications must address clear plans for maintaining services for all students in the existing BOCES because the Department will not grant an application for a new or reorganized AU until all students in the current AU are under new approved comprehensive plans;~~

~~3.01(3)(ac)(iii) For any applicant(s) that has not met the federal and/or state requirements for provision of special education services to students with disabilities, the application must demonstrate that the proposed administrative unit will have the capacity to meet those requirements;:-~~

~~3.01(3)(a)(iv) — Identify all due process hearings or state complaints that have involved the applicant district (the district seeking to become a new AU or join a reorganized AU) or any of its schools within the past four school years inclusive of the year in which the application is made;:-~~

~~3.01(3)(a)(iv)(A) — If the decisions or actions of the applicant district's staff resulted in any adverse findings against the existing AU because of a due process hearing or state complaint, the applicant district must evidence that all required corrective actions required by the administrative law judge or state complaint officer have been completed in full.~~

~~3.01(3)(a)(v) — Identify any findings of noncompliance resulting from any general supervision or monitoring activities conducted by the Department that~~

involved the applicant district or any of its schools within the past four school years inclusive of the year in which the application is made; and-

\_\_\_\_\_ 3.01(3)(a)(v)(A) The applicant district must evidence that all corrective actions required by the Department have been completed in full.

3.01(3)(a)(vi) An analysis that addresses the following:

\_\_\_\_\_ 3.01(3)(a)(vi)(A) If the applicant district(s) is/are approved to form a new or reorganized AU, what are the projected revenues and expenditures for the newly formed AU(s), and/or reorganized AU(s), and any existing AUs?

\_\_\_\_\_ 3.01(3)(a)(vi)(B) If the applicant district(s) is/are approved to form a new or reorganized AU(s), what are the programmatic impacts for special education services for both the new or reorganized AU and any existing administrative unit?

\_\_\_\_\_ 3.01(3)(a)(vi)(C) If the applicant district(s) is/are approved to form a new or reorganized AU, what is the potential impact on recruiting and retaining qualified special education teachers and special service providers for the new or reorganized AU(s) and any existing administrative unit?

3.01(3)(a)(vi)(D) If the applicant district(s) is/are approved to form a new or reorganized AU, what are the potential negative impacts of the reorganization on services to all eligible special education students within the existing AU's jurisdiction and can they be mitigated?

\_\_\_\_\_ 3.01(3)(a)(vi)(E) Will the new or reorganized AU(s) improve the academic and functional outcomes of special education students through the efficient and effective delivery of special education services to special education students within its jurisdiction?

\_\_\_\_\_ 3.01(3)(a)(vii) If one of the impacted parties requested (during the pre-filing conferral process) that a report be completed by an agreed-upon third party, the third-party report should be submitted with the application for a new or reorganized administrative unit.

Either the Department or any entity impacted by an application for a new or reorganized administrative unit may request the entity seeking the change to secure and pay for a report prepared by a Department-approved independent third party, which report shall describe the anticipated revenues and expenditures for all affected administrative units. The independent third party shall possess sufficient expertise in the following areas: accounting, special education budget development and projection, and special education fiscal requirements. The request for the third-party report must be made within 14 calendar days of the day the Department

~~notifies the applicant and affected entities that the application is complete (see Rule 3.01(4)):~~

- 3.01(3)(be) A charter school network or charter school collaborative seeking to become approved and designated as an administrative unit shall submit an application to the State Director of Special Education pursuant to this Rule 3.01(3), which application shall also include evidence that each charter school expected to participate in the new administrative unit:
- 3.01(3)(be)(i) Demonstrates the capacity and commitment to serve children with disabilities, as defined in section 22-20-103, C.R.S., through an analysis of the charter school's existing record of serving children with disabilities or by expressly submitting a plan to the new administrative unit articulating an existing or intended commitment;
- 3.01(3)(be)(ii) Creates a strategic plan for the enrollment of children with disabilities in the charter school to increase educational options for families with children with disabilities;
- 3.01(3)(be)(iii) Has or develops and implements special education programming that results in the continued enrollment of children with disabilities;
- 3.01(3)(be)(iv) Has or develops and implements multi-tiered systems of support to identify and refer children with disabilities to special education services; and
- 3.01(3)(be)(v) Demonstrates how the new administrative unit will allow the charter school to better and more efficiently serve children with disabilities.

3.01(4) Timelines for Review of Application for a New or Reorganized Administrative Unit

~~3.01(4)(a) Before submitting an application for a new or reorganized AU, the prospective applicant should meet and confer with other impacted entities (e.g. the existing AU and other members of the existing AU) to discuss the intent to apply. In this conferral process, the potential applicant will confirm whether any of the impacted entities seeks a third-party review of the application. The parties are encouraged to begin conferral conversations early enough to ensure completion of the third-party report by the deadline.~~

~~3.01(4)(b) An application for a new or reorganized AU must be submitted by September June 1 (or the next business day, if September June 1 falls on a weekend). The Department will not begin review of the application until September 1 in order to provide the parties with time to do additional conferals and/or mediation over the summer. If the parties determine through mediation or other conferrals that the application or the third-party report need revisions, the applicant may submit a revised application and/or third party report to the Department by September 1. This timeline is designed to ensure that the parties have sufficient time to review the budgetary and other impacts on the proposed change. The~~

timeline is also designed to ensure that the applicant and other impacted entities receive a decision with sufficient time to plan for new budgets and new staffing in spring of that school year after receiving the Department's decision, with a launch of the new or reorganized AU in the subsequent school year.

3.01(4)(c) After September 1 Upon receipt of an application to form a new or reorganized administrative unit, the Department shall review the application to determine whether it contains the documentation and information required by this Rule. The Department shall have until **September 22-15** (or the next business day, if September 22-15 falls on a weekend or holiday) to determine whether the application is complete. The Department will and to provide the applicant and affected entities with written notification of whether the application is complete or whether additional information is requested and, if applicable, which specific information and/or documentation is being requested. The Department may also request that multiple entities submit applications jointly when the Department will not be able to grant one application unless it can grant all applications related to the students of an existing AU of this determination.

3.01(4)(d) The applicant shall have until **September 29** (or the next business day if September 29 falls on a weekend) to provide any additional information requested or to resubmit applications jointly.

3.01(4)(e) If an applicant to form a new or reorganized administrative unit fails to timely submit a complete application containing the documentation and information required by this rule and the Department's request, the application shall be deemed incomplete and shall be denied.

3.01(4)(f) When there is a request to submit a third-party report, the applicant will ideally submit the third-party report with the application. If the applicant was unable to do so, the applicant shall submit the third-party report no later than **November 1**. The applicant shall be responsible for the cost of the third-party report.

3.01(4)(f)(i) The independent third party shall conduct an analysis of the questions stated in rule 3.01(3)(a)(vi).

3.01(4)(f)(ii) The independent third party shall possess sufficient expertise in the following areas: accounting, special education budget development and projection, special education fiscal requirements, and the delivery of special education services.

3.01(4)(f)(iii) The independent third-party report shall be provided to all affected entities and the Department by no later than **November 1** (or the next business day): The Department will provide technical assistance, upon request, regarding the completion of third-party reports.

3.01(4)(g) At any point during this process by June 15, either the applicant or the affected parties may request mediation. If mediation occurs, it should be completed by August 20.

~~3.01(4)(g)(i) The applicant and affected entities must agree on a mediator. The costs and expenses of the mediation will be split among the participating parties.~~

~~3.01(4)(g)(ii) Once selected by mutual agreement, the selected mediator will convene a meeting with representatives who have decision-making authority for the applicant(s) and the current administrative unit. Such meeting will be attended by representatives of the respective entities and may be attended by the attorneys of the parties.~~

~~3.01(4)(g)(iii) The Department will provide the mediator with the full application, the third-party report, if applicable, and any other relevant supporting documentation.~~

~~3.01(4)(g)(iv) The purpose of the mediation is to discuss the reasons the applicant(s) wish to form a new or reorganized AU and the facts that form the basis of the application(s), so that the affected entity or entities have the opportunity to resolve the disputes and concerns that are the basis for the application(s).~~

~~3.01(4)(a) If an applicant to form a new or reorganized administrative unit fails to timely submit a complete application containing the documentation and information required by this Rule, the application shall be deemed incomplete and shall be denied.~~

~~3.01(4)(hb) If an applicant to form a new or reorganized administrative unit timely submits a complete application and the Department determines that it does not require additional information or documentation, the Department shall have until **November 30** (or the next business day, if November 30 falls on a weekend or holiday) to approve or deny the application.~~

~~3.01(4)(i) For the 2025 application year only, the following modifications are made: an applicant must notify potentially impacted parties of an intent to file an application by June 1; however, the application and third-party report will not be due until August 1, 2025. All other deadlines and procedures remain the same.~~

~~3.01(4)(c) If an applicant timely submits a complete application but the Department or another entity determines it requires additional information or documentation, the Department's notification shall identify the specific information or documentation requested, including, as necessary, information from affected administrative units. The applicant shall provide the requested information or documentation to the Department by October 1. The Department shall have until November 30 (or the next business day, if November 30 falls on a weekend or holiday) to approve or deny the application.~~

3.01(5) Department of Education Approval of Application for a New or Reorganized Administrative Unit

- 3.01(5)(a) The Department shall approve an application for a new or reorganized administrative unit only if the application materials submitted by the applicant, any third-party report, and any other evidence considered and documented by the Department demonstrate:
- 3.01(5)(a)(i) That the proposed administrative unit will be able to meet all ~~of its~~ obligations, ~~including maintenance of effort~~, under state and federal special education law and the standards in these rules; and
- 3.01(5)(a)(ii) That the existing or remaining administrative unit will be able to meet all ~~of its~~ obligations, ~~including maintenance of effort~~, under state and federal special education law and the standards in these rules.
- ~~3.01(5)(b) In reviewing an application, the Department shall also consider the impact of approving additional administrative units on the efficiency and effectiveness of all existing AUs and on the Department.~~
- 3.01(5)(bc) The Department shall present its decision approving or denying an application in writing to the applicant and affected entities, including its reasons for denying an application, as applicable.
- 3.01(5)(cd) If an affected entity disagrees with the determination of the Department, the affected entity may appeal the decision to the Commissioner of the Department of Education. In hearing an appeal, the Commissioner shall only overturn a decision by the Department upon a finding that ~~that~~ in approving or denying the application, the Department or the applicant violated the application procedures or processes required by ~~the ECE~~ these rules, or that the Department's decision was not supported by the evidence presented in the application, the third-party report, and/or other relevant documentation named and considered in the Department's written decision. The party bringing the appeal bears all burdens of proof, presentation, and persuasion to demonstrate that the decision of the Department should be overturned.
- 3.01(5)(cd)(i) The affected entity shall submit its appeal to the Commissioner within ~~60~~ 30 calendar days of the entity's receipt of the Department's decision to approve or deny the application.
- 3.01(5)(cd)(ii) The Commissioner shall consider the appeal and make a determination concerning the appeal by January 31 (or the next business day) within 60 days of the date the appeal is submitted. The Commissioner shall provide written notice of the decision on appeal to the affected entity.
- 3.01(5)(cd)(iii) The decision of the Commissioner shall be final and shall not be subject to further review.

### 3.02 Standards for Approved Facility Schools, State Operated Programs, and Department of Early Childhood Programs

3.02(1) Approved Facility Schools – see Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

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.

3.02(3) Department of Early Childhood Programs

3.02(3)(a) Minimum Standards for Department of Early Childhood Programs.

The Colorado Department of Education is the state educational agency responsible for compliance with IDEA, Part B, and the ECEA, including compliance within Department of Early Childhood programs. The local administrative unit is the local education agency responsible for identification, placement, re-evaluation, of special education and related services for students with disabilities. Accordingly, Department of Early Childhood Programs shall satisfy the following minimum standards related to IDEA Part B and the ECEA.

3.02(3)(a)(i) Complete all training and certification requirements established by the Department of Education for identifying children suspected of having a disability and referring such children to the appropriate administrative unit for evaluation. Preschool Providers that have provided services to children with disabilities in prior Colorado public preschool programs are exempt from this requirement.

3.02(3)(a)(ii) Preschool Providers shall complete all special education training and licensing or authorization requirements for early childhood educators established by the Department of Education prior to any placement by the

administrative unit of a child with disabilities in its program. Preschool Providers that have provided services to children with disabilities in prior Colorado public preschool programs are exempt from this requirement.

