

# NEBO SCHOOL DISTRICT SPECIAL EDUCATION POLICIES AND PROCEDURES MANUAL

Alternative SLD Eligibility Method

November 2023

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## I. GENERAL PROVISIONS

### I.A. PURPOSES (34 CFR § 300.1; RULES I.A.)

1. The primary purposes of this District's policies and procedures manual, consistent with Utah Code Annotated (UCA) Title 53E, Chapter 7, Part 2, Special Education Program; and the Individuals with Disabilities Education Improvement Act (IDEA), as amended; are:
  - a. To ensure that all students with disabilities ages 3 through 21 in Utah, including students with disabilities who have been suspended or expelled from school and students who have not graduated from high school with a regular high school diploma, have available to them a free appropriate public education
  - b. (FAPE) that emphasizes special education and related services, as specified on an Individualized Education Program (IEP) designed to meet their unique needs and prepare them for further education, employment, and independent living;
  - c. To ensure that the rights of students with disabilities and their parent(s) are protected;
  - d. To ensure that State standards are established for the provision of a FAPE to students with disabilities, as defined in these Rules;
  - e. To assess and ensure the effectiveness of efforts to educate students with disabilities.

### I.B. DEFINITIONS AS USED IN THESE RULES (34 CFR §§ 300.4–300.45; RULES I.E.)

District has adopted all applicable definitions as found in Rule I.E.1-59, provided here for reference. Definitions 1–59 are copied as they appear in the Rules, including numbering, spelling, capitalization, order, and formatting. Internal references refer to the USBE Rules. Definitions 60–68 are Nebo-specific.

*Adapted Physical Education* means specially designed physical education, as described in the student's IEP.

*Adaptive behavior* means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of students of comparable age and cultural group.

*Alternate Achievement Standards, the Essential Elements*, are specific statements of knowledge and skills linked to the grade-level expectations identified in the Utah Core Standards for students with significant cognitive disabilities.

- a. The purpose of the Essential Elements is to build a bridge from the content in the Utah Core Standards to grade-level academic expectations for students with the most significant cognitive disabilities by adapting the depth, breadth, and complexity of the Utah Core Standards against which students with significant cognitive disabilities will be measured.
- b. Other alternate or modified academic achievement standards are prohibited.

*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 student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such a device.



*Assistive technology service* means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- a. Evaluating the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
- b. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities.
- c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
- 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.
- e. Training or technical assistance for a student with a disability or, if appropriate, that student's family.
- 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 students with disabilities.

*Behavior Intervention Plan (BIP)* means a component of a student's educational program or IEP designed to address behaviors that interfere with the student's learning or that of others and behaviors that are inconsistent with school expectations, based on the results of a functional behavior assessment (FBA). A BIP, includes:

- a. A description of the student's strengths, interests, and reinforcer preferences;
- b. An operational definition of the problem behavior, written clearly enough for an unfamiliar person to reliably measure the behavior's occurrence;
- c. A replacement behavior the team will teach the student which matches the function of the problem behavior as determined by a functional behavior assessment (FBA);
- d. Descriptions of antecedent strategies used to reduce the occurrence of the problem behavior and/or increase the occurrence of the replacement behavior;
- e. Descriptions of reinforcing consequence strategies used to reward occurrences of the replacement behavior and/or other appropriate alternative behavior(s);
- f. Description of intervention effectiveness data to be used to monitor the student's progress, including the type of data that will be collected and a schedule for ongoing collection and analysis of progress data;
- g. The date the team will reconvene to review progress data;
- h. The effective start date for the BIP and description of any necessary training and/or materials needed to implement the plan with fidelity by the start date;
- i. Descriptions of reductive consequence strategies used in response to occurrences of the problem behavior; and
- j. If applicable, any safety protocols necessary to protect the student and/or others. Safety protocols must be immediately communicated to all team members including substitute

teachers (e.g., additional supervision in specific routines, modified or alternative materials needed for safety).

*Career and Technical Education (CTE)* 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 requiring certification or licensure other than a baccalaureate or advanced degree.

*Charter school* (20 USC § 7221i; UCA 53G-5-404) means a public school that functions as an LEA, unless it is a school of an LEA, that:

- a. Is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
- b. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- c. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency, provides a program of elementary or secondary education, or both;
- d. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- e. Does not charge tuition
- f. Complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the IDEA;
- g. Is a school to which parent(s) choose to send their students, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
- h. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
- i. Meets all applicable Federal, State, and local health and safety requirements;
- j. Operates in accordance with State law, including but not limited to UCA 53G-5-404; and
- k. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

*Consent* means that:

- a. The parent or student who is an adult has been fully informed of all information relevant to the activity for which consent is sought, in the parent's or student's, who is an adult, native language, or other mode of communication.
- b. The parent or student who is an adult understands and agrees in writing to the carrying out of the activity for which the parent's or student's, who is an adult consent is sought,

and the consent describes that activity and lists the records (if any) that will be released and to whom.

- c. The parent or student who is an adult understands that the granting of consent is voluntary on the part of the parent or student who is an adult and may be revoked at any time. If a parent or student who is an adult 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).
- d. If the parent or student who is an adult revokes consent in writing for the student's receipt of special education and related services, the public agency is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

*Co-teaching* means an instructional arrangement in which a licensed general education teacher and a licensed special education teacher deliver core instruction to all students along with specially designed instruction to students with disabilities in a single learning environment. Co-teaching partnerships require educators to make joint instructional decisions and share responsibility and accountability for the learning of all the students (students with disabilities and students who are nondisabled) in the class.

*Day, business day, and school day* mean:

- a. *Day* means a calendar day unless otherwise indicated as a business day or a school day;
- b. *Business day* means a day on or between Monday through Friday, except for a day that is a Federal and State holidays; and
- c. *School day* means any day, including a partial day, on which students are in attendance at school for instructional purposes, and has the same meaning for all students in school, including students with and without disabilities.
- d. *Shortened school day*, as used in these Rules, means a student's school day is reduced solely by school personnel in response to the student's behavior for disciplinary purposes, rather than the student's IEP Team or placement team, for that student to receive FAPE. In general, the use of informal removals to address a student's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement.

*Discipline* means the consequences a school imposes on a student who violates a school's code of student conduct or rules as determined by school personnel. I. General Provisions 20 The term discipline as used in these SpEd Rules does not include the use of corporal punishment which is prohibited by UCA 53G-8-302.

*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.

*English learner* or *EL Student* means a student who is learning English as a second language. (Board Rules R277-404).

*Equipment* means machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published

and audiovisual instructional materials; telecommunications, sensory and other technological aids and devices; and books, periodicals, documents, and other related materials.

*Evaluation* means procedures used in accordance with these SpEd Rules to determine whether a student has a disability under the IDEA, and the nature and extent of the special education and related services that the student needs.

*Evidence-based instruction* means activities that have a research-based rationale but lack direct empirical support—provided, that is, that they are accompanied by “ongoing efforts to examine the effects” of the activity on important student outcomes.

*Extended school year (ESY) services* means special education and related services that:

- a. Are provided to a student with a disability:
  - (1) Beyond the normal school year of the LEA;
  - (2) In accordance with the student’s IEP;
  - (3) At no cost to the parent(s) of the student with a disability or to the student with a disability who is an adult, and
- b. Meet the standards of the USBE (34 CFR § 300.106).

*Federal administrative responsibilities* means any administrative responsibility or obligation established or imposed under Part B of the IDEA and its implementing regulations or under the General Education Provisions Act (GEPA) or its implementing regulations (20 USC § 1401 et. seq.; 34 CFR § 300, 34 CFR § 76).