- 3.02(3)(a)(iii) Preschool providers that may provide preschool services to children with disabilities shall comply with all state and federal laws, regulations, requirements, including requirements and corrective actions established by the relevant administrative unit prior to placement by the administrative unit of a child with disabilities in its program.
- 3.02(3)(a)(iv) Preschool Providers shall employ sufficient staff that have completed the training and licensing or authorization requirements for early childhood educators established by the Department of Education prior to such staff providing services to children with disabilities at the direction of the administrative unit.

3.02(3)(b) Dispute Resolution Process for Special Education-Related Disputes Between Administrative Units and Department of Early Childhood Programs

The following dispute resolution process applies to special education-related disputes between administrative units and Department of Early Childhood Programs. This process does not apply to disputes between an administrative unit and the state Department of Early Childhood. Disputes between parents/guardians and education providers are governed by Section 6 of these rules.

- 3.02(3)(b)(i) The Department of Early Childhood (CDEC) program and the administrative unit will arrange to discuss issues and work to resolve the dispute at the local level.
- 3.02(3)(b)(ii) If the parties are unable to resolve issues at the local level, the administrative unit may implement this dispute resolution process by notifying the Colorado Department of Education (CDE) or may seek other legal or equitable remedies that may be available to the administrative unit.
- 3.02(3)(b)(iii) The dispute resolution process is initiated by the administrative unit providing written notice to the CDE and the other parties to the dispute, describing the dispute with specificity and identifying the relief requested. The other parties to the dispute shall have fifteen calendar days to provide a written response. The parties to the dispute shall provide CDE with all documents and information requested by CDE, including, without limitation, any agreements between the parties, that are relevant in resolving the dispute.
- 3.02(3)(b)(iv) CDE, in consultation with CDEC as CDE deems appropriate, may implement, and apply remedies and sanctions, as reasonably necessary, including requirements of local agreements, training and technical assistance from state staff, or other appropriate remedies to effectively resolve the issues presented to CDE. Any decision issued by CDE is binding

and must be implemented by the administrative unit and the CDEC program. Nothing in this Section 3.02(b) shall be interpreted to confer authority on CDEC to issue orders, relief, or remedies.

### 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 meet the requirements under 34 C.F.R. § 300.156.

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

Paraprofessionals may assist licensed personnel in the provision of services related to instruction or supervision of children and may assist in the provision of special education and related services. They must be appropriately and adequately trained and supervised based on their role. Each AU or approved facility school will determine the qualifications, ~~and~~ competencies, ~~and training~~ required for paraprofessionals to ensure student safety and their preparation to assist in the lawful provision of special education and related services. The level of supervision should generally increase for students with a higher level of vulnerability due to their disability (e.g. line-of-sight supervision for non-verbal students).

3.04(1)(e)(i) Required training should be based on the necessary skills for the role of the paraprofessional and completed prior to starting service or within a reasonable period of time based on the necessity of the skills being taught. Any necessary refresher training should be completed annually. Role appropriate training could include, for example, the confidentiality provisions of the Family Educational Rights and Privacy Act (FERPA) and state privacy laws, mandatory reporter of child abuse training pursuant to section 22-32-109(1)(z), C.R.S., the characteristics of disabling conditions, proper techniques for behavior modification and de-escalation, the legal requirements related to the provision of special education, and any relevant local policies and procedures. Training can and should be differentiated based on the paraprofessional's role – e.g. whether the individual is a 1:1 aide, or providing instructional support for a classroom, or providing related services (e.g. feeding tube assistance), or supporting students who are Deaf, Blind, or non-verbal, or is a transportation paraprofessional, or substitute paraprofessional.

**Commented [MB5]:** New language proposed in response to stakeholder feedback to increase guidance for paraprofessionals serving students with disabilities.

3.04(1)(e)(ii) Pursuant to Colorado law, a paraprofessional is precluded from employment if they were convicted of felony child abuse. When an employer receives notice of a misdemeanor child abuse conviction and is conducting an individualized determination regarding whether to offer or retain employment for a special education paraprofessional, the employer should consider that students with disabilities are a vulnerable population and that there is a strong connection to the nature of the job sought that is likely to preclude employment.

3.04(1)(e)(iii) Administrative units and approved facility schools shall assure and document that they meet the requirements for supervision and training 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 AU or approved facility school 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) [Expired 05/15/2014 per House Bill 14-1123]

3.04(3) Temporary Educator Eligibility (TEE) Authorization / Special Education Temporary Authorization (SETA)

Authorization for Temporary Educator Eligibility (TEE) for staff providing special education and related services to students with disabilities shall be formally referred to as Special Education Temporary Authorization (SETA) and conducted in accordance with Section 4.13 of the Rules for the Colorado Educator Licensing Act of 1991 at 1 CCR 301-37, 2260.5-R-4.13.

**3.05 Staff Development**

Administrative units and approved facility schools 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 approved facility school 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.

## **4.00 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 three to 21 who may have a disability and 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)(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(1)(c) Department of Early Childhood Programs – Part B Child Identification.

The Colorado Department of Education is the state educational agency responsible for compliance with IDEA Part B and ECEA. Administrative Units are the local educational agencies pursuant to IDEA Part B and ECEA and are responsible for Child Find initial evaluations. However, Department of Early Childhood programs may receive information about preschool children that triggers Child Find identification and referral obligations. Each Department of Early Childhood program shall comply with the Child Find identification and referral procedures established by the Department of Education. The administrative unit of residence shall remain responsible for all Child Find initial evaluation requirements.

**Commented [MB6]:** These are technical fixes to address recommendations by CDE's Early Childhood Special Education Director and CDE's Child Find Specialist.

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 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 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 the child has a disability and needs special education and related services.

- 4.02(3)(a) A special education referral may be initiated by:
- 4.02(3)(a)(i) An administrative unit or state-operated program because of a building level screening and/or referral process; or
- 4.02(3)(a)(ii) The parent of the child; or

## 4.02(3)(a)(iii) A Department of Early Childhood program.

Any other interested person who believes that a child needs an initial evaluation must work with the parent or the appropriate administrative unit, state-operated program, or Department of Early Childhood program.

## 4.02(3)(b) Parental Notification of Referral

4.02(3)(b)(i) Referrals from an administrative unit or state operated program: 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)(b)(ii) Referrals from a Department of Early Childhood Program: The program shall comply with all Child Find procedures established by the Department of Education for parental notification of referral. The administrative unit of residence shall remain responsible for all Child Find initial evaluation requirements.

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 ~~2-082.09~~ 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

**Commented [MB7]:** These are technical fixes to address recommendations by CDE's Early Childhood Special Education Director and CDE's Child Find Specialist.

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 ~~2-082.09~~ 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 time after the initial evaluation is completed.

4.02(6)(a)(ii) Following a reevaluation, a meeting shall be held within a reasonable 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 ~~2-082.09~~ 2-082.09(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 ~~2-022.03~~ 2-022.03 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 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 approved facility schools 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 approved facility school, private school, or Department of Early Childhood program, a representative of the approved facility school, private school, or Department of Early Childhood program must attend the IEP Team meeting. If the representative is unable to attend, their 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.

4.03(6)(b)(i) The plan shall include the following:

4.03(6)(b)(i)(A) 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)(i)(B) 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)(i)(C) 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)(i)(D) 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.

4.03(6)(b)(ii) Colorado teachers licensed and endorsed in 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 approved facility school 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 §300.116, §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 physical 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, subject to the limitations in this section 4.03(8).

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:

**Commented [MB8]:** Changes made to clarify expectations with respect to significant changes in placement and reevaluations, in response to stakeholder questions.

4.03(8)(b)(ii)(A) A significant change in placement for educational purposes includes:

- ~~4.03(8)(b)(ii)(A)(I) placement or referral to a private school or approved facility school by the administrative unit,~~
- ~~4.03(8)(b)(ii)(A)(II) the AU's addition or termination of an instructional or related service,~~
- ~~4.03(8)(b)(ii)(A)(III) when the student moves or is moved from in-person learning to online or at-home learning or from a brick-and-mortar school to an online school/program or vice versa, or~~
- ~~4.03(8)(b)(ii)(A)(IV) or~~ any change which would result in the following:
  - 4.03(8)(b)(ii)(A)(IV)(1) The child having different opportunities to participate in nonacademic and extracurricular services; ~~or~~
  - 4.03(8)(b)(ii)(A)(IV)(2) 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; or

~~4.03(8)(b)(ii)(A)(III) — The child transfers from a brick and mortar school to an online school or program or vice versa. The administrative unit for the entity sponsoring the online school or program is responsible for consideration of reevaluation and convening the IEP Team to determine whether the online school or program is an appropriate placement for the child.~~

4.03(8)(b)(ii)(B) A significant change in placement shall be made only upon consideration of reevaluation consistent with 34 CFR 300.305. ~~Such~~ A significant change in placement shall be made only by an IEP Team with the addition of those persons conducting ~~the 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 and must include parent participation. A location or building decision that does not constitute a change in placement does not require prior written notice or an IEP Team meeting, except as provided in section 4.03(8)(c) of these Rules.

## 4.03(8)(b)(iv) Public School Choice.

When a student transfers to a new school or program under Sections 22-30.5-104(3) (to a charter school), 22-30.5-507(3) (to a CSI school), 22-30.7-101 et seq. (to an online school or program), 22-32.5-101 et seq. (to an innovation school/zone), and/or 22-36-101(1), C.R.S. (open enrollment to any inter- or intra-district school of choice), the transfer requirements contained in 34 CFR §300.323(e) or 34 CFR §300.323(a) apply, depending on the timing of the transfer. The administrative unit shall not inquire about the transferring child's IEP or disability status until after the child has been admitted unless the transfer is part of a centralized districtwide admissions process. If the transfer is part of such a process the district must ensure and should provide assurance in applicable public communications that it does not use the information collected until after the admissions have been completed. Following admissions, 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 comply 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 applicable contract between a charter school and its authorizer or alternative administrative unit 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 charter school 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. However, as required by Sections 22-30.5-104(3), 22-30.5-507(3), and 22-36-101(1), C.R.S., an administrative unit shall not choose a location other than the parents' school of choice unless the IEP team determines that an appropriate placement cannot be provided at that location. An administrative unit that determines that the parents' school of choice is not an appropriate educational placement shall include a specific explanation of its determination in either the IEP or a separate prior written notice compliant with 34 C.F.R. § 300.503.

## 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.

## 5.00 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; and
  - 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 approved facility schools 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 3.01 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, a state-operated program, or a Department of Early Childhood 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.

5.01(24) Requirements regarding the participation of all children with disabilities in general state and district-wide assessment programs as established in 34 CFR §300.160.

## **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 program 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 receive funding under Part B of the IDEA, administrative units and state-operated programs 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.

**6.00 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) [Repealed]
- 6.02(7.5) Due Process Complaints and Civil Actions
  - 6.02(7.5)(a) General.

Except as is otherwise provided for in this Section 6.02(7.5), the requirements regarding resolution meetings and due process hearings shall be consistent with 34 CFR §300.507 through §300.515.

- 6.02(7.5)(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(7.5)(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 as set forth in 34 CFR §300.508(b).

6.02(7.5)(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 notice available to parents consistent with 34 CFR §300.504.

6.02(7.5)(a)(iv) A due process complaint can be filed against the Department.

**Commented [MB9]:** Added based on feedback from OSEP.

6.02(7.5)(b) Due Process Complaint – specific filing requirements.

6.02(7.5)(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 Administrative Law Judge (ALJ) to the case.

6.02(7.5)(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. If the due process complaint is filed against the Department, the party need only file the complaint with the Department.

6.02(7.5)(b)(iii) All timelines related to the due process complaint begin on the date that the complaint is received by both the opposing party and the Department.

6.02(7.5)(b)(iv) 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(7.5)(b)(iv)(A) By telephone, immediately notify the Department of the existence of the due process complaint; and

6.02(7.5)(b)(iv)(B) By facsimile, immediately provide a complete copy of the due process complaint to the Department accompanied by a written statement documenting the date when the due process complaint was filed. The Department will notify the public once secure electronic submission of due process complaints is available, and the parties may then submit any required documentation via this option.

6.02(7.5)(b)(v) 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 ALJ pursuant to 34 CFR §300.508(d).

6.02(7.5)(c) Assignment of an Administrative Law Judge.

Within two business days after the Department's receipt of a due process complaint, the Department shall notify the Office of Administrative Courts (OAC) in order to have an ALJ assigned to the complaint.

6.02(7.5)(d) Timelines applicable to resolution meetings and mediation.

6.02(7.5)(d)(i) Resolution Meeting

6.02(7.5)(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(7.5)(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(7.5)(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(7.5)(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(7.5)(d)(i)(C) The resolution meeting described need not be held if -

6.02(7.5)(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(7.5)(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(7.5)(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(7.5)(d)(ii) Resolution Period
- 6.02(7.5)(d)(ii)(A) The ALJ has no authority to extend the 30-day resolution period.
- 6.02(7.5)(d)(ii)(B) The parties may extend the resolution period but only under the circumstances described in Section 6.02(7.5)(d)(iii)(C).
- 6.02(7.5)(d)(ii)(C) 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(7.5)(d)(ii)(D) Except as provided in Section 6.02(7.5)(d)(iii), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period
- 6.02(7.5)(d)(ii)(E) 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(7.5)(d)(ii)(F) 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)(1) through (3)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the ALJ dismiss the parent's due process complaint.
- 6.02(7.5)(d)(ii)(G) 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 ALJ to begin the due process hearing 45-day timeline.
- 6.02(7.5)(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(7.5)(d)(iii)(A) Both parties agree in writing to waive the resolution meeting;

- 6.02(7.5)(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; or
- 6.02(7.5)(d)(iii)(C) When a party withdraws from mediation after the parties previously agreed, at the end of the 30-day resolution period, to continue the mediation as described below:
- 6.02(7.5)(d)(iii)(C)(I) The parties' agreement to continue the mediation shall be in writing and signed by each party; and
- 6.02(7.5)(d)(iii)(C)(II) Immediately after the parties' execution of the agreement to continue mediation, the parties shall jointly and simultaneously file the written agreement to continue mediation with the ALJ and the Department.
- 6.02(7.5)(e) Timelines applicable to due process hearings and convenience of hearings.
- 6.02(7.5)(e)(i) The Department 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(7.5)(d)(iii), above -
- 6.02(7.5)(e)(i)(A) A final decision is reached in the hearing; and
- 6.02(7.5)(e)(i)(B) A copy of the decision is mailed to each of the parties.
- 6.02(7.5)(e)(ii) At the request of either party, the ALJ may grant specific extensions of time beyond the 45 day due process hearing period. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7.5)(f)(v), below.
- 6.02(7.5)(e)(iii) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.
- 6.02(7.5)(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(7.5)(f)(i) The qualifications of ALJs.
- At a minimum, an ALJ must meet the qualifications established by 34 CFR §300.511(c). The Department, at its discretion, may require additional qualifications.
- 6.02(7.5)(f)(ii) The subject matter of due process hearings.
- 6.02(7.5)(f)(iii) The timeline and exceptions to the timeline for requesting a hearing.

## 6.02(7.5)(f)(iv) Specific procedures.

The ALJ shall:

- 6.02(7.5)(f)(iv)(A) Consistent with the timelines in Section 6.02(7.5)(e), above, establish the procedures and timelines to be followed during the hearing;
- 6.02(7.5)(f)(iv)(B) Schedule the time and place for the hearing;
- 6.02(7.5)(f)(iv)(C) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined;
- 6.02(7.5)(f)(iv)(D) At the request of either party, issue subpoenas to compel attendance of witnesses at the hearing;
- 6.02(7.5)(f)(iv)(E) Ensure that a written or electronic verbatim account of the hearing is kept; and
- 6.02(7.5)(f)(iv)(F) Provide to the Department a copy of any order or decision issued.

## 6.02(7.5)(f)(v) Extension of timelines

- 6.02(7.5)(f)(v)(A) The ALJ shall not have authority to extend the 45 day due process decision timeline until after the resolution period described in section 6.02(7.5)(d)(ii), above, has occurred.
- 6.02(7.5)(f)(v)(B) 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(7.5)(f)(v)(C) The ALJ'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(7.5)(f)(v)(D) The ALJ shall provide a copy of such written order to the parties and to the Department.
- 6.02(7.5)(f)(v)(E) 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 specific timelines established in Section 6.02(7.5)(i)(ii), below, shall apply.

## 6.02(7.5)(g) Hearing Rights

Hearing rights accorded to parties shall be consistent with 34 CFR §300.512.

## 6.02(7.5)(h) Hearing Decisions

6.02(7.5)(h)(i) General. Due process hearing decisions shall be consistent with the requirements established by 34 CFR §300.513. The topics addressed by 34 CFR §300.513 include:

- 6.02(7.5)(h)(i)(A) The decision of the ALJ on the provision of FAPE;
- 6.02(7.5)(h)(i)(B) Separate request for a due process hearing; and
- 6.02(7.5)(h)(i)(C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.

6.02(7.5)(h)(ii) Specific requirements for due process decisions.

- 6.02(7.5)(h)(ii)(A) The ALJ shall render, in writing, all findings of fact and the decision based upon the evidence.
- 6.02(7.5)(h)(ii)(B) The ALJ shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7.5)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7.5)(i)(ii).
- 6.02(7.5)(h)(ii)(C) The ALJ shall include within the decision notification that, any party aggrieved by the findings and decision, has the right to bring a civil action consistent with the requirements as set forth in 34 CFR §300.516.
- 6.02(7.5)(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(7.5)(h)(ii)(E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the recording of the hearing, if available. The record shall be forwarded to the Department within 100 days after the conclusion of all due process proceedings if no civil action is brought.

## 6.02(7.5)(i) Expedited Due Process Hearings

6.02(7.5)(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(7.5)(i)(ii) Specific Timelines

6.02(7.5)(i)(ii)(A) The Department 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 ALJ must make a determination within 10 school days after the hearing.

6.02(7.5)(i)(ii)(B) Unless the parents and administrative unit or state-operated program agree in writing to waive the resolution meeting described below, or agree to use the mediation process described in 34 CFR §300.506 -

6.02(7.5)(i)(ii)(B)(I) The resolution meeting must occur within seven days of receiving notice of the due process complaint; and

6.02(7.5)(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(7.5)(i)(ii)(B)(III) The ALJ has no authority to extend any of the timelines set forth in this section 6.02(7.5)(i)(ii).

6.02(7.5)(i)(ii)(B)(IV) The parties may not agree to mutually extend the resolution period to resolve an expedited due process complaint.

6.02(7.5)(i)(iii) The requirements and procedures contained in this Section 6.02(7.5)(a) through 6.02(7.5)(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(7.5)(j) 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(7.5)(k) Attorneys' fees.

Reasonable attorneys' fees may be awarded to a prevailing party by a court of competent jurisdiction, as described in 34 CFR §300.516, and consistent with the requirements established by 34 CFR §300.517.

6.02(7.5)(l) 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 the provisions of 34 CFR §300.533 apply.

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) Approved Facilities Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an approved facility school 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 approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the approved facility school 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 consistent with the requirements set forth in 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 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.

## 7.00 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 (or case management agencies), and approved facility schools should maintain individual student records that contain the following:
  - 7.01(1)(b)(i) Information about the disposition of each referral.

**Commented [MB10]:** Technical edit: Based on HB21-1197, which became effective July 2024, "community centered boards" have largely transitioned to being "case management agencies."

- 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 (or case management agencies) and approved facility schools shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

**Commented [MB11]:** Technical edit: Based on HB21-1197, which became effective July 2024, "community centered boards" have largely transitioned to being "case management agencies."

## 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 2-442.45 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, approved facility school, and Department of Early Childhood program 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, approved facility school and Department of Early Childhood program 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 approved facility school,

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)(b)(v) Confirmation that the AU adopted the policy on Abbreviated School Day Schedules.

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, approved facility school, or Department of Early Childhood program, 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, approved facility school, or Department of Early Childhood program is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such administrative unit, state-operated program, approved facility school, or Department of Early Childhood program 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.

**Commented [MB12]:** Added to ensure compliance with HB24-1063.

7.05(2)(b) Should the Department of Education determine that an administrative unit, state-operated program, approved facility school, or Department of Early Childhood program 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, approved facility school, or Department of Early Childhood program 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, approved facility school, or Department of Early Childhood program, the Department of Education shall acknowledge receipt of such and indicate whether it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.

7.05(5) [Deleted]

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, approved facility school, or Department of Early Childhood program 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, approved facility school, or Department of Early Childhood program 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, approved facility school, or Department of Early Childhood program;

7.05(6)(d) suspend payments, under an approved project, to the administrative unit, state-operated program, approved facility school, or Department of Early Childhood program.

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, or to the Colorado Department of Early Childhood for appropriate licensing action.

## **7.06 State Complaint Procedures**

The Department shall accept, investigate, and resolve state-level complaints under 34 CFR §§ 300.151 to 300.153 as part of its duty of general supervision.

**Commented [MB13]:** Added at the recommendation of the Department to increase transparency and stakeholder engagement on state complaint procedures.

7.06(1) Pursuant to section 22-20-104(1)(a)(VIII), C.R.S., the Department shall publish rules of agency organization governing how it processes state complaints. These state complaint procedures shall identify:

7.06(1)(a) The process for filing a complaint with the Department consistent with 34 CFR §§ 300.151(a)(1) and 300.153;

7.06(1)(b) Time limits and procedures consistent with 34 CFR § 300.152; and

7.06(1)(c) A reminder to public agencies to comply with 34 CFR § 300.504(a)(2).

7.06(2) As required by 34 CFR § 300.151(a)(2), the state complaint procedures must be posted to the Department's website, described in the Department's procedural safeguards notice, and otherwise widely disseminated to parents and other interested individuals.

7.06(3) The Department's decisions in a state complaint shall not be subject to appeal, but the same issues may be subject to a due process complaint if the party has a right to file a due process complaint consistent with 34 CFR 300.507. Subsequent due process proceedings will not delay implementation of any remedies imposed by a state complaint decision unless and until:

7.06(3)(a) The specific legal violation to which the remedy is directed is at issue in the due process complaint; and

7.06(3)(b) There is a direct conflict between the state complaint decision and the final decision of the administrative law judge.

**~~7.07~~ [Deleted]**

**8.00 RESPONSIBILITIES OF ADMINISTRATIVE UNITS, STATE-OPERATED PROGRAMS AND APPROVED FACILITY SCHOOLS**

**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(1)(i) Reporting of any Department of Early Childhood Program noncompliance with state and federal special education laws, regulations, and requirements to the Department of Education and Department of Early Childhood. Such reports shall be made in writing to the Commissioner of Education and the Executive Director of the Department of Early Childhood or their designees no later than five business days after discovery of the acts or omissions giving rise to the noncompliance.

8.01(1)(j) Adoption and implementation of a policy regarding Abbreviated School Day Schedules by July 1, 2025 that is substantially similar to a policy that the Department will create pursuant to section 22-20-123(3)(a), C.R.S., and which must include the following at minimum:

8.01(1)(j)(i) The definitions of Abbreviated School Day and Abbreviated School Day Schedule in rules 2.01 and 2.01(1) of these rules; and

8.01(1)(j)(ii) An explanation of and expectations on how Abbreviated School Days relate to school discipline and informal removals, which includes the following:

8.01(1)(j)(ii)(I) When a school unilaterally shortens a child's school day to address behavioral concerns, it must count this as a disciplinary removal even if the child was not formally suspended. This includes, but is not limited to, the following circumstances: when the school calls the child's parent/guardian to pick them up early due to behavior; when a teacher does not allow a child to attend class due to behavior; and when a school official unilaterally determines that the child must attend for an Abbreviated School Day due to behavior; and

8.01(1)(j)(ii)(II) These removals must be accurately recorded and tracked to ensure the child receives the disciplinary protections to which

**Commented [MB14]:** New language in response to HB24-1063 regarding Abbreviated School Day Schedules.

they are entitled, such as a manifestation determination review should the combined removals constitute a disciplinary change of placement under Section 504 or the IDEA; and

8.01(1)(j)(ii)(III) These provisions do not mean that a school is prohibited from disciplining a child with disabilities for conduct that violates the student code of conduct as long as it does so consistent with the protections afforded to children with disabilities under IDEA and Section 504; and

8.01(1)(j)(iii) An explanation of and expectations regarding how Abbreviated School Days relate to school attendance, which includes the following:

8.01(1)(j)(iii)(I) A child with disabilities in high school who voluntarily enrolls in a reduced class load, consistent with other non-disabled students in the school, and who is on track to graduate is not considered to be on an Abbreviated School Day Schedule; and

8.01(1)(j)(iii)(II) Children with disabilities appropriately placed on an Abbreviated School Day Schedule by an IEP or 504 Team may not be considered truant or chronically absent based solely on the abbreviated schedule. Compulsory school attendance requirements pursuant to Section 22-33-104, C.R.S., do not apply to children with disabilities who have been placed on an Abbreviated School Day Schedule by an IEP or 504 team in accordance with the Department's policy and state and federal law; and

8.01(1)(j)(iii)(III) Children with disabilities should have the same opportunity to participate in field trips, school functions, and extracurricular activities as their nondisabled, same-aged peers. A child who has been placed on an Abbreviated School Day Schedule by their IEP or 504 team should not be determined ineligible to participate in field trips, school functions, and extracurriculars based on the abbreviated schedule. If a child with a disability needs supplementary aids and services to meaningfully participate in field trips, school functions, and extracurricular activities, these should be determined by the IEP or 504 team and described in the IEP or 504 plan; and

8.01(1)(j)(iv) The role of the IEP or 504 Team in Determining an Abbreviated School Day Schedule, including at minimum:

8.01(1)(j)(iv)(I) The IEP or 504 team must determine whether an Abbreviated School Day Schedule is appropriate based on the child's unique disability-related needs, consistent with IDEA and Section 504. For an IDEA-eligible child, initial placement on an Abbreviated School Day Schedule may not be determined through the IEP amendment process described in 300.324(a)(4); and

8.01(1)(j)(iv)(II) In making this determination, the team must consider and document in the IEP or 504 plan how FAPE will be achieved with the Abbreviated School Day Schedule and whether the Abbreviated School Day Schedule will impact the ability to educate the child with disabilities in the LRE. FAPE and LRE must be determined consistent with the requirements of IDEA or Section 504; and

8.01(1)(j)(iv)(III) Additional technical guidance that will be provided in the Department's Abbreviated School Day Schedule policy related to components that must be determined and documented in the IEP or 504 process as well as how often the Abbreviated School Day Schedule should be reviewed; and

8.01(1)(j)(v) The requirements for consent and information provided to parents, legal guardians, and custodians of children with disabilities, including:

8.01(1)(j)(v)(I) Explaining student rights related to informal removals for conduct or behavior as described in rule 8.01(1)(j)(ii).