*Free appropriate public education (FAPE)* means special education and related services that:

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the USBE and Part B of the IDEA;
- c. Include preschool, elementary school, and secondary school education in Utah; and
- d. Are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and these SpEd Rules.

*Functional behavior assessment (FBA)* is a systematic process used to understand the function and purpose of a student’s specific, interfering behavior and factors that contribute to the behavior’s occurrence and nonoccurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior.

- a. FBA must involve direct observation of the student engaging in the problem behavior, with descriptive information recorded about the behavior, its antecedents, and its consequences. FBA may also involve methods of indirect assessment, including:
  - (1) Interview measures designed to yield information about the function of the student’s problem behavior conducted with the parent(s)/guardian(s), teacher(s), related service providers, other school staff familiar with the student’s behaviors, and/or the student;
  - (2) Checklist measures designed to yield information about the function of the student’s problem behavior conducted with the parent(s)/guardian(s), teacher(s),

related service providers, other school staff familiar with the student's behaviors, and/or the student; and

- (3) Review of relevant student records regarding patterns of behavior, previous interventions, and/or other information which may be analyzed to develop a hypothesis about the function of the problem behavior.

b. FBA should produce four main results:

- (1) Baseline data on the problem behavior's occurrence using an appropriate quantitative measure such as frequency, duration, latency, percent of opportunities, and/or rating scale.
- (2) Data gathered from direct observation (and, if applicable, indirect assessment) that includes:
  - (a) An operational definition of the problem behavior, written clearly enough for an unfamiliar person to reliably measure the behavior's occurrence,
  - (b) Descriptions of the antecedent events that reliably precede the problem behavior,
  - (c) Descriptions of the consequent events that reliably follow the behavior.
- (3) Description of the possible function(s) of the problem behavior determined by analyzing all information obtained during the assessment.
- (4) A hypothesis statement summarizing the following features of the problem behavior:
  - (a) Antecedents,
  - (b) Operational definition of the problem behavior,
  - (c) Reinforcing consequences, and
  - (d) The function(s) maintaining the behavior.

c. FBA should facilitate the development of a Behavior Intervention Plan (BIP).

*Functional Performance* means activities and skills that are not considered academic or related to a student's academic achievement as measured on Statewide achievement tests. Functional Performance includes areas such as behavioral and mental health factors that impact the involvement and progress by a student with a disability in the general education curriculum.

*General curriculum* means the same grade-level core curriculum as that provided for students who are nondisabled (i.e., the Utah Core Standards).

*IDEA* means the Individuals with Disabilities Education Improvement Act as amended (20 USC § 1401 et. seq.), and its implementing regulations (34 CFR § 300 et. seq.). Part B of the IDEA applies to students ages 3–21 and Part C of the IDEA (early intervention) applies to children ages 0–2 and is implemented by 34 CFR § 303.

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

*Individualized Education Program (IEP)* means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the IDEA and these SpEd Rules.

*IEP Team* means a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. The required team members are the parent of the student or a student who is an adult, an LEA representative, not less than one general education teacher of the student (if the student is, or may be, participating in the general education environment), not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student, and a person who can interpret the instructional implications of evaluation results, who may be a member of the team listed above. For students of postsecondary transition age, the student must be invited to attend (34 CFR § 300.321).

*Inclusion* means inclusion and acceptance of students with disabilities is ensuring each student is valued as a visible member of the school community with equal opportunities to contribute by creating conditions for active, meaningful participation with:

- a. Interaction and engagement with age-appropriate peers;
- b. Systems that promote high expectations and learner agency for each student;
- c. Grade/age-appropriate core content standards, curricular materials, and resources; and
- d. Availability of services and supports including IEP-Team determined services across all educational settings, including extra-curricular activities,

(1) To the maximum extent possible and appropriate in the least restrictive environment.

*Individualized Family Service Plan (IFSP)* means the individualized plan of services for eligible children and their families under Part C (early intervention ages 0– 2) of the IDEA.

*Interim alternative educational setting (IAES)* means an appropriate setting determined by the student's IEP Team or a hearing officer in which the student is placed for no more than 45 school days. This setting enables the student to continue to receive educational services so as to enable them to participate in the general education curriculum (although in another setting) and progress toward meeting the goals set out in the IEP. As appropriate, the setting includes provision of an FBA, and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

*Least restrictive environment (LRE)* means that, to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

*Local education agency (LEA)* means the Utah school districts, the Utah Schools for the Deaf and the Blind (USDB), and all Utah public charter schools that are established under State law that are not schools of an LEA. I. General Provisions 25

*Multi-tiered System of Supports (MTSS)* means a comprehensive continuum or framework for implementing systemic, evidence-based practices to maximize student achievement in academics and behavior in preparation for and leading to College and Career Readiness. The MTSS model includes Universal, Targeted, and Intensive levels of support. Universal (Tier One) represents those supports provided to all students. Tier One practices should be

implemented with fidelity prior to addressing practices for Tier Two or Three. Targeted (Tier Two) represents additional supports provided to remediate or accelerate student success. Intensive (Tier Three) represents individually-responsive supports that are intended to further remediate or accelerate student success and do not necessarily equate to special education services. Individually responsive supports, designed to achieve rapid response, are developed based on individual need through data-based instructional decision making but may be provided in a small group or individual format. Tier Two and Three supports are provided in addition to, not in place of, Tier One instruction.

*Native language* means:

- a. When used with respect to an individual with limited English proficiency, the language normally used by that individual; or, in the case of a student who is not an adult, the language normally used by the parent(s) of the student in all direct contact with a student, including evaluation of the student; the language normally used by the student in the home or learning environment.
- b. 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).

*Paraeducator* means a school employee who has been trained and who works under the supervision of teachers or other professionally-licensed or certified practitioners to support and assist in providing instruction and other services to students. Paraeducators are sometimes referred to as paraprofessionals (Board Rules R277-324).

*Parent* means a biological or adoptive parent; a guardian, but not the State if the student is a ward of the State; a person acting in the place of a parent of a student (such as a grandparent, stepparent, or other relative) with whom the I. General Provisions 26 student lives; a person who is legally responsible for the student's welfare; an adult with power of attorney or other legal authority to make educational decisions, or a surrogate parent who has been appointed in accordance with these SpEd Rules.

- a. In accordance with State law, a foster parent may act as a parent under Part B of the IDEA if the following four conditions are met:
  - (1) The biological or adoptive parent's authority to make educational decisions on the student's behalf has been extinguished under State law.
  - (2) The foster parent has an ongoing, long-term parental relationship with the student.
  - (3) The foster parent is willing to make the educational decisions required of parent(s) under these SpEd Rules.
  - (4) The foster parent has no interest that would conflict with the interests of the student. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless said parent does not have legal authority to make educational decisions for the student. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the parent for purposes of these SpEd Rules.

*Personally identifiable information (PII)* means information which must be maintained securely and which includes:

- a. The name of the student, the student's parent, or other family member.
- b. The address of the student.
- c. A personal identifier, such as the student's social security number or student number.
- d. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

*Physical education* means the development of:

- a. Physical and motor fitness.
- b. Fundamental motor skills and patterns.
- c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
- d. Physical education includes specialized physical education, adapted physical education, movement education, and motor development.

*Postsecondary Transition services* means a coordinated set of activities for a student with a disability that:

- a. Is designed to exist within a results-oriented process, and is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, competitive integrated employment (including supported employment), continuing and adult education, adult services, independent living, or full community participation;
- b. Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- c. May be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

*Qualified eye care professional* means a licensed ophthalmologist or licensed optometrist.

*Qualified health professional* means an individual who has the requisite training and licensure and functions in the role of providing medical information to the school evaluation group consistent with the individual's professional license. This person could be the student's physician, nurse, or other healthcare professional.