8.01(1)(j)(v)(II) There are times when a lawfully convened IEP or 504 team meets and determines that an Abbreviated School Day Schedule is necessary to ensure a FAPE for the student (e.g. a student with a medical condition that requires homebound). When an offer of FAPE is made that includes an Abbreviated School Day Schedule, and the parent/guardian disagrees that the Abbreviated School Day Schedule is necessary for FAPE, the parent/guardian can pursue existing remedies under state and federal law. For IDEA-eligible children, the parent/guardian can request mediation, file a state complaint, or file a due process complaint. For children on a 504 plan, the parent/guardian can file a complaint with the Office of Civil Rights.

8.01(1)(j)(v)(III) For any Abbreviated School Days or Abbreviated School Day Schedules that are not connected to the offer of FAPE determined by the IEP or 504 Team (and are not lawful and proper disciplinary removals), the school must obtain informed and written consent from the child's parent(s), legal guardian(s), or custodian(s) prior to implementing the Abbreviated School Day or Abbreviated School Day Schedule. A parent, guardian, or custodian may revoke this consent in writing at any time.

8.01(1)(j)(v)(IV) Additional technical guidance that will be provided by the Department in its Abbreviated School Day Schedule policy related to consent; and

8.01(1)(j)(vi) Additional requirements related to documentation and record keeping for Abbreviated School Day Schedules that will be included in the Department's policy on Abbreviated School Day Schedules.

**8.01(2) Duties and responsibilities of approved facility schools.**

An approved facility school with an on-grounds school approved by the Facility School Board in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1, shall be responsible for:

- 8.01(2)(a) Development of a Comprehensive Plan in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.
- 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 these Rules.
- 8.01(3)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of these 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.

8.01(4) Duties and responsibilities of alternative administrative units.

- 8.01(4)(a) For a child with disabilities who is enrolled in a charter school that participates in an alternative administrative unit, the alternative administrative unit, for the duration of the child's enrollment in the charter school, is solely legally and fiscally responsible for specialized instruction and related services to provide a free appropriate public education for the child and for dispute resolution pursuant to the "Exceptional Children's Educational Act", article 20 of title 22 of the Colorado Revised Statutes, and the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended. Dispute resolution includes, but is not limited to, resolution of state complaints, due process hearings, and investigations by the federal department of education.

**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 approved facility school approved by the Facility Schools Board. 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, alternative administrative units, districts of residence, approved facility schools, charter schools and online schools or 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 approved facility schools 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 approved facility schools shall be the responsibility of the administrative unit of residence.

8.04(1)(d) When the applicable contract between a charter school and its authorizer or alternative administrative unit 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 approved facility schools, 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 online schools or 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 approved facility schools, 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 applicable contract between a charter school and its authorizer or alternative administrative unit 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 online schools or 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 approved facility schools 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 applicable contract between a charter school and its authorizer or alternative administrative unit 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 online school or 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 applicable contract between a charter school and its authorizer or alternative administrative unit allows the charter school to provide the special

education services and to conduct the IEP meeting required by Section 4.03, 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 charter school remains ultimately responsible for ensuring compliance with this section and Section 4.03(8)(b)(ii).

## 9.00 OUT OF DISTRICT PLACEMENTS

### 9.01 DEFINITIONS

9.01(1) “**Applicable revenues**” means:

- 9.01(1)(a) The Per Pupil Revenue (PPR), as follows:
  - 9.01(1)(a)(i) 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 enrollment in multidistrict online schools;
  - 9.01(1)(a)(ii) 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)(iii) 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., not including enrollment in multidistrict online schools;
  - 9.01(1)(a)(iv) The PPR 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)(v) The per pupil funding for online enrollment set by Section 22-54-104(4.5), C.R.S., for a child with a disability enrolled in a multidistrict online school, including a multidistrict online school provided by a charter school.
- 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, including the per child rate for preschool services as determined by the Colorado Department of Early Childhood pursuant to section 26.5-4-208, C.R.S. (“per child preschool rate”).
- 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(1)(h) For an approved facility school, the amount of funds received from the state under Section 22-54-129, C.R.S.

- 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. **“Charter school”** does not include any school authorized pursuant to Section 22-80-102(4)(b), C.R.S.
- 9.01(3) **“Facility”** and **“Approved Facility School”** are defined in section 2.19 of these Rules.
- 9.01(4) **“Multidistrict online school”** means an multidistrict online school as defined in Section 22-30.7-102(6), 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 a facility with an approved facility school or another out-of-home placement.
- 9.01(6) **“Public Placement”** means the placement of a child with a disability in a facility with an approved facility school 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”** means:
- (a) 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 special education services in a 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.; or
  - (b) the tuition rate for the cost of providing special education services to a child with a disability in an approved facility school established by the Department of Education and approved by the State Board pursuant to Section 22-20-109(2)(a) & (b), C.R.S. and Section 9.06(1) of these rules.

## 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 approved facility schools 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 approved facility school 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 approved facility school 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 multidistrict online school 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 Impairment, Including Blindness;
- 9.03(1)(a)(ii) A Hearing Impairment, Including Deafness;
- 9.03(1)(a)(iii) Deaf-blindness;
- 9.03(1)(a)(iv) A Serious Emotional Disability;
- 9.03(1)(a)(v) Autism Spectrum Disorder;
- 9.03(1)(a)(vi) A Traumatic Brain Injury;
- 9.03(1)(a)(vii) Multiple Disabilities; or
- 9.03(1)(a)(viii) Intellectual Disability.

##### **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 Approved Facility Schools**

9.03(2)(a)(i) When a child with a disability is placed into an approved facility school, the district of residence is responsible for paying the tuition costs. The tuition cost rate shall be determined by the Department of Education and approved by the State Board 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. Except that the district of residence may pay a higher tuition cost than the cost established by the Department of Education and approved by the State Board for children in need of specialized services, if these services are included in a child's IEP. Costs for additional services required by an individual child and documented on an IEP may be negotiated by the approved facility school and administrative unit of residence. 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 that the administrative unit of attendance may charge the district of residence for children in group homes or group centers served by the administrative unit of attendance.

9.03(2)(a)(i)(A) When a child with a disability is placed into an approved facility school, the administrative unit of residence must count the child for the December Special Education Count. The approved facility school must report monthly student enrollment to CDE as required by Section 22-54-129(4)(a), C.R.S., and 1 CCR 301-39, rule 14.00, and bill CDE for the amounts due under Section 22-54-129(2.5)(a)(I), C.R.S.

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 a facility with an approved facility school shall notify in writing the child's administrative unit of residence, the administrative unit in which the approved facility school 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 approved facility school 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 these Rules.

## 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 a multidistrict online school, 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), 9.04(2), 9.05(1), 9.06(2) and 9.07(2) of the Rules. 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 other than a multidistrict online

school, 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), 9.04(1), 9.06(3), and 9.07(1) of these Rules. 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 Multidistrict Online Schools

When a child with a disability enrolls in and attends a multidistrict online school that is not provided by a charter school, the district of residence shall be responsible for paying to the provider of the multidistrict online school 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 online provider shall provide notice in accordance with these Rules when a child with a disability applies to enroll in the multidistrict online school. 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 multidistrict online school 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 multidistrict online school and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(d)(ii)(B) A multidistrict online school, 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 multidistrict online school complies with the Rules herein governing tuition costs. Likewise, if the multidistrict online school does not intend to seek tuition costs, Sections 9.03(2)(d), 9.04(3), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply. This subsection in no way relieves the administrative unit of attendance for the multidistrict online school from the obligation to provide a free appropriate public education to the children with disabilities attending the multidistrict online school.

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 online 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.

9.03(2)(f) Enrollment in Alternative Administrative Units

Notwithstanding any provision of this Section 9.03 of these Rules to the contrary:

- 9.03(2)(f)(i) An alternative administrative unit shall not charge the previous district of residence tuition for the excess costs incurred in educating a child with a disability unless the child is placed by a multidisciplinary team pursuant to section 22-20-108(4), C.R.S., in the alternative administrative unit and the child meets the criteria for funding pursuant to section 22-20-114(1)(c)(II), C.R.S. The amount of tuition shall be established in a manner substantially similar to the process in Section 9.03(2)(b).
- 9.03(2)(f)(ii) If the parents of a child with a disability remove the child from enrollment in the alternative administrative unit after the annual count date to determine state funding for children with disabilities, the alternative administrative unit continues to be deemed the administrative unit of residence for that child for the remainder of the school year and may be required to pay the tuition charge for excess costs to the administrative unit of attendance that enrolls the child for the remainder of the school year. The amount of tuition shall be prorated as appropriate and shall be established in a manner substantially similar to the process in Section 9.03(2)(b).
- 9.03(2)(f)(iii) If a child with a disability who is enrolled in an alternative administrative unit is placed by an IEP team in an approved facility school or other private setting for special education purposes, the child with a disability continues to be enrolled in the alternative administrative unit (which is thus the district of residence for purpose of Section 9.03(2)(a) of these Rules) until:
- 9.03(2)(f)(iii)(A) The parents of the child with a disability initiate a change in enrollment that results in the child with a disability attending a school affiliated with a different administrative unit;
- 9.03(2)(f)(iii)(B) The child with a disability is no longer enrolled in the school of the alternative administrative unit because the child with a disability is no longer entitled by age to continue in the school of the alternative administrative unit, unless the child with a disability has reached the age of eighteen and qualifies for transition services and is enrolled in a school that offers high school;
- 9.03(2)(f)(iii)(C) The child with a disability is no longer enrolled in the school of the alternative administrative unit because the child with a disability is home-schooled or enrolled in a private school for general education purposes; or
- 9.03(2)(f)(iii)(D) The placement of the child with a disability in an approved facility school or other private setting for special education purposes ends and, subsequently, the enrollment of the child with a disability in the alternative administrative unit ends for any reason permitted by law.

9.03(2)(f)(iii)(E) Nothing in this rule 9.03(2)(f)(iii) modifies rule 9.03(2)(f)(i) and (ii).

#### **9.04 SCHOOLS OF CHOICE NOTIFICATION REQUIREMENTS**

##### **9.04(1) Notice - Public Schools Of Choice That Are Not Charter Schools Or Multidistrict Online Schools**

The district of attendance shall provide written notice to the district of residence when a child is admitted 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**

As required by federal law, the State Board interprets the term “applies to enroll” as used in Section 22-20-109, C.R.S., to refer the point at which this student is admitted, i.e., 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 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 is admitted 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 is admitted 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**

As required by federal law, the State Board interprets the term "applies to enroll" as used in Section 22-20-109, C.R.S., to refer the point at which this student is admitted, *i.e.*, 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 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 is admitted 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 – Multidistrict Online Schools**

The multidistrict online school shall provide written notice to the district of residence when a child is admitted in the multidistrict online school and the multidistrict online school’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**

As required by federal law, the State Board interprets the term “applies to enroll” as used in Section 22-20-109, C.R.S., to refer the point at which this student is admitted, *i.e.*, the multidistrict online school 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 multidistrict online school director shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; 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 multidistrict online school 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 is admitted in the multidistrict online school, as defined in this Section; and

9.04(3)(d)(ii) Upon exercising timely and due diligence, the multidistrict online school 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 multidistrict online 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.

## **9.05 CONTRACT FOR TUITION RESPONSIBILITY**

### **9.05(1) Charter Schools (Including Multidistrict Online Schools that are Charter Schools)**

#### **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 multidistrict online school, 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 Multidistrict Online Schools

If the charter school sponsors a multidistrict online school, 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) **Multidistrict Online Schools (Excluding Charter Schools that Are Multidistrict Online Schools)**

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 multidistrict online school intends to seek tuition costs. Likewise, if the multidistrict online school 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 multidistrict online school;

- 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 multidistrict online 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(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 multidistrict online school, or is otherwise not attending the multidistrict online school, the multidistrict online school 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 multidistrict online school 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 multidistrict online school'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 multidistrict online school 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 multidistrict online school 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 multidistrict online 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)(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 multidistrict online school, 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 multidistrict online 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 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 multidistrict online school 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 multidistrict online school 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 multidistrict online school or a third party contractor of the multidistrict online school, 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 multidistrict online school'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 multidistrict online school must notify the new district of residence in accordance with Section 9.04(3) of these Rules. The multidistrict online school 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 multidistrict online school 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) Approved Facility Schools

9.06(1)(a) Starting the 2024-25 school year, tuition costs for approved facility schools will be structured in tiers. CDE will establish tiers (i.e., levels) for the purpose of tuition cost rates. CDE will annually make two designations: (1) assignment of each approved facility school to a tier; and (2) determination of a tuition cost rate for each tier. The tuition cost rate must be based primarily on special education staff salaries, special education staff employment benefits, and additional expenses for special education programming such as professional development, assessments, and specialized equipment. When determining annual tuition cost rates for each tier, CDE may consider previous tuition cost rates as well as actual costs incurred by approved facility schools to provide special education programming, as demonstrated by documentation submitted to CDE.

9.06(1)(b) Annually, approved facility schools must submit to CDE information about certain costs to provide special education programming, as requested on forms developed by CDE. At a minimum, CDE may collect information about the following: information about staff-to-student ratios; the number of school days that the approved facility school offers the program; special education expenditures as defined in section 2.00 of these rules; and other education costs. CDE may use the information collected to establish the tiered tuition cost rates.

9.06(1)(c) The State Board must annually review and approve CDE's assignment of approved facility school tiers and determination of tuition cost rates for each tier.

- 9.06(1)(d) A percentage of the baseline funding amount, 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 approved facility school 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. In other words, the total revenue should not exceed the total actual costs.
- 9.06(1)(f) If an approved facility school believes it belongs in a different tuition rate tier than the tier designated by the Department of Education and approved by the State Board, the approved facility school may provide written notice to the Department of Education's Office of Facility Schools explaining the basis for its request to be placed in a different tuition rate tier no later than 30 days from the State Board's annual determination of tuition rate tiers. The Department of Education's Office of Facility Schools will review the request for reconsideration and issue a written decision within 30 days of receipt of the request.

**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 or per child preschool rate funding, the PPR or per child preschool rate amounts 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 or per child preschool rate, 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) **Multidistrict Online Schools, Including Charter Schools**

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

9.06(4)(a) Annually, multidistrict online schools 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 multidistrict online 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(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 multidistrict online school 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 multidistrict online school, 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 multidistrict online school 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 multidistrict online school 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 multidistrict online school 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 multidistrict online school.
- 9.06(4)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each multidistrict online school, 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 multidistrict online schools.
- 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) Multidistrict Online Schools

9.07(3)(a) If a multidistrict online school 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 multidistrict online school, 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 multidistrict online school the amount due 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. 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 multidistrict online school 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 multidistrict online school 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 multidistrict online school, the State Board shall direct the Department to review the terms of the tuition contract and other relevant information of the multidistrict online school, 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. The Department shall request from the district of residence, the district of attendance, and the multidistrict online 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, the district of attendance, and the multidistrict online school.
- 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 multidistrict online school. If the State Board finds that the district of residence improperly withheld any portion of the amount, the district of residence shall pay to the multidistrict online school, 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 multidistrict online 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 multidistrict online school.
- 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 multidistrict online school, or who otherwise has not been attending the multidistrict online school, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

**10.00 (reserved)****11.00 (reserved)****12.00 GIFTED AND TALENTED STUDENT PROGRAMMING**

Administrative units shall implement gifted education student programs providing programming options and services for gifted children for at least the number of days calendared for the school year by each school district.

**12.01 Definitions.**

- 12.01(1) **"Administrative Unit" or "AU"** means a school district, a board of cooperative services, a charter school network, a charter school collaborative, 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 (see Rule ~~2-022.03~~ of these Rules).
- 12.01(2) **"Advanced Learning Plan" or "ALP"** means a written record of a gifted student's strengths, academic and affective learning goals and the resulting 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 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 students in developing and/or refining interpersonal skills.
- 12.01(4) **"Annual Plan"** means an AU's comprehensive educational plan and annual proposed budget form that the AU submits to the Department pursuant to State Board rules.
- 12.01(5) **"Aptitude"** means abilities or behaviors that can be monitored, evaluated, or observed to determine potential or a level of performance in problem solving, reasoning, and other cognitive functions (e.g., memory, synthesis, creativity, speed in problem solving). Aptitude or general ability assessments predict potential in an area of giftedness and/or academic school success.

- 12.01(6) **“Aptitude Test”** means an ability test to determine potential or level of performance in problem solving, reasoning and other cognitive functions. Aptitude or ability tests predict potential in an area of giftedness and/or future academic school success.
- 12.01(7) **“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(8) **“Assessment”** means methods, tools, and data collected as a body of evidence for use in the following gifted education processes:
- 12.01(8)(a) Identification and programming;
  - 12.01(8)(b) Monitoring the gifted child’s performance and outcomes; and
  - 12.01(8)(c) Program evaluation.
- 12.01(9) **“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(10) **“Competence”** means documented performance, achievement, or test scores on standardized or locally normed test results. Screening procedures consider competence in the context of a defined range of student performance, as described herein, for purposes of recognizing gifted potential or identifying a talent pool for developing giftedness.
- 12.01(11) **“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(12) **“Early Access”** means early entrance to kindergarten at age 4 or early entrance to first grade at age 5 for highly advanced gifted children who are placed in a grade level above other same aged peers based upon the following conditions:
- 12.01(12)(a) the student is formally identified as gifted as specified in 12.01(16); and
  - 12.01(12)(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(13) **“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(14) **“Engagement”** means the collaboration of families, schools, and communities as active partners in improving learner, classroom, school, district, and state outcomes.

- 12.01(15) **“Evaluation”** means evaluation procedures, methods, and tools used to initially identify a gifted child, assess and monitor the child’s progress, and evaluate the child and the gifted program. Evaluation includes, but need not be limited to:
- 12.01(15)(a) Identifying the child’s unique strengths, interests, and needs;
  - 12.01(15)(b) Monitoring the child’s academic achievement and growth and affective goals;
  - 12.01(15)(c) Identifying the priorities and concerns of the child’s family and resources to which the family and the child’s school have access; and
  - 12.01(15)(d) Determining program strengths and areas for program improvement.
- 12.01(16) **“Gifted Children”** means those persons between the ages of four and twenty-one whose aptitude or competence in abilities, talents, and potential for accomplishment in one or more domains are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs. Gifted 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, ethnic, and 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(16)(a) General or Specific Intellectual Ability
    - 12.01(16)(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(16)(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(16)(b) Specific Academic Aptitude
    - 12.01(16)(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(16)(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(16)(c) Creative or Productive Thinking

12.01(16)(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(16)(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(16)(d) Leadership Abilities

12.01(16)(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(16)(d)(ii) Criteria

Leadership is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized leadership tests.

12.01(16)(e) Visual Arts, Performing Arts, Musical, Dance, or Psychomotor Abilities

12.01(16)(e)(i) Definition

Visual arts, performing arts, musical, dance 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(16)(e)(ii) Criteria

Visual arts, performing arts, musical, dance or psychomotor abilities are demonstrated by advanced level on performance talent-assessments or ninety-fifth percentile and above on standardized talent-tests.

12.01(17) **“Gifted Education Services”** or **“Gifted Education Programs”** means the services, delivery model and programs provided to gifted students pursuant to these Rules. “Gifted education services” and “gifted education programs” include, but need not be

limited to, strategies, programming options, and interventions reflecting evidence-based practices, such as acceleration, concurrent enrollment, differentiated instruction, and affective guidance.

- 12.01(18) **“Highly Advanced Gifted Child”** means a gifted child whose body of evidence demonstrates a profile of exceptional ability or potential compared to same-age gifted children. To meet the needs of highly advanced development, early access to educational services may be considered as a special provision. For purposes of early access into kindergarten or first grade, the highly advanced gifted child exhibits exceptional ability and potential for accomplishment in cognitive process and academic areas.
- 12.01(19) **“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(20) **“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 for juried performance.
- 12.01(21) **“Portability”** means that a student’s state-approved identification in one or more categories of giftedness transfers to any district in the state. Gifted programming must continue according to the receiving district’s programming options. Portability of identification is a part of the student’s permanent record and advanced learning plan.
- 12.01(22) **“Pre-Collegiate”** means a variety of programs to help students plan for college, identify scholarship opportunities, and provide assistance with the application process for selected post-secondary options. Programs may be offered through middle and high schools, colleges and universities or community organizations and businesses.
- 12.01(23) **“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(24) **“Program Elements”** means components of a comprehensive program plan, which include, but need not be limited to, definition, communication, identification, programming, personnel, accountability, reporting, record keeping, and resolution of disagreements.
- 12.01(25) **“Program Plan”** means a comprehensive and complete narrative of program elements, including, but need not be limited to:
- 12.01(25)(a) Procedures and criteria the AU will use for identification;
  - 12.01(25)(b) Programming options for each category of giftedness that the AU will implement in the gifted program; and
  - 12.01(25)(c) Actions and tools for the academic achievement of gifted children, and for evaluating the gifted program, which actions and tools are aligned with state accountability and program evaluations.

- 12.01(26) **“Qualified Personnel”** or **“Qualified Person”** means a licensed, content endorsed educator 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(27) **“Screening”** means an assessment method that uses a tool(s) to determine if the resulting data provides evidence of exceptional potential in an area of giftedness. Screening tools may be qualitative or quantitative in nature, standardized and/or normative. Screening data are one component in a body of evidence for making identification and instructional decisions.
- 12.01(28) **“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(29) **“Special Provisions”** means the programming options, strategies and services necessary to implement the gifted student’s ALP.
- 12.01(30) **“Twice Exceptional”** means a student who is:
- 12.01(30)(a) Identified as a gifted student pursuant to Section 12.01(9) of these Rules; and
  - 12.01(30)(b)(1) Identified as a child with a disability pursuant to Section 4.02 of these Rules; or
  - 12.01(30)(b)(2) A qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794.
- 12.01(31) **“Universal Screening”**, for purposes of Section 22-20-202, C.R.S., means the systematic assessment of all students within a grade level of an AU or district for identifying students with exceptional ability or potential, especially students from traditionally underrepresented populations; and/or screening in conjunction with creation of each student’s individual career and academic plan (ICAP).

## 12.02 Administrative Unit Gifted Education Program Plan

### 12.02(1) Annual Plan

Administrative units shall submit to the Department an annual plan that is a gifted education UIP addendum. In multi-district AUs or BOCES, member districts submit the UIP addendum. Multi-district AUs and BOCES submit a summary for improving gifted student performance that includes annual assurances and a proposed budget for the forthcoming fiscal year. For charter networks and charter school collaboratives, the UIP addendum shall be submitted with each participating school’s UIP.