*Qualified mental health professional* means an individual who has the requisite training and licensure and functions in the role of providing developmental and mental health information to the school evaluation group consistent with the individual's professional license. This person could be the student's psychologist, school psychologist or social worker.

*Qualified personnel* means personnel who have met USBE-approved or USBE-recognized certification, licensing, registration, paraeducator qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.



*Regular high school diploma* means a standard high school diploma that is fully aligned with State standards. A regular high school diploma may not be aligned to alternate academic achievement standards (i.e., Essential Elements).

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

- a. Exception: services that apply to students with surgically implanted devices, including cochlear implants.
- b. 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.
- c. Nothing in this section:
  - (1) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP Team to be necessary for the student to receive a FAPE.
  - (2) 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 student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or
  - (3) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.
- d. The related services are defined as follows:
  - (1) *Audiology* means services provided by or supervised by a qualified audiologist and includes:
    - (a) Identification of students with hearing loss;
    - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
    - (c) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
    - (d) Creation and administration of programs for prevention of hearing loss;
    - (e) Counseling and guidance of students, parent(s), and teachers regarding hearing loss; and

- (f) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) *Counseling services* means services provided by qualified social workers, school psychologists, school counselors, or other qualified personnel consistent with Board Rules R277-313.
- (3) *Early identification and assessment of disabilities in students* means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- (4) *Interpreting services* means services provided by qualified personnel and includes, with respect to students 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 special interpreting services for students who are deafblind.
- (5) *Medical services* mean services provided by a licensed physician to determine a student's medically-related disability that results in the student's need for special education and related services.
- (6) *Occupational therapy* means services provided by or supervised by a qualified occupational therapist, and includes:
  - (a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
  - (b) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
  - (c) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) *Orientation and mobility services* means services provided to students with blindness or visual impairment by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching students the following, as appropriate:
  - (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);
  - (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 students with no available travel vision;
  - (c) To understand and use remaining vision and distance low vision aids; and
  - (d) Other concepts, techniques, and tools.
- (8) *Parent counseling and training* means assisting parent(s) in understanding the special needs of their student, providing parent(s) with information about child

development, and helping parent(s) to acquire the necessary skills that will allow them to support the implementation of their student's IEP.

- (9) *Physical therapy* means services provided by or supervised by a qualified physical therapist.
- (10) *Psychological services* means services provided by a qualified psychologist or school psychologist and include:
  - (a) Administering psychological and educational tests, and other assessment procedures;
  - (b) Interpreting assessment results;
  - (c) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;
  - (d) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - (e) Planning and managing a program of psychological services, including psychological counseling for students and parent(s); and
  - (f) Assisting in developing positive behavior intervention strategies.
- (11) *Recreation* includes:
  - (a) Assessment of leisure function;
  - (b) Therapeutic recreation services;
  - (c) Recreation programs in schools and community agencies; and
  - (d) Leisure education.
- (12) *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 USC § 701 et seq.).
- (13) *School health services and school nurse services* means health services that are designed to enable a student with a disability to receive a FAPE as described in the student'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.
- (14) *Social work services* in schools include:
  - (a) Preparing a social or developmental history on a student with a disability;
  - (b) Group and individual counseling with the student and family;
  - (c) Working in partnership with parent(s) or student who is an adult and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

- (d) Mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; and
  - (e) Assisting in developing positive behavior intervention strategies.
- (15) *Speech language pathology services* means services provided by or under the supervision of a qualified speech language pathologist and include:
- (a) Identification of students with speech or language impairments;
  - (b) Diagnosis and appraisal of specific speech or language impairments;
  - (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - (e) Counseling and guidance of parent(s) or student who is an adult, students, and teachers regarding speech and language impairments.
- (16) *Transportation* includes:
- (a) Travel to and from school and between schools;
  - (b) Travel in and around school buildings; and
  - (c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

*Science of Reading* means a corpus of objective investigation and accumulation of reliable evidence about how humans learn to read and how reading should be taught. The evidence-based elements the science of reading has identified include: oral language skills, concepts of print, phonological awareness, phonemic awareness, alphabet letters and sounds, phonics, morphological analysis, spelling, fluency, vocabulary development, background knowledge, comprehension strategies, text discussion, and writing.

*Scientifically-based research* means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:

- a. Employs systematic, empirical methods that draw on observation or experiment;
- b. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- c. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- d. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

- e. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
- f. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

*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. Board Rules R277-410 requires schools with grades nine and above to be accredited.

*Service animal* (UCA 62A-5b-1024) means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. The work or tasks performed must be directly related to the handler's disability. Emotional support animals are not service animals.

*Special education* means specially designed instruction, at no cost to the parent(s) or the student who is an adult, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech language pathology services and may include other related services, travel training, and applied technology education, if they meet the definition of special education. Special education services are services provided to the student, and do not include consultation between teachers or monitoring a student's grades or work completion.

- 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 students who are nondisabled or their parent(s) as part of the regular education program.

*Specially designed instruction (SDI)* means adapting, as appropriate to the needs of a student who is eligible under these SpEd Rules, the content, methodology, or delivery of instruction in order to:

- a. Address the unique needs of the student that result from the student's disability; and
- b. Ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the LEA that apply to all students.

*Speech-Language Technician* is a license area of concentration connected to an associate or professional license as outlined in Board Rules R277-301.

*State educational agency (SEA)* means the staff of the Utah State Board of Education.

*Student with a disability* means a student, ages 3–21, evaluated in accordance with these SpEd Rules as having autism, a speech or language impairment, deafblindness, an emotional-behavioral disability, a hearing loss including deafness, an intellectual disability, multiple disabilities, an orthopedic impairment, an other health impairment, a specific learning disability, a traumatic brain injury, a visual impairment including blindness, or a student ages 3–8 (until the student's ninth birthday) experiencing developmental delays whose disability affects the student's educational performance and who, by reason thereof, needs special education and related services.

- a. If it is determined, through an appropriate evaluation under these SpEd Rules, that a student has one of the disabilities identified above, but the student only needs related

services and not special education (defined as specially designed instruction), the student is not a student with a disability who is eligible under these SpEd Rules.

- b. If, consistent with the definition of special education under these SpEd Rules I.E.50, the related service required by the student is considered special education rather than a related service under these SpEd Rules, the student would be determined to be a student with a disability.

*Student Experiencing Homelessness* means an individual who lacks a fixed, regular, and adequate nighttime residence (McKinney-Vento Homeless Assistance Act, 42 USC § 11434a; Board Rules R277-616), including:

- a. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- b. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- c. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- d. Migratory children who qualify as experiencing homelessness because they are living in circumstances described above; and
- e. Unaccompanied youth—that is, a youth not in the physical custody of a parent or guardian.

*Student who is an adult* means a student who is 18 years of age and older whose educational rights have not been legally transferred to another adult through guardianship, power of attorney, or other means.

*Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with students who are nondisabled to the maximum extent appropriate in accordance with these SpEd Rules, including the LRE requirements (SpEd Rules III.P.–S.).

*Travel training* means instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:

- a. Develop an awareness of the environment in which they live.
- b. 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).

*Ward of the State* means a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. The definition of Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in SpEd Rule I.E.33. above.

*Asynchronous learning* means communication exchanges which occur in elapsed time between two or more people. Examples include email, online discussion forums, message boards, blogs, podcasts, etc.

*Blended course* means a course that combines two models of instruction, online and face-to-face.

*Blended learning* means any time a student learns both at a supervised brick-and-mortar location away from home and through online delivery with some element of student control over time, place, path, and/or pace; often used synonymously with Hybrid Learning (Horn and Staker, 2011).