The annual plan shall be integrated with a district’s accountability UIP ~~timelines, or no later than April 15~~. The UIP gifted education addendum, as the annual plan, shall include an action plan to meet designated targets. An AU shall submit an annual plan before receiving AU gifted education funds. Exception to this annual plan is for small rural districts that

**Commented [MB15]:** Technical edit to conform to changes in UIP submission deadline.

function on a bi-annual unified improvement plan submission. (C.R.S. 22-11-303(4)(b))

#### 12.02(2) **Comprehensive Plan**

Administrative units shall submit to the Department a comprehensive gifted education program plan on a multiple-year cycle as declared by the Department, such cycle to be no longer than 5 years. The program plan shall be implemented by all constituent schools and districts of the AU. The filing of the program plan shall include a proposed program plan budget. Plans shall be filed by April 15 of the fiscal year prior to the funding year. The Department will review all program plans for completeness. An AU's program plan shall be deemed complete if it addresses all elements specified in Section 12.02(2)(a) through 12.02(2)(l) of these Rules. A program plan for the education of gifted students submitted to the Department for funding purposes and program description shall contain the following elements:

##### 12.02(2)(a) **Procedures for Parent, Family, and Student Engagement and Communication**

12.02(2)(a)(i) The program plan shall describe how the AU implements parent, family, and student engagement and communication with regard to gifted education programs that include, but are not limited to: how parents are informed about access to identification procedures; ways to educate parents and families about giftedness or parenting gifted students; information about involvement and progress reporting; what programming options are available to match student strengths and challenges; information about concurrent enrollment; how to be involved in college and career planning; primary languages in the AU, and ways parents and families may participate in the school community.

12.02(2)(a)(ii) In multi-district AUs and BOCES, methods of engagement and communication may vary based upon individual district procedures, but each district must have a plan for parent, family, and student communication and engagement.

##### 12.02(2)(b) **Definition of "Gifted Student"**

The program plan shall include a written definition that is the same as or substantially similar to the definition of "gifted student" specified in section 12.01(16) of these Rules. This definition shall serve as the basis for the implementation of all other program plan elements described below.

##### 12.02(2)(c) **Identification Procedures**

The program plan shall describe the assessment process used by the AU for identifying students who meet the definition specified in section 12.01(16) 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 planning and programming. In traditionally under-represented student groups and visual/music/performing arts student groups or talent pools, identification may require the collection of student information over time, using additional data points from a response to intervention approach, or additional assessment. The AU identification procedures shall include, but need not be limited to:

- 12.02(2)(c)(i) A method(s) to ensure equal and equitable access for all students. The program plan shall describe the efforts that the AU 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(2)(c)(ii) Referral procedures that seek referrals from a variety of sources, and screening procedures used for conducting identification assessment. Every AU is strongly encouraged to include optional universal screening in identification procedures;
- 12.02(2)(c)(iii) A time line of no more than 30 school days after a referral to determine whether a student will continue with formal identification assessment, or will receive talent pool designation;
- 12.02(2)(c)(iv) Implementation of assessments that align with the purpose of identifying exceptionality in the categories of giftedness, and in traditionally underrepresented populations. The AU may choose local assessment tools from the Department's chart of common and varied assessment tools used in identification;
- 12.02(2)(c)(v) Collection of data for a body of evidence that includes, but is not limited to: assessment results from multiple sources and multiple types of data (i.e. qualitative and quantitative data about achievement, cognitive ability, performance, parent and teacher input, motivation and observations of gifted characteristics/behaviors). The body of evidence contains data to identify the strength area defined in the definition of gifted children and determine appropriate programming services. These same categories are used in data collection and for developing the ALP;
- 12.02(2)(c)(vi) A review team procedure; and that includes at least one person trained or endorsed in gifted identification and programming;
- 12.02(2)(c)(vii) A review team procedure for determining identification or a talent pool designation from a body of evidence and for developing individualized ALPs for identified students. When only cognitive ability assessment data meets criteria in a body of evidence, the review team may determine that the

student is identified with general or specific intellectual ability. This identification meets the condition of portability;

12.02(2)(c)(viii) A determination letter for parents and school files describing the decision of the review team, and area(s) of giftedness if the student is found to have exceptional abilities; and

12.02(2)(c)(ix) A communication procedure by which parents are made aware of the identification assessment process for their student, understand the results of the determination, and engage in the development and review of the student's ALP.

12.02(2)(d) **Criteria for Determining Exceptional Ability (Giftedness) or Talent Pool**

12.02(2)(d)(i) For each category of giftedness defined in 12.01(16), criteria for exceptional ability means: 95 percentile or above on a standardized nationally normed test or observation tool, or a rating on a performance assessment that indicates exceptionality/distinguished compared to age mates.

12.02(2)(d)(ii) Not meeting criteria on a single assessment tool shall not prevent further data collection or consideration for identification, if other indicators suggest exceptional potential as observed in a body of evidence.

12.02(2)(d)(iii) Criteria for screening assessments is a score range less than the 95 percentile ranking or results on observation/performance assessment tools as determined by the AU to determine referrals, further data collection and observation, and/or formation of student talent pools.

12.02(2)(e) **Identification Portability**

Identification portability shall be based upon AU implementation of statewide identification procedures required in Section 12.02(2)(c) and use of criteria set for exceptionality in Section 12.02(2)(d) and determination of a student's identification in one or more of the categories of giftedness as described in the state definition of gifted children in Section 12.01(16). Administrative units shall implement procedures for statewide portability of identification that include, but may not be limited to:

12.02(2)(e)(i) A requirement that the sending school/district transfer the body of evidence for identification and the ALP with student records when the student moves from one district to another;

12.02(2)(e)(ii) Review of the transferred student's ALP within 45 school days of start date to determine programming options and services that serve the identified area(s) according to the district and community resources of the receiving district;

12.02(2)(e)(iii) If the receiving district finds the body of evidence to be incomplete, the receiving district shall consult with, as practical, the former district, parents, and student and re-evaluate the identification determination; and

12.02(2)(e)(iv) Communication to parents within 60 school days of start date about how the new district will meet the needs outlined in the student's ALP.

12.02(2)(f) **Advanced Learning Plan Content**

The AU shall develop an ALP for every gifted student according to the student's determined area(s) of giftedness, interests, and instructional and affective needs. The ALP shall be considered in educational planning toward post-secondary readiness outcomes and decision-making concerning subsequent programming for that student and be used in the articulation/transition process, preschool (if applicable) through grade 12. At the high school level ALPs may blend with the student's individualized career and academic plan (ICAP) if all content of the ALP are inclusive in the ICAP which includes achievement and affective goals. The ALP content shall include, but not be limited to:

12.02(2)(f)(i) A student profile described in a body of evidence. This profile shall be subject to the AU's student records confidentiality guidelines. The local AU determines periodic updates of the student profile, especially in terms of interests, and/or demonstration of previously unidentified strengths;

12.02(2)(f)(ii) A working-document section of the ALP. This portion of the ALP records annual measurable, attainable achievement and affective goals and progress. Achievement goals are standards-based statements in strength area(s). Additional achievement goals may be needed to address documented achievement gaps or career interest. Affective goals reflect development of personal, social, communication, leadership, and/or cultural competency;

12.02(2)(f)(iii) Description or delineation of supplemental curriculum, activities, specific programs or coursework, specific strategies, and/or extended or expanded learning opportunities available in the AU that match a student's strength area(s) and support the goals;

12.02(2)(f)(iv) Progress reports that align with the AU's or member district's schedule for parent-reporting and/or conferences about student progress. Adjustments to goals and programming options may occur during any progress reporting period; and

12.02(2)(f)(v) Personnel involved in ALP development, and in progress report meetings or conferences, including, but not limited to classroom teacher(s), student, parents, gifted education staff or staff with training in gifted education identification and programming, and support staff as appropriate.

**12.02(2)(g) ALP Procedures and Responsibilities**

The AU shall have procedures for developing ALPs that include, but need not be limited to:

- 12.02(2)(g)(i) Notification of ALP development and times in the school year when parents, teachers and the student talk about student academic and affective goal progress;
- 12.02(2)(g)(ii) Personnel assigned with the responsibility for development and monitoring. At minimum the student's parents and classroom teachers should be familiar with and support ALP goals, and/or write ALP measurable goals according to local procedures. Gifted education resource personnel may assist in the writing of goals, but may not be the sole custodian of the ALP. Goals are written and aligned with classroom tiered instruction and expanded learning opportunities for supplemental or intensive programming;
- 12.02(2)(g)(iii) A method to develop student awareness and active participation in the ALP process;
- 12.02(2)(g)(iv) A process for management of ALPs within the cumulative file system including a procedure for transferring ALPs between grade levels, school levels, and districts. It is highly encouraged that ALPs are written by those working with the gifted student and that the ALP is an ongoing plan for coursework, tiered instruction, and increasing performance in the student's area of strength. ALP goals should be written or reviewed for current relevancy to teachers and students at the beginning of the school year;
- 12.02(2)(g)(v) An ALP progress reporting timeline. The review of progress integrates with ongoing conference or reporting periods of the district. It is highly encouraged that ALPs be student-led at the secondary level; and
- 12.02(2)(g)(vi) A system to show evidence of parent engagement and input in ALP development and in the review of progress. Evidence may include, but is not limited to: signature, electronic signature or checkbox of involvement, checklist, or other assurance supporting the student's growth. If after 3 documented attempts to contact the parents for signature, no parental signature is obtained, school personnel shall continue with ALP implementation and continue to engage parents in the process.

**12.02(2)(h) Programming**

- 12.02(2)(h)(i) The program plan shall describe the programming components, options, and strategies that will be implemented by the AU and schools to appropriately address the educational needs of gifted students. Programming shall match the academic strengths and interests of the gifted student. Other educational or affective needs shall be addressed according

to the individual student's profile. Programming components, options, and strategies shall include, but need not be limited to:

- 12.02(2)(h)(i)(A) Alignment of the gifted student's assessment data and ALP goals to programming options in the areas of giftedness;
- 12.02(2)(h)(i)(B) Structures or type of delivery by which gifted students are served at the different school levels (e.g., the general classroom, resource location, small instructional group, and/or pullout for direct and extended instruction aligned to strength area);
- 12.02(2)(h)(i)(C) Support in differentiated instruction and methods (e.g., acceleration, cluster grouping and higher order thinking skills);
- 12.02(2)(h)(i)(D) Affective and guidance support systems (e.g., social skills training, early college and career planning);
- 12.02(2)(h)(i)(E) Diverse content options provided for gifted students in their areas of strength (e.g., mentorship, Socratic seminars, advanced math, honors courses);
- 12.02(2)(h)(i)(F) The means by which articulation for preschool (if applicable) through grade 12 is planned and implemented;
- 12.02(2)(h)(i)(G) Pre-collegiate and/or pre-advanced placement support;
- 12.02(2)(h)(i)(H) ALP development and reviews conducted through the collaborative efforts of the teacher(s), other school personnel (as needed), parents and the student (as appropriate); and
- 12.02(2)(h)(i)(I) Post-secondary options available to gifted students.
- 12.02(2)(h)(i)(J) Concurrent enrollment opportunities, if indicated by a gifted child's ALP or ICAP. To be considered in an ALP, the AU shall consider the student's need for appropriate concurrent enrollment, available options, funding, and requirement for administrative approval.

12.02(2)(h)(ii) Students identified with exceptional ability require provisions to develop the areas of strength over time. When underachievement and/or motivational issues are observed behaviors in a gifted student, the ALP team, child study team, or review team shall problem solve in collaboration with the family, the student, and appropriate staff.