*Brick-and-mortar schools* means traditional schools or school buildings, as contrasted with an online school.

*Online course* means any course offered over the internet.

*Online learning* means education in which instruction and content are delivered primarily over the internet (Watson & Kalmon, 2005). The term does not include print-based correspondence education, broadcast television or radio, videocassettes, and stand-alone educational software programs that do not have a significant Internet-based instructional component (U.S. Department of Education Office of Planning, Evaluation, and Policy Development Policy and Program Studies Service, 2010). The term "online learning" is used interchangeably with virtual learning.

*Online school* means a formally constitute organization (public [traditional or charter], private, state, etc.) that offers full-time education delivered primarily over the internet.

*Statewide Online Education Program* means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act (R277-726-2(15)). The Statewide Online Education Program is created to enable an eligible student to earn high school graduation credit through the completion of publicly funded online courses (UCA 53F-4-502(1)).

*Synchronous learning* means online learning in which the participants interact at the same time and in the same space, as contrasted with *asynchronous learning*.

#### **I.C. FULL EDUCATIONAL OPPORTUNITY GOAL (34 CFR § 300.109; RULES IX.A.2.D.(2)(c))**

1. District provides a free appropriate public education (FAPE) to all eligible students with disabilities in conformity with the requirements of the Rules and the IDEA. District hereby affirms the goal of providing a full educational opportunity to all students with disabilities determined eligible for special education and related services, of the ages served by District, in accordance with all of the timeline requirements of the IDEA.
2. District follows all necessary requirements in the development and delivery of an individualized education program (IEP) for eligible students. Placement in the least restrictive environment (LRE) will be implemented to the maximum extent appropriate for students with special needs. District provides a continuum of placements to address the needs of students with disabilities to ensure those students receive special education and related services appropriate to their needs.

#### **I.D. METHODS OF ENSURING SERVICES (34 CFR § 300.154; RULES IX.A.2.D.(2)(m))**

1. District ensures each eligible student with disabilities enrolled in the school receives the services included in the IEP through a systematic process of IEP internal file reviews and monitoring of service delivery by District personnel.

## II. IDENTIFICATION, LOCATION, AND EVALUATION

### II.A. CHILD FIND SYSTEM (34 CFR §§ 300.109, 300.111; RULES II.A.)

1. District In accordance with the requirements of Part B of the IDEA and with the Rules, has developed policies and procedures to ensure that all students with disabilities residing within the jurisdiction of the LEA, including students with disabilities birth through 21 years of age and those attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. These policies and procedures include a practical method for determining which students are currently receiving needed special education and related services and provide a process to reevaluate those who are found eligible within the three-year timeframe.
2. The requirements of this section apply to:
  - a. Highly mobile students with disabilities (such as students who are migrant and experiencing homelessness) (34 CFR § 300.111(c)(2)).
  - b. Students who have been suspended or expelled from school (34 CFR § 300.101(a)).
  - c. Students who have not graduated from high school with a regular high school diploma (34 CFR § 300.102(a)(3)(iii)).
  - d. Students who are suspected of being a student with a disability under the Rules and who are in need of special education and related services, even though they are advancing from grade to grade (34 CFR § 300.111(c)(1)).
  - e. Students who are homeschooled and students enrolled in private schools within the school district's boundaries.
  - f. Students in State custody/care.
  - g. Students in nursing homes.
3. Public charter schools are responsible for child find for students enrolled in their own school and have no responsibility for child find for students in private schools. Charter schools may not refer enrolled students to the local school district for child find.
4. The determination that a student is a “student with a disability” under these Rules must be made on an individual basis, by a group made up of the parent or student who is an adult and school personnel determined by the student’s LEA.
5. Major components of the child find system include:
  - a. LEA implementation, coordination, and tracking of child find activities and students identified, including students who are home schooled and students enrolled in private schools within the school district’s jurisdiction (34 CFR § 300.131).
  - b. USBE staff provision of ongoing technical assistance to LEAs, private schools, and other State agencies in implementing the child find system.
  - c. Implementation of the statewide data collection system for reporting student information, including Federal student count (34 CFR §§ 300.132, 300.640– 641) and the data requirements found in the Rules VI.B.3., which includes that:



- (1) Each school district must maintain in its records, and provide to the USBE staff annually, the following information related to parentally placed or student who is an adult nonprofit private school students:
    - (a) The number of students evaluated and reevaluated within three years;
    - (b) The number of students determined to be students with disabilities; and
    - (c) The number of students served.
  - d. School district collaboration and coordination with State and Local Department of Health, which has responsibility for providing early intervention services for infants and toddlers with disabilities, ages birth through two, under Part C of the IDEA (Interagency Agreement).
6. The collection and use of data to meet the requirements of this section are subject to the confidentiality of information provisions under these Rules and R277-487.

**II.B. REFERRAL (34 CFR § 300.301; RULES II.B.)**

1. Consistent with the consent requirements in Rules II.C., either a parent or the student who is an adult or an LEA may initiate a request for an initial evaluation to determine if a student is a student with a disability under Part B of the IDEA and these Rules. Upon receipt of a request for an evaluation, District must respond within a reasonable timeframe. The response may not be delayed due to District's Response to Intervention process.
2. District shall provide an initial special education assessment for children who enter the custody of the Division of Child and Family Services (DCFS), upon request by that division and the LEA obtains appropriate parental consent for the evaluation for children whose school records indicate that they may have disabilities requiring special education services.

**II.C. PARENTAL CONSENT (34 CFR § 300.300; RULES II.C.)**

1. Parental consent for initial evaluation.
  - a. The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability under the Rules must, after providing prior written notice to the parent or student who is an adult, obtain informed consent, consistent with Rules I.E.9, from the parent of the student or the student who is an adult before conducting the evaluation.
    - (1) Consent from a parent or student who is an adult for initial evaluation must not be construed as consent for initial provision of special education and related services.
    - (2) District must make reasonable efforts to obtain informed consent from the parent or student who is an adult for an initial evaluation to determine whether the student is a student with a disability.
    - (3) When conducting psychological evaluations, District must implement the parental or student who is an adult consent requirements of UCA 53E-9-203 (Student Privacy and Data Protection).
  - b. For initial evaluations only, if the student is a ward of the State and is not residing with the student's parent(s), District is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

- (1) Despite reasonable efforts to do so, District cannot discover the whereabouts of the parent(s) of the student;
  - (2) The rights of the parent(s) of the student have been terminated in accordance with State law; or
  - (3) The rights of the parent(s) to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.
- c. If the parent(s) of a student or a student who is an adult enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or fails to respond to a request to provide consent, District may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards or the due process procedures in Section IV of these Rules.
- (1) District does not violate its obligation under the child find provisions of these Rules if it declines to pursue the evaluation by utilizing the procedural safeguards or the due process procedures.
2. Parental consent for services.
- a. District that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent(s) of the student or student who is an adult before the initial provision of special education and related services to the student.
  - b. District must make reasonable efforts to obtain informed consent from the parent(s) or student who is an adult for the initial provision of special education and related services to the eligible student with disabilities.
  - c. If the parent(s) of a student or student who is an adult fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, District:
    - (1) May not use the procedures in of these Rules IV., including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student;
    - (2) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which District requests consent; and
    - (3) Is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which District requests such consent.
  - d. If, at any time subsequent to the initial provision of special education and related services, the parent(s) of a student or student who is an adult revokes consent in writing for the continued provision of special education and related services, District:
    - (1) May not continue to provide special education and related services to the student but must provide prior written notice in accordance with Rules IV.D. before ceasing the provision of special education and related services;
    - (2) May not use the procedures in Rules IV., including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student;

- (3) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which District requests consent; and
  - (4) Is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which District requests such consent (34 CFR § 300.300).
3. Parental consent for reevaluations.
- a. District must obtain informed parental or student who is an adult consent prior to conducting any reevaluation of a student with a disability.
  - b. If the parent or student who is an adult refuse to consent to the reevaluation, District may, but is not required to, pursue the reevaluation by using the dispute resolution procedures provided in the procedural safeguards, and including mediation or due process procedures.
  - c. District does not violate its obligation under child find if it declines to pursue the reevaluation.
  - d. The informed parental or student who is an adult consent need not be obtained if the LEA can demonstrate that:
    - (1) It made reasonable efforts to obtain such consent; and
  - e. The student's parent or the student who is an adult has failed to respond.
4. Other consent requirements.
- a. Parental or student who is an adult consent is not required before:
    - (1) Reviewing existing data as part of an evaluation or a reevaluation; or
    - (2) Administering a test or other evaluation that is administered to all students unless consent is required for all students before administration of that test or evaluation.
  - b. District may not use a parent's or student who is an adult refusal to consent to one service or activity under Rules II.C.1., II.C.2., or II.C.3., to deny the parent or student any other service, benefit, or activity of the LEA, except as required by this part.
  - c. If a parent of a student or an student who is an adult who is home schooled or placed in a private school by the parent(s) or student who is an adult at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent or student who is an adult fails to respond to a request to provide consent, the LEA may not use the consent override procedures (described in Rules II.C.1.c., II.C.3.), and District is not required to consider the student as eligible for special education and related services.
  - d. To meet the reasonable efforts requirement in Rules II.C.1.a.2., II.C.1.b.1., II.C.2.b., and II.C.3.d.1., District must document its attempts to obtain parental or student who is an adult consent using the procedures in Rules III.G.3.
  - e. Unless parent(s) or the student who is an adult revoke consent for special education and related services or refuse consent for initial placement, disagreements regarding the provision of IEP services should be resolved by the IEP Team and result in a completed IEP which includes all components necessary for the provision of FAPE.

#### **II.D. INITIAL EVALUATION (34 CFR § 300.301; RULES II.D.)**

1. District must conduct a full and individual initial evaluation to determine whether a student is a “student with a disability” under Part B of the IDEA and the Rules, and to determine the educational needs of the student.
2. The initial evaluation:
  - a. Must be conducted within 45 school days of receiving parental or student who is an adult consent for the evaluation, unless:
    - (1) The initial evaluation is requested by the Division of Child and Family Services (DCFS) and District obtains appropriate consent for the evaluation, in which case District shall provide an initial special education evaluation to an individual who enters DCFS custody if DCFS suspects the individual may be an eligible student within 30 days after the day on which DCFS makes the request (UCA 53E-7-207).
    - (a) District may refuse to conduct an evaluation described in the Rules [II.D.2.] a. (1) if District reviews the relevant data regarding the individual and, within ten days after the day on which District received the request described in the Rules [II.D.2.] a.(1), gives the DCFS prior written notice of refusal to evaluate.
  - b. Must consist of procedures to determine:
    - (1) If the student is a student with a disability; and
    - (2) The educational needs of the student.
3. The timeframe shall not apply to District if:
  - a. The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or
  - b. The student who is an adult repeatedly fails or refuses to participate in evaluation activities; or
  - c. A student enrolls in District after the relevant timeframe has begun, and prior to a determination by the student’s previous LEA as to whether the student is a student with a disability.
  - d. The exception in Rules II.D.3.c. applies only if District is making sufficient progress to ensure a prompt completion of the evaluation, and the parent or student who is an adult and District agree to a specific time when the evaluation will be completed.

#### **II.E. SCREENING FOR INSTRUCTIONAL PURPOSES (34 CFR § 300.302; RULES II.E.)**

1. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. Results of screenings should be considered by District for child find purposes.

#### **II.F. EVALUATION PROCEDURES (34 CFR § 300.304; RULES II.F.)**

1. District has established and implemented procedures that meet the evaluation requirements of Part B of the IDEA and the Rules as follows:
  - a. In conducting the evaluation, District must:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by a parent or student who is an adult, that may assist in determining:
  - (a) Whether the student is a student with a disability; and
  - (b) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or, for a student in preschool, to participate in appropriate activities);
- (2) Not use any single procedure as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. District must consider the publication date and continued validity of assessments in use when new editions are published.
- (4) District must ensure that assessments and other evaluation materials used to assess a student:
  - (a) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (b) Are provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (c) Are selected to assess the specific areas of concern identified by the assessment/evaluation group, including the parent(s) or student who is an adult;
  - (d) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (e) Are selected and administered by trained and knowledgeable personnel based upon the specific assessment's requirements; and
  - (f) Are administered and interpreted in accordance with any instructions and administrator requirements provided by the producer of the assessments and the Standards for Educational and Psychological Testing (AERA, APA, NCME, 2014).
    - (i) District must ensure and document that all evaluators meet the assessment publishers' administrator/interpreter/user requirements, (e.g., appropriate degree, higher education coursework in tests and measures, and supervised clinical experiences/practica).
    - (ii) District shall provide documentation to USBE staff upon request.
- (5) District must ensure that:
  - (a) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

- (b) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (c) The administration of psychological testing and the evaluation or assessment of personal characteristics, such as intelligence (e.g., cognitive, IQ), personality, abilities, interests, aptitudes, and neuropsychological functioning are only administered and interpreted by personnel who have been trained and fully meet the administrator/ interpreter/user qualifications of the test publisher (e.g., appropriate degree, higher education coursework in tests and measures, and supervised clinical experiences/practica).
  - (d) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
  - (e) Assessments of students with disabilities who transfer from another LEA to District in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
  - (f) In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
  - (g) Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the student are provided.
- b. The USDB is available to LEAs for assessments of students with visual impairment and hearing loss, as well as professional learning on appropriate administration of assessments, and procedures to ensure appropriate interpretation of assessments (R277-800-7).

**II.G. REEVALUATION PROCEDURES (34 CFR § 300.303; RULES II.G.)**

1. District must ensure that a reevaluation of each student with a disability is conducted:
  - a. If District determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or
  - b. If the student's parents or student who is an adult or teacher requests a reevaluation.
2. A reevaluation:
  - a. May occur not more than once a year, unless the parents or student who is an adult and District agree otherwise; and
  - b. Must occur at least once every three years, unless the parents or adult student and District agree that a reevaluation is unnecessary as there are data available to continue

eligibility and determine the educational needs of the student. When the parents or student who is an adult and LEA agree that a reevaluation is unnecessary, the group must document data reviewed and used in an evaluation report and complete an eligibility determination.

**II.H. ADDITIONAL REQUIREMENTS FOR INITIAL EVALUATIONS AND REEVALUATION PROCEDURES (34 CFR § 300.305; RULES II.H.)**

1. As part of any initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must:
  - a. Review existing evaluation data on the student, including:
    - (1) Evaluations and information provided by the parent(s) of the student or the student who is an adult;
    - (2) Current classroom-based, local, or State assessments, and classroom- based observations; and
    - (3) Observations by teachers and related services providers; and
  - b. On the basis of that review, and input from the student's parent(s) or the adult student, identify what additional data, if any, are needed to determine:
    - (1) Whether the student is a student with a disability and the educational needs of the student; or, in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;
    - (2) The present levels of academic achievement and related developmental needs of the student;
    - (3) Whether the student needs special education and related services; or, in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
    - (4) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.
2. The IEP Team and other qualified professionals, as appropriate, may conduct its review of existing data without a meeting.
3. District must administer such assessments and other evaluation measures as may be needed to produce the data needed to determine continuing eligibility.
4. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the LEA must notify the student's parent(s) or student who is an adult of:
  - a. That determination and the reasons for the determination; and
  - b. The right of the parent(s) or student who is an adult to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.