12.02(2)(i) **Evaluation and Accountability Procedures**

The comprehensive program plan shall describe the AU's procedures for evaluation and accountability including, but not limited to:

- 12.02(2)(i)(i) Unified improvement plan addendum methods by which gifted student performance is monitored and measured for continual learning progress and how such methods align with the state accreditation process (e.g., annual UIP gifted education addendum, multi-district/BOCES summary, intervention progress monitoring data sources, ALP goals, and performance, district, and/or state assessment data). These methods include UIP elements such as annual gifted student performance target(s) and an action plan to meet the target(s) and a timeline to report on progress toward targets;
- 12.02(2)(i)(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(2)(i)(iii) Methods for ensuring that gifted student performance (achievement and growth) and reporting are consistent with state accreditation and accountability requirements (i.e., disaggregation of state assessment data for gifted students, identification of discrepancies in the data, goal setting and demonstration of achievement and growth); and
- 12.02(2)(i)(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(2)(i)(v) Methods by which parents, educators, and other required persons are informed about the methods described in 12.02(2)(i)(i-iv) above.
- 12.02(2)(j) **Personnel**
- 12.02(2)(j)(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 AU shall employ or contract with a person who is responsible for:
- 12.02(2)(j)(i)(A) Management of the program plan; and
- 12.02(2)(j)(i)(B) Professional development activities, the purposes of which are:

- 12.02(2)(j)(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(2)(j)(i)(B)(II) To increase, to the extent practicable, the number of qualified personnel providing instruction to gifted students.
- 12.02(2)(j)(ii) The AU shall make good faith effort to hire and retain on at least a half-time basis one qualified person to administer and monitor the implementation of the AU's gifted program.
- 12.02(2)(j)(iii) Administrative units should consider employing sufficient personnel for ALP writing and monitoring, and differentiated instruction for gifted students.
- 12.02(2)(j)(iv) Administrative units should collaborate with universities and colleges for the development of qualified personnel.
- 12.02(2)(j)(v) Personnel responsible for the instruction and learning of gifted students in core academic areas must meet the teacher qualification requirements under federal law.
- 12.02(2)(j)(vi) 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(2)(j)(vii) The program plan shall also indicate the content of and means by which the AU 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 in-service 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(2)(k) **Budget**
- 12.02(2)(k)(i) The AU shall include in the annual plan a budget for gifted education which reflects the collaborative efforts of the AU and cost of implementing the program elements and the student goals stated in the annual comprehensive program plan. The budget shall detail the funding committed by the AU and funding requested from the Department. Funding committed by the AU shall be an amount determined by the AU to contribute

towards the AU's gifted student education program described in the AU's program plan. Funds requested from the Department may be used for:

- 12.02(2)(k)(i)(A) Salaries for appropriately licensed and endorsed personnel primarily serving gifted students (e.g., gifted education directors, coordinators, resource teachers, counselors and teachers of gifted classrooms);
- 12.02(2)(k)(i)(B) Professional development and training relating to gifted education;
- 12.02(2)(k)(i)(C) Programming options and school counseling or affective guidance specific to gifted students and their ALPs ;
- 12.02(2)(k)(i)(D) Materials used in instructional programming for gifted education; and
- 12.02(2)(k)(i)(E) Administrative costs (classified or grant fiscal staff), technology, and equipment necessary for the education of gifted students up to ten percent for any one of these limited expenditures, and, not to collectively exceed twenty percent of the total amount requested from the Department.

12.02(2)(k)(ii) Administrative units may contract with other AUs to establish and maintain gifted student programs (e.g., art, music, online coursework, and counseling) for the education of gifted children, sharing costs of student programming in accordance with terms of a contract. This action is optional based upon available AU resources, and subject to AU discretion. An AU with less than six children who need a particular program may purchase services from one or more AUs that provide the appropriate gifted education program for individual or groups of gifted students. Gifted education personnel in these AUs shall collaborate on the content and monitoring of such contracts.

12.02(2)(l) **Early Access**

If early access is permitted in the AU, an AU shall include in its program plan provisions to identify and serve highly advanced gifted children pursuant to Section 12.08 of these Rules. Constituent schools or districts within the AU shall abide by the requirements established in the program plan.

**12.03 Reports**

Administrative units shall submit to the Department an end-of-year 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) Free and reduced lunch;
  - 12.03(2)(d) Area(s) of giftedness;
  - 12.03(2)(e) Twice exceptionality; and
  - 12.03(2)(f) Gifted preschoolers served through early entrance per local policies and procedures, if applicable;
- 12.03(3) The percent of students in the AU who have been identified as gifted and talented through a formal identification procedure;
- 12.03(4) Qualified personnel by school level, district resource personnel and central administration;
- 12.03(5) The types of programming strategies utilized most commonly at each school level to address the needs of gifted students reported by:
- 12.03(5)(a) Programming options for each area of giftedness as specified in 12.01(16) of these Rules;
  - 12.03(5)(b) Methods of articulation through the grades; and
  - 12.03(5)(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(6) 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**

Administrative units shall 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 documents shall be part of the student's cumulative education record.

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 AU shall be held to be confidential and protected in accordance with applicable federal and state laws and regulations. Student records that are collected and/or stored electronically shall be held to current state law and FERPA regulations governing the protection of personally identifiable information and the privacy interests of students.

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 AU, including its member districts or the Charter School Institute for student records, preschool (if applicable) through grade 12.

**12.06 Procedures for Disagreements**

The program plan shall describe procedures for resolving disagreements with parents/guardians, or students in regard to identification, programming, and ALPs. The procedures for resolving disagreements shall include, but need not be limited to: a method for the aggrieved individual to express issues and concerns; a means to discuss disagreements in a timely manner with personnel designated by the district with authority to resolve the disagreement. The procedures shall afford the aggrieved individual notice of the decision giving rise to the dispute and an opportunity to be heard before the decision is implemented. The procedures must be posted for ease of access by stakeholders.

**12.07 Monitoring**

12.07(1) Each AU 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 AU 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 annual and comprehensive program plans;
- 12.07(4)(b) A review of the annual enrollment and student performance reports;
- 12.07(4)(c) A planned comprehensive on-site procedure integrated with the continuous improvement and gifted education review 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.

**12.08 Early Access****12.08(1) General Provisions**

- 12.08(1)(a) Early access shall be provided by the AU to identify and serve highly advanced gifted children who are:
  - 12.08(1)(a)(i) Four years of age and for whom early access to kindergarten is deemed appropriate by the AU; and
  - 12.08(1)(a)(ii) Five years of age and for whom early access to first grade is deemed appropriate by the AU.
- 12.08(1)(b) If the AU permits early access, early access provisions shall be included in its early childhood and gifted instructional programs, and the AU shall expand access to kindergarten through grade one for students deemed appropriate for early access.
- 12.08(1)(c) Early access shall not be an acceleration pattern recommended for the majority of age 4 or age 5 gifted children who will benefit from preschool gifted programming that responds to the strength area. The purpose of early access is to identify and serve the few highly advanced gifted children who require comprehensive academic acceleration.
- 12.08(1)(d) When an AU permits early access, its program plan shall describe the elements of an early access process and how those elements, criteria and components will be implemented. Determinations made by the AU shall be made after consideration of criteria required by Section 12.08(2)(d) of these Rules.
- 12.08(1)(e) In 2008, an AU may submit an early access addendum to its program plan by September 10, 2008. Thereafter, AUs shall submit an addendum for early access by January 1 preceding the initial school year in which early access will be permitted, thus early access assessment may occur after the addendum is approved by the Department.

**12.08(2) Elements of an Early Access Process**

An early access process shall include the following elements:

**12.08(2)(a) Communication**

The AU shall communicate with parents, educators and community members as specified in Section 12.02(1)(a) of these Rules. Early access communication is:

12.08(2)(a)(i) Information about the criteria and process for identifying a highly advanced gifted child for whom early access is deemed appropriate, time frames, portfolio referral, deadlines, specific tests and threshold scores used to make final determinations concerning such a student;

12.08(2)(a)(ii) Professional development of educators, or other means to increase the understanding of a highly advanced gifted child and the educational needs of such a student;

12.08(2)(a)(iii) A method for collaborative efforts among preschool, general and gifted education personnel and parents; and

12.08(2)(a)(iv) An advanced learning plan for the highly advanced gifted child determined appropriate for early access.

**12.08(2)(b) Optional Fee Condition**

12.08(2)(b)(i) The AU may charge parents a reasonable fee for assessment and other procedures performed for the purpose of identifying a highly advanced gifted child and making determinations for early access. The AU shall describe the fee related to the implementation of the referral, testing and/or decision making processes.

12.08(2)(b)(ii) No charge shall be assessed if the child who is the subject of such assessments is eligible for a reduced-cost meal or free meal pursuant to the federal "National School Lunch Act", 42 U.S.C. §1751, et seq.

12.08(2)(b)(iii) When evaluating the need for fees, the AU will:

12.08(2)(b)(iii)(A) Integrate the costs of assessment and decision making into the ongoing general instructional and assessment practices conducted by early childhood and gifted education personnel to the maximum extent possible;

12.08(2)(b)(iii)(B) Take into account the economic circumstances of the community and applicant's family; and

12.08(2)(b)(iii)(C) Consider test results within three months of application from outside licensed professionals paid by the parent.

**12.08(2)(c) Funding and Reporting**

Administrative units that permit early access shall receive funding from the state education fund created in Article IX, Section 17(4) of the Colorado Constitution. To receive funding the AU shall abide by the Rules in this Section 12.08, and:

12.08(2)(c)(i) Support integration of early access in early childhood and gifted programming;

12.08(2)(c)(ii) Report age four gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report; and

12.08(2)(c)(iii) Report age five gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report.

12.08(2)(d) **Criteria for Early Access**

The AU shall evaluate a child referred by the parent for early access using the following criteria. The evaluation will lead to a student profile of strengths, performance, readiness, needs and interests, and a determination of appropriate placement. All criteria must be considered in making the determination – test scores alone do not meet the standards of a determination.

12.08(2)(d)(i) **Aptitude**

12.08(2)(d)(i)(A) Aptitude supporting early access is indicated by a highly advanced level of performance compared to age-peers on cognitive abilities rating scales or 97th percentile and above on standardized cognitive ability tests. Every child with a score above 97th percentile may not benefit from early access to kindergarten or first grade.

12.08(2)(d)(i)(B) The AU shall describe the method(s) and the developmentally appropriate tools for assessment that will be used to determine potential in general cognitive abilities and school success (e.g., individualized ability test, such as the Wechsler Preschool and Primary Scale of Intelligence or Woodcock Johnson Cognitive Ability Scale, or Kaufman Brief Intelligence Test).

12.08(2)(d)(ii) **Achievement**

12.08(2)(d)(ii)(A) Achievement supporting early access is indicated by a highly advanced level of performance compared to age-peers on achievement rating scales, performance assessment, or 97th percentile and above on standardized achievement tests. Typically,

early access children function two or more years above their age peers.

- 12.08(2)(d)(ii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine knowledge and skills in reading, writing and mathematics (e.g., curriculum-based assessment, above-level testing, and individualized achievement tests, such as the test of early math ability/reading ability, Woodcock Johnson III Tests of achievement, or Iowa Tests of basic skills).

12.08(2)(d)(iii) Performance

- 12.08(2)(d)(iii)(A) Performance supporting early access is indicated by work samples and informal teacher and/or parent data indicating demonstrated ability above age peers.

- 12.08(2)(d)(iii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine actual demonstration of the student's work (e.g., work samples, independent reading, advanced vocabulary, observational data).

12.08(2)(d)(iv) Readiness, Social Behavior and Motivation

- 12.08(2)(d)(iv)(A) Readiness, social behavior and motivation for early access are determined by the child's ability to demonstrate the indicators deemed necessary for kindergarten or first grade by the district's standards or national standards (e.g., district readiness checklist, normed-checklists and rating scales, such as the California Preschool Competency Scale or the Preschool/Kindergarten Behavioral and Social Scale or Bracken School Readiness).

- 12.08(2)(d)(iv)(B) The AU shall describe the method(s) and tools for evaluation that will be used to determine a child's readiness for kindergarten or first grade, social maturity, and eagerness to learn.

12.08(2)(d)(v) Support Systems

- 12.08(2)(d)(v)(A) The AU shall define and implement a support system to assist in a child's success in and transition through early access by evidence of:

- 12.08(2)(d)(v)(A)(I) A letter of determination of the early access decision signed by the parent, gifted education staff, early childhood staff, the receiving teacher and building administrator indicating recognition and support of the child's placement (determination letters will be placed in the child's cumulative file);

- 12.08(2)(d)(v)(A)(II) A transition goal in the child's advanced learning plan for the first year of early access;
  - 12.08(2)(d)(v)(A)(III) Methods of communication with the student about school success; and
  - 12.08(2)(d)(v)(A)(IV) Methods for parent-teacher communication.
- 12.08(2)(d)(v)(B) The AU will describe how parents, teachers, school administrators and the learning environment will contribute to a positive support system.

12.08(2)(e) **Process for Early Access**

The AU shall establish a collaborative process among parents, preschool, general and gifted educators and school administration for evaluating early access referrals. The process implemented shall include the following components:

12.08(2)(e)(i) **Timelines**

- 12.08(2)(e)(i)(A) Applications for early access are due by April 1 for the next school year. Each AU shall declare when it will begin accepting applications.
- 12.08(2)(e)(i)(B) Determinations shall be made within 60 calendar days of the AU receiving the child's portfolio submitted by the child's parent in accordance with Section 12.08(2)(e)(iii)(A) of these Rules.
- 12.08(2)(e)(i)(C) For referrals received after April 1, the AU may, at its discretion, consider the child's information, provided the determination is made by September 1 or by the start of the upcoming school year, whichever is earlier.
- 12.08(2)(e)(i)(D) A student shall be age 4 by October 1 for kindergarten; and, age 5 by October 1 for first grade.

12.08(2)(e)(ii) **Personnel**

The AU shall identify personnel at the AU, district, and/or school level who will be involved in the early access process based on the following list. Designated personnel may serve in multiple capacities during the early access process.