5. District is not required to conduct the assessment for reevaluation described in Rules II.H.4.b unless requested to do so by the student's parent(s) or the student who is an adult.
6. Evaluations before change in eligibility.
  - a. District must evaluate a student with a disability before determining that the student is no longer a student with a disability.
  - b. The evaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law (i.e., age 22).
  - c. For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law, District must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

## **II.I. DETERMINATION OF ELIGIBILITY (34 CFR § 300.306; RULES II.I.)**

1. Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parents of the student or the student who is an adult determine eligibility under Part B of the IDEA and the Rules, including:
  - a. Whether that student is a student with a disability, and
  - b. The educational needs of the student.
2. District shall provide the parents or adult student with a copy of the evaluation report and the documentation of determination of eligibility.
3. A student must not be determined to be a student with a disability:
  - a. If the determinant factor for that determination is:
    - (1) Lack of appropriate instruction in the science of reading, including the essential components of reading instruction (explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies) (20 USC 6368(3));
    - (2) Lack of appropriate instruction in mathematics; or
    - (3) Limited English proficiency; and
  - b. If the student does not otherwise meet the eligibility criteria.
4. Procedures for determining eligibility and educational need.
  - a. In interpreting evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student, District must:
    - (1) Draw upon information from a variety of sources, such as aptitude and achievement tests, parent or student who is an adult input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
    - (2) Ensure that information obtained from all of these sources is documented and carefully considered.



- b. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student within 30 calendar days.

**II.J. CATEGORICAL DEFINITIONS, CRITERIA, AND ASSESSMENTS (34 CFR § 300.8; 34 CFR § 300.304 34 CFR § 300.306; RULES II.J.)**

1. District has adopted the criteria and evaluation procedures, by category, for determining eligibility for a student with disabilities under Part B of the IDEA and the Rules II.J.1-13. Including: *Specific Learning Disabilities* (Rules II.J.11.). This section specifies the criteria and evaluation procedures, by category, for determining eligibility for a student with disabilities under Part B of the IDEA and the Utah Special Education Rules. References in this section to “these SpEd Rules” refer to the Utah Special Education Rules.
2. Autism.
  - a. Definition.
    - (1) *Autism* is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
      - (a) Autism does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional-behavioral disability or an intellectual disability, as defined in these SpEd Rules.
      - (b) A student who manifests the characteristics of autism after age three could be identified as having autism if the group determines that the student meets the definition of autism under these SpEd Rules.
  - b. Eligibility Criteria.
    - (1) A group of qualified professionals and the student’s parent(s) or student who is an adult determine eligibility as defined above.
    - (2) The autism must adversely affect the student’s educational performance.
    - (3) The student with autism must require special education and related services.
    - (4) The group must determine that autism is the student’s primary disability, although the student may exhibit characteristics of other disability conditions such as an emotional-behavioral disability or intellectual disability.
    - (5) To be eligible under this category, the student must exhibit significant impairments in verbal and/or nonverbal communication and social interaction. The student may also exhibit engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, difficulty with emotional regulation, and unusual responses to sensory experiences.
      - (a) Significant impairment in social interaction includes, but is not limited to:
        - (i) Failure to use appropriate nonverbal behaviors such as eye contact, facial expression, body postures, and other social gestures.
        - (ii) Failure to develop peer relationships appropriate to developmental level.

- (iii) A lack of spontaneous initiation to share interests, enjoyment, or achievements with other people.
- (b) Significant impairment in communication includes, but is not limited to:
  - (i) Delay in or lack of spoken language with no attempt to communicate through alternate modes such as gesture or mime.
  - (ii) In individuals who have reached expected developmental speech milestones:
    - (A) An inability to initiate or sustain a conversation with others.
    - (B) An inability to use conventions of social communication or pragmatics.
  - (iii) Stereotyped and repetitive use of language or peculiar language.
  - (iv) Lack of varied, spontaneous make-believe play, or social imitative play, appropriate to development level.
- (c) Significant restricted, repetitive, and stereotyped patterns of behavior, interests, and activities includes, but is not limited to:
  - (i) Restricted patterns that are atypical either in intensity or focus.
  - (ii) Rigid adherence to specific, nonfunctional routines or rituals.
  - (iii) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movement).
  - (iv) Persistent preoccupation with people, events, or objects.
- (d) Unusual resistance to environmental change or change in daily routines includes, but is not limited to, resistance to:
  - (i) New adults or students in the classroom setting, such as substitute teachers.
  - (ii) Changes in the arrangement of furniture.
  - (iii) Changes in the daily schedule of activities.
- (e) Unusual responses to sensory experiences include, but are not limited to, unusual or extreme responses to:
  - (i) Sudden loud noises or high-pitched sounds.
  - (ii) Rough or highly textured surfaces or clothes touching the skin.
  - (iii) Bright light or significant intermittent changes in lighting.
  - (iv) Strong or unfamiliar tastes or smells.
- (f) The requirements of these SpEd Rules II.I must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal), including an autism checklist/rating scale, must be used to assess intellectual, academic, communicative, social, and adaptive functioning.

- (2) The student's prior medical history from a qualified health professional, regarding any specific syndromes, health concerns, medication, and developmental history from either a qualified health professional or qualified mental health professional, must be on record regarding any information deemed necessary for planning the student's education program.
    - (3) The requirements of these SpEd Rules II.D.–H. must be met.
3. Deafblindness.
  - a. Definition.
    - (1) *Deafblindness* means associated 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 students with deafness or students with blindness.
  - b. Eligibility Criteria.
    - (1) While there must be prior documentation by qualified health professionals that a student has associated hearing and visual impairments the combination of which meet the definition above, only a group of qualified professionals and the student's parent(s) or student who is an adult determine eligibility as defined above.
    - (2) The deafblindness must adversely affect the student's educational performance.
    - (3) The student with deafblindness must require special education and related services.
    - (4) The group must determine that deafblindness is the student's primary disability, although the student may have other disabling conditions in addition to the vision and hearing losses.
    - (5) A combination of the following must exist:
      - (a) Vision impairment including one or both of the following:
        - (i) Visual impairment that, with or without correction, adversely affects a student's ability to access visual information and to develop visual skills for educational performance. This may include partial/low vision or blindness.
        - (ii) Functional blindness, where the physical structures of the eye may be functioning, but the student does not attend to, examine, utilize, or accurately process visual information. This may include cortical visual impairment or central visual impairment.
      - (b) Hearing loss that must include one or both of the following:
        - (i) Hearing loss that, with or without amplification, adversely affects a student's ability to access auditory information and the development of language and communication for educational performance. This may include hard of hearing or deafness.
        - (ii) Functional hearing loss (abnormal auditory perception), where parts of the auditory system may be functioning, but the student does not attend to, respond to, localize, utilize, or accurately process auditory information. This may include cortical deafness, auditory processing disorders, or auditory neuropathy/dyssynchrony (which is an impairment of the auditory nerve,

where parts of the auditory system may be functioning, but there is a problem sending the sound from the ear to the brain).

(6) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

(1) Multiple measures (formal and informal) must be used to assess vision and hearing and all areas of suspected deficits. The evaluation must include and take into consideration the impact of the combined vision and hearing losses. Evaluation must be both clinical and functional assessment.

(2) Areas of evaluation must include:

(a) Audiological evaluation.

(i) Clinical—Audiological testing may include:

(A) Audiological testing yielding threshold results; aided threshold evaluations yielding aided threshold results; speech audiometric tests yielding speech discrimination scores and speech reception thresholds; and proper functioning, fitting, and follow-up of hearing aids.

(B) Otoacoustic Emission Testing (OAE).

(C) Auditory Brainstem Response (ABR) testing.

(ii) Functional assessment of auditory abilities.

(b) Vision evaluation.

(i) Ophthalmological testing.

(A) Clinical assessment of visual acuity, visual field, fixation and movement, refractive errors, and health of the eye structure.

(B) Additional diagnostic tests such as Visual Evoked Response (VER), Magnetic Resonance Imaging (MRI), and Electroretinogram (ERG).

(ii) Functional assessment of visual abilities.

d. Educational Evaluation.

(1) Other areas of evaluation to consider, as appropriate, include:

(a) Language and communication needs.

(b) Current and future needs for instruction in braille or the use of braille.

(c) Orientation and Mobility (O&M) needs.

(d) Accommodations and modifications necessary for the student to be able to access the general curriculum and other activities.

(e) Assistive technology needs.

(2) The requirements of these SpEd Rules II.D.–H. must be met.

4. Developmental Delay.

a. Definition.

- (1) In a student ages 3–8 *developmental delay* means a significant delay in one or more of the following areas: physical/motor development, cognitive development, communication development, social/ emotional development, or adaptive development. The delay must adversely affect a student's educational performance.
- (2) LEAs that choose to use the classification of developmental delay must conform to the State's definition of developmental delay, including the age range adopted by the State, and the requirement that the LEA conduct a full and individual initial evaluation.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) determine eligibility as defined above.
- (2) The developmental delay must adversely affect the student's educational performance.
- (3) The student with a developmental delay must require special education and related services.
- (4) The group must determine that the student's primary disability is developmental delay, and not one of the other disability categories. If the student meets the criteria of any other disability category the student must be classified in that specific disability.
- (5) Students who are eligible for services include students who have been determined to have a significant delay or deficit in one or more of the following areas:
  - (a) Cognitive development.
  - (b) Physical/motor development.
  - (c) Communication development.
  - (d) Social/emotional development.
  - (e) Adaptive development.
- (6) Significant delays are defined as:
  - (a) 1.5 standard deviations below the mean, or at or below the seventh percentile in three areas of development.
  - (b) 2.0 standard deviations below the mean, or at or below the second percentile in two areas of development.
  - (c) 2.5 standard deviations below the mean, or at or below the first percentile in one area of development.
- (7) The requirements of these SpEd Rules II.I must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) must be used to assess the area(s) of suspected delay.

- (2) Assessments selected must be appropriate for students ages 3–8.
  - (3) The requirements of these SpEd Rules II.D.–H. must be met.
5. Emotional-Behavioral Disability.
- a. Definition.
    - (1) *Emotional behavioral disability* means a condition exhibiting one or more of the following characteristics over a long period of time (i.e., at least 45 school days) and to a marked degree (e.g., frequency, duration, or intensity of the student’s behavior in comparison to the behavior of peers) that adversely affects a student’s educational performance:
      - (a) An inability to learn (e.g., insufficient progress towards meeting age or grade level academic standards) that cannot be explained by intellectual, sensory, or health factors.
      - (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
      - (c) Inappropriate types of behavior or feelings under normal circumstances.
      - (d) A general pervasive mood of unhappiness, depression, or anxiety.
      - (e) A tendency to develop physical symptoms or fears associated with personal or school problems.
    - (2) *Emotional-behavioral disability* includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional-behavioral disability. A student may not be identified as having an emotional-behavioral disability if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional-behavioral disability.
    - (3) *Emotional-behavioral disability* is a term that covers the following two types of behavioral difficulties, which are not mutually exclusive, and which may adversely affect a student’s educational performance.
      - (a) *Externalizing* refers to behavior problems that are directed outwardly by the student toward the social environment, and usually involve behavioral excesses.
      - (b) *Internalizing* refers to a class of behavior problems that are directed inwardly, and often involve behavioral deficits.
  - b. Eligibility Criteria.
    - (1) A group of qualified professionals and the student’s parent(s) or student who is an adult determine eligibility as defined above.
    - (2) The emotional-behavioral disability must adversely affect the student’s educational performance.
    - (3) The student with the emotional behavioral disability must require special education and related services.
    - (4) The group must determine that an emotional-behavioral disability is the primary disability.

- (5) Before classifying a student as having an emotional-behavioral disability, the group must determine that all of the following conditions are met:
  - (a) The observable emotional and/or behavioral responses of concern occur in an academic setting in school and at least one nonacademic setting;
  - (b) The observable emotional and/or behavioral responses of concern are significantly different from same-age peers in terms of frequency, intensity, and/or setting;
  - (c) The observable emotional and/or behavioral responses of concern are not primarily the result of:
    - (i) Intellectual disability;
    - (ii) Vision impairment, hearing loss, or other medical conditions;
    - (iii) Inappropriate classroom management;
    - (iv) Cultural factors;
    - (v) Environmental or economic disadvantage; or
    - (vi) Limited English proficiency.
  - (d) A variety of documented evidence-based instructional and/or behavioral interventions were implemented, and the student remains unable to access education in a general education setting. Intervention documentation must include start and end dates.
- (6) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) must be used to assess behavioral, social, and academic areas and must include the following:
  - (a) Documentation which demonstrates that the behavior that adversely affects the student's educational performance has been exhibited over a long period of time and to a marked degree.
  - (b) A functional behavior assessment (FBA) as defined in these SpEd Rules I.E.21 that evaluates the observable behaviors leading to the referral for the educational evaluation.
  - (c) A social and developmental history that may include, but is not limited to, the following:
    - (i) Communication skills,
    - (ii) Social interaction skills,
    - (iii) Responses to sensory experiences,
    - (iv) Relevant family and environmental information,
    - (v) Patterns of emotional adjustment, and
    - (vi) Unusual or atypical behaviors.

- (d) Complete documentation in the student's records in each of the following areas:
  - (i) Academic performance as evidenced by achievement tests, classroom academic screenings and tests, report cards, cumulative records, statewide assessments, and other data.
  - (ii) Social/behavioral/adaptive checklists or rating scales which provide information regarding the student's past and present patterns of interaction with peers, family, teachers, adults, and others.
  - (iii) Behaviors for which the student is referred.
- (e) The requirements of these SpEd Rules II.D.–H. must be met.

6. Hard of Hearing/Deafness.

a. Definition.