- 12.08(2)(e)(ii)(A) A person designated to collect portfolio referrals;
- 12.08(2)(e)(ii)(B) Educators designated to collect data used in a body of evidence including the test examiner(s), early childhood teacher(s), a gifted education resource person, and others as identified by the AU (e.g., a performance assessment team, principal);

- 12.08(2)(e)(ii)(C) A determination team consisting of an AU level or school level gifted education resource person, a teacher in early childhood, and others as identified by the AU (e.g., principal, psychologist, counselor, parent);
- 12.08(2)(e)(ii)(D) A support team during transition including the receiving teacher and school administrator, parents, and gifted education/early childhood personnel; and
- 12.08(2)(e)(ii)(E) Other persons helpful in collecting data or making determinations, including the person who assisted in developing the screening portfolio.

12.08(2)(e)(iii) Evaluation

The AU shall describe the implementation steps for early access evaluation. The steps shall include, but not be limited to:

12.08(2)(e)(iii)(A) Screening Portfolio

Parents are responsible for collecting the information required for an early access portfolio application, and for submitting the portfolio to the appropriate AU personnel. The AU must describe the requirements for an application portfolio that shall include:

12.08(2)(e)(iii)(A)(I) Applicant contact information;

12.08(2)(e)(iii)(A)(II) A screening tool completed, individually, by the parent and the child's current teacher; or, if the child is not in school, by the parent and another adult who knows the child from other early childhood experiences (developmentally appropriate screening tools are district-developed tools and/or standardized tools, like the Gifted Rating Scales for Preschool and Kindergarten or the Kingore Observation Scale); and

12.08(2)(e)(iii)(A)(III) Information about the performance of the child that provides evidence of a need for early access evaluation (e.g., work samples, data from the child's current teacher or an adult from early childhood experiences, or indicators of early access readiness factors).

12.08(2)(e)(iii)(B) Referral

The AU shall designate the gifted education director/coordinator, principal, or other qualified person, to accept the referral portfolio provided by the parent, and make an initial decision as to whether early access assessment should continue.

12.08(2)(e)(iii)(C) Testing and a Body of Evidence

The AU shall conduct the necessary tests and collect student information, including test results accepted pursuant to Section 12.08(2)(b)(iii)(C) of these Rules, regarding the criteria and factors for early access outlined in Section 12.08(2)(d) of these Rules. The body of evidence is complete if data regarding all criteria, and other considerations deemed necessary by the AU, are compiled for data analysis and decision making.

12.08(2)(e)(iii)(D) Decision Making

12.08(2)(e)(iii)(D)(I) Early access decisions will be a consensus process within the determination team that analyzes multiple criteria from a body of evidence resulting in a student profile of strengths, needs and interests of the child. Test scores alone will not determine early access. If the team cannot reach consensus, the building principal or the gifted education director/coordinator shall make the final decision in accordance with the AU's early access program plan.

12.08(2)(e)(iii)(D)(II) A determination letter will be signed by members of the determination team and the parent; and, forwarded for signature of the receiving teacher and principal if they are not on the determination team. Parents may accept or decline the offer of early access. When a child is deemed appropriate for early access, an advanced learning plan (ALP) shall be developed according to the AU's procedures, but no later than the end of the first month after the start of school. The ALP shall include academic and transition goals.

12.08(2)(e)(iii)(D)(III) If the determination team finds the child gifted, but does not find that the child meets the criteria for early access, the team will provide the child's school with the child's assessment portfolio for serving the area of exceptionality in the child's public preschool or public kindergarten program.

12.08(2)(e)(iii)(D)(IV) If the student transfers during the first year of an early access placement the new AU shall maintain the placement.

12.08(2)(e)(iv) Monitoring of Student Performance

The student's teacher shall monitor student performance at least every five weeks during the student's first year of early access. The monitoring process shall be based on the advanced learning plan and performance reports shared with the parents and child.

## 12.08(2)(e)(v) Procedures for Disagreements

Procedures for disagreements for early access shall be in accordance with Section 12.06 of these Rules.

**12.09 Gifted Education Grants**12.09(1) **Screening Grants**

An AU may apply to the Department for a grant for the universal screenings it conducts. An AU may conduct a universal screening of enrolled students no later than end of second grade; and/or a second universal screening in conjunction with the creation of each child's ICAP by end of eighth grade year.

12.09(1)(a) The amount of each grant request must be based on the number of students who participate in the screening and the per pupil cost of the screening.

12.09(2) **Grants to offset the costs incurred in employing qualified personnel**

An AU that hires a qualified person to administer the AU's gifted programs and implement the AU's program plan may apply to the Department for a grant to offset the costs incurred in employing the qualified person up to .5 FTE.

12.09(2)(a) The amount of each grant request must be equal to the costs incurred by the applying AU in employing the qualified person up to .5 FTE.

12.09(3) **Grant Distribution**

Grants are dependent upon the annual appropriation provided to the Department in any given year and shall be distributed to applicants in accordance with 22-20-205, C. R. S.

12.09(3)(a) If funds are sufficient to fully fund all requests received by the Department, the Department shall distribute awards to each AU applicant.

12.09(3)(b) If funds are insufficient to fully fund all the requests received by the Department, the Department shall distribute funds in the order in which the Department received the applications by date of receipt over the course of three days. If funds are sufficient to fully fund each request received on the first date of receipt, the Department shall distribute awards to each AU application received on that date. If funds are insufficient to fund each request received on day-one of receipt, then funds will be proportionally distributed to each day-one applicant on a pro-rata basis. If grant funds remain after day-one distributions, then funds for day-two applicants and day-three applicants would be distributed in the same manner, until all funds are expended.

12.09(3)(c) If grant funds are not fully expended in a given fiscal year, the Department shall distribute the monies appropriated in the same manner that it distributes AU annual allocations.

12.09(4) **Application Window**

During the first year of implementation, 2014-15 school year, applications will be due to the Department during a three-day application window no later than December 15 as specified in the grant application. Beginning on April 15-17, 2015, and each year thereafter, subject to available appropriations, Gifted Education Grant applications will be due during an April 15-17 application window for funding available July 1 of the subsequent fiscal year.

#### 12.09(5) **Application Procedures**

The Department will develop an application, pursuant to the Department's grant process and pursuant to the requirements and timelines found in 22-20-205, C.R.S. Each grant application may include a request for one, or more, of the allowable uses: one qualified personnel (up to .5 FTE), as the term is defined by 22-20-202(7), C. R. S. and universal screenings in K-2 and/or in conjunction with the creation of each child's individual career and academic plan middle school years.

12.09(5)(a) Each universal screening grant request shall at a minimum specify the name of the screening tool, the number of students who will participate in the universal screening, and the per pupil cost of the screening;

12.09(5)(b) Each qualified personnel grant request shall at a minimum specify the cost to employ a qualified person and a letter or certified document that verifies the qualified person has an endorsement or higher degree in gifted education, or is working toward attaining an endorsement or higher degree in gifted education.

#### 12.09(6) **Duration of Grant Awards**

Each grant shall have a term of one year. Funds must be utilized within the fiscal year (July-June) of the distribution of grant funds.

#### 12.09(7) **Reporting**

In any fiscal year in which the General Assembly makes an appropriation to the Department for the purposes of the grant program, each AU that receives a grant shall report the following information to the Department each year during the term of the grant:

12.09(7)(a) The number of and grade of students who participated in the universal screening, the per pupil cost of the screening, evidence of payment for the screening tool, and the name of tool(s) used; and/or

12.09(7)(b) The number of qualified personnel hired using grant moneys, and the type of endorsement/degree held by the qualified person or documentation that the qualified person is working toward attaining an endorsement or higher degree in gifted education.

#### 12.10 **Advisory Committee**

Administrative units are highly encouraged to establish and maintain a local advisory committee for gifted education.

#### 13.00 **INCORPORATION BY REFERENCE**

**Commented [MB16]:** Technical clarification: Language is consistent with statute and would allow testing in fifth grade before middle school as an option.

The foregoing rules incorporate by reference several sections and appendices from the IDEA Part B regulations, 34 CFR, Parts 300 and 303, as those regulations stood on ~~December 31, 2022~~ **November 13, 2024**. The foregoing rules do not incorporate by reference any later amendment or editions to the IDEA Part B regulations.

The ~~Federal Motor Carrier Safety R~~egulations are available at <https://www.ecfr.gov/>. They are also available for public inspection during regular business hours from the Colorado Department of Education, 201 E. Colfax Ave., Denver, Colorado 80203.

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### Editor's Notes

#### History

Entire rule eff. 12/30/2007.

Rules 2220-R-1.00, 12.00 emer. rules eff. 08/14/2008.

Rules 2220-R-1.00, 12.00 eff. 10/31/2008.

Rules 2220-R-1.00 (11); ~~2-082.09~~ (7), ~~2-082.09~~ (7)(b) - (b)(i-iii), 2.1~~10~~ - 2.1~~24~~; 5.01, 5.01 (24) eff. 09/30/2009.

Rules 2220-R-1.00 (12); ~~2-022.03~~; 3.01(1)(a), 3.01(2)(a), 3.01(3), 3.01(4)(a-c); 7.06 emer. rule eff. 10/06/2010; expired eff. 02/03/2011.

Rules 2220-R-1.00(12); 12.01(1), 12.02(1)(g) eff. 03/02/2011.

Rules 2220-R-1.00(13), ~~2-022.03~~, ~~2-082.09~~(6), 6.02 - 6.02(7.5) emer. rules eff. 06/08/2011.

Rules 2220-R-1.00(13), ~~2-022.03~~, ~~2-082.09~~(6), 6.02 - 6.02(7.5) eff. 09/30/2011.

Rules 2220-R-1.00(13) - (14), ~~2-022.03~~, 3.01, 7.07 eff. 7/30/2012.

Rules 2220-R-1.00(15), ~~2-022.03~~, ~~2-082.09~~, 2.1~~54~~, ~~2-442.45~~, 3.02, 9.01(3) eff. 10/30/2012.

Rules 2220-R-1.00(16), ~~2-022.03~~, ~~2-022.03~~(1)(b), ~~2-082.09~~(13), 2.1~~64~~ - 2.1~~98~~, 2.20, 3.02(1), 3.04(1)(e) - (f), 3.04(2), 3.05, 3.06, 4.03(4), 4.03(5)(c), 4.03(6)(c)(ii), 4.03(8)(b)(ii)(A), 5.01(8), 6.02(7.5), 6.02(7.5)(d)(iii)(D), 6.02(8)(k), 7.01(1)(b), 7.01(3)(c), 7.05, 7.07, 8.00, 8.01(2), 8.01(2)(a), 8.02(1)(c), 8.03(2), 8.04(1), 8.04(1)(c), 8.05(1)(c), 8.06(1)(c), 9.01(1)(a)(i) - (ii), 9.01(3), 9.01(5) - (6), 9.01(8), 9.02(1), 9.02(1)(a), 9.02(2), 9.03(1)(a), 9.03(2)(a), 9.06(1) eff. 03/02/2013. Regulation 2220-R-6.02(7) repealed eff. 03/02/2013.

Rules 2220-R-1.00(17), 12.01(23), 12.09 emer. rules eff. 12/01/2014; expired 03/12/2015.

Rules 2220-R-1.00(17), ~~2-022.03~~, 3.01(1), 3.04(1)(e)-(f), 3.04(3), 4.03(6)(b), 12.00-12.07, ~~12-082.09~~(2)-12.10 eff. 06/01/2015.

Rules 2220-R-1.00(18), 9.01(1), 9.03(2)(a) eff. 03/01/2016.

Rules 2220-R-2.00 ~~2.5049~~(1), 2220-R-3.00 3.04(1)(a)(i), 2220-R-4.00 4.03(8), 2220-R-8.00 803(2), 8.05(1)(c), 8.06(1), 8.07(1), 2220-R-9.00, 2220-R-12.00 12.02(2)(j)(v) eff. 06/30/2022. Rules 2.20, 7.07 repealed eff. 06/30/2022.

Entire rule eff. 06/30/2023.

Rules 9.01(1)(e), 9.01(8), 9.06(2) eff. 12/30/2023.

Rules ~~2-022.03~~(1)(b), ~~2-022.03~~(1)(c), ~~2-022.03~~(1)(i)-(j), 2.19(1), 9.01(1)(h), 9.01(3), 9.01(8), 9.03(2)(a)(i), 9.03(2)(a)(i)(A), 9.06 eff. 06/30/2024. Rules 9.03(2)(a)(ii)(A)-(B) repealed eff. 06/30/2024.

**Annotations**

Rule 3.04(2) (adopted 01/09/2013) was not extended by House Bill 14-1123 and therefore expired 05/15/2014.