- (1) *Hard of Hearing* is loss in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.
- (2) *Deafness* is a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or student who is an adult determine eligibility as defined above.
- (2) The hearing loss/deafness must adversely affect the student's educational performance.
- (3) The student with the hearing loss/deafness must require special education and related services.
- (4) The group must determine that the hearing loss/deafness is the primary disability.
- (5) Before classifying a student as having hearing loss/deafness, the group must:
  - (a) Take into account whether the type of deafness or hearing loss is conductive, sensorineural, or mixed; and
  - (b) Consider whether a central nervous system impairment, or central auditory processing disorder (which is an impairment of the auditory cortex, where parts of the auditory system may be functioning, but the student does not attend to, respond, localize, or accurately process information) is causing the student to appear as a student with a hearing loss or deafness.
- (6) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) are required for a student suspected of having a hearing loss.
- (2) Areas of evaluation must include:



- (a) Audiological evaluation, which may include:
  - (i) Audiological testing yielding threshold results; aided threshold evaluations yielding aided threshold results; speech audiometric tests yielding speech discrimination scores and speech reception thresholds; and proper functioning, fitting, and follow-up of hearing aids.
  - (ii) Otoacoustic Emission Testing (OAE).
  - (iii) Auditory Brainstem Response (ABR) testing.
  - (iv) Functional assessment of auditory abilities.
- (b) Language growth and development (signed, spoken, or written) must be evaluated by qualified personnel using assessment instruments and procedures that are appropriate for the diagnosis and appraisal of the suspected hearing loss.
  - (i) Speech and language evaluation.
  - (ii) Speech intelligibility may be evaluated by phonetic evaluation, suprasegmental features (vocalization, vocal duration, vocal intensity, vocal pitch), and articulation of segmental features (vowels, diphthongs, consonants, blends).
  - (iii) Linguistic evaluation (vocalizations as specified in these SpEd Rules II.J.5.d.(1)(c)(i) above, within linguistic structure).
  - (iv) Language and communication mode.
- (c) Academic achievement.
- (3) Other areas of evaluation to consider, as appropriate, include:
  - (a) Intellectual ability. When intellectual ability is assessed, results must be interpreted by qualified personnel.
  - (b) Adaptive behavior, as gathered from parent(s) or adult student and school staff.
- (4) The requirements of these SpEd Rules II.D.–H. must be met.

7. Intellectual Disability.

a. Definition.

- (1) *Intellectual disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or student who is an adult determine eligibility as defined above.
- (2) The intellectual disability must adversely affect the student's educational performance.
- (3) The student with the intellectual disability must require special education and related services.

- (4) The group must determine that an intellectual disability is the primary disability.
- (5) Intellectual, academic, and adaptive assessment results demonstrate consistently low profiles across measures.
- (6) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) are required for a student suspected of having an intellectual disability, and must include:
  - (a) Intellectual evaluation.
    - (i) An individual test of intelligence must be administered by a qualified examiner as outlined in SpEd Rules II.F. Traditional approaches to assessing cognitive ability may be ineffective for some students who are suspected of having intellectual disabilities. Documentation must be provided which indicates significant subaverage intellectual functioning (generally two standard deviations) on the full-scale score.
    - (ii) If scores (e.g., domain, cluster, and index) are significantly discrepant from each other, further evaluation must be conducted to determine the reason for the discrepancy and to ensure that the student is actually manifesting an intellectual disability.
  - (b) Documentation of significant deficits in academic achievement as measured by achievement tests, classroom academic screenings and additional data (e.g., tests, report cards, cumulative records).
  - (c) Documentation of significant deficits in adaptive behavior as measured by standardized and/or curriculum-based assessments must be gathered from parent(s) or the student who is an adult and school staff.
  - (d) The requirements of these SpEd Rules II.D.–H. must be met.

8. Multiple Disabilities.

a. Definition.

- (1) *Multiple disabilities* means concomitant impairments (such as intellectual disability/blindness or intellectual disability/orthopedic impairment) that affect a student's educational performance. The combination of disabilities must cause such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The multiple disabilities category does not include deafblindness.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or student who is an adult determine eligibility as defined above. The group must identify the disabilities and ensure that the student meets the criteria for each of the multiple disabilities. Intellectual disabilities need not be one of the multiple disabilities identified.
- (2) The multiple disabilities must adversely affect the student's educational performance.

- (3) The student with multiple disabilities must require special education and related services.
- (4) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) must be used to assess all areas of concern. Areas to be considered include cognitive ability, academic skills, adaptive skills, language and communication, social functioning (such as self-help and independent living skills), vocational skills, and sensory/motor skills.
- (2) The evaluation process is determined by the group and must include a combination of tests, interviews with those familiar with the student, and observations conducted in settings familiar to the student.
- (3) Cognitive ability must be assessed by a qualified examiner as outlined in SpEd Rules II.F. Traditional approaches to assessing cognitive ability may be ineffective for some students who are suspected of having multiple disabilities.
- (4) The use of assisted and augmentative communication and motor systems must be considered during the evaluation and documented.
- (5) The student's prior medical history, from a qualified health professional, must be on record if specific syndromes, special health problems (e.g., tracheotomy), medication, and long-term medical prognosis are a concern for the individual.
- (6) The following sensory/motor areas must be considered for evaluation:
  - (a) Abnormal tactile or joint sensation,
  - (b) Abnormal muscle tone and movement,
  - (c) Lack of integration of primitive reflexes,
  - (d) Lack of balance or coordination,
  - (e) Organization of sequential motor movement,
  - (f) Motor skills, or
  - (g) A combination of any of the above.
- (7) Where deficits in adaptive behavior are suspected, they must be measured and documented on standardized and/or curriculum-based assessments with input from parent(s) or student who is an adult and school staff.
- (8) Vision and hearing must be assessed.
- (9) The requirements of these SpEd Rules II.D.–H. must be met.

9. Orthopedic Impairment.

a. Definition.

- (1) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone

tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or the student who is an adult determine eligibility as defined above.
- (2) The orthopedic impairment must adversely affect the student's educational performance.
- (3) The student with the orthopedic impairment must require special education and related services.
- (4) The group must determine that the orthopedic impairment is the student's primary disability.
- (5) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) must be used to assess all areas of the suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (2) The student's prior medical history, from a qualified health professional, must be on record regarding any specific syndromes, health concerns, medication, and information deemed necessary for planning the student's educational program.
- (3) The requirements of these SpEd Rules II.D.–H. must be met.

10. Other Health Impairment.

a. Definition.

- (1) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, HIV/AIDS, an acquired brain injury which may result from health problems such as an hypoxic event, encephalitis, meningitis, brain tumor, or stroke, and that adversely affects a student's educational performance.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or the student who is an adult determines eligibility as defined above.
- (2) The health impairment must adversely affect the student's educational performance.
- (3) The student with the health impairment must require special education and related services.
- (4) The group must determine that the other health impairment is the student's primary disability.
- (5) The requirements of these SpEd Rules II.I. must be met.

- c. Evaluation.
    - (1) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
    - (2) The student's prior medical history, from a qualified health professional, must be on record regarding any specific syndromes, health concerns, medication, and information deemed necessary for planning the student's educational program. Each individual who provides health information may only provide information consistent with the parameters of the Utah professional licensure.
    - (3) The requirements of these SpEd Rules II.D.–H. must be met.
11. Specific Learning Disabilities.
- a. Definition (34 CFR § 300.8(C)(10)); Rules II.J.11.a.)
    - (1) *Specific learning disabilities* 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 do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that affects a student's educational performance.
    - (2) *Specific learning disabilities* does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional behavioral disability; or of environmental, cultural, or economic disadvantage.
  - b. Procedures for Identifying Students with Specific Learning Disabilities (34 CFR § 300.307; Rules II.J.11.b.).
    - (1) District has adopted the following method for determining a student's eligibility under the specific learning disability category:
      - (a) Alternative Method.
        - (i) An other alternative research-based procedure (Patterns of Strengths and Weaknesses (PSW) approved by District's school board and submitted to the USBE called the Alternative method that demonstrates that the student does not make sufficient progress to meet State-approved age- or grade-level standards in one or more of the areas identified in the Rules II.J.11.b.(3)(a) (the group must refer to the USBE Specific Learning Disability Eligibility Guidelines when using this method).
    - (2) Additional group members (34 CFR § 300.308; Rules II.J.11.b.2).
      - (a) The determination of whether a student suspected of having a specific learning disability is a student with a disability must be made by the student's parent(s) or student who is an adult and a group of qualified professionals, which must include:
        - (b) The student's regular teacher; or
        - (c) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of the student's age; or

- (d) For a student of less than school age; an individual qualified by the USBE to teach a student of the student's age; and
  - (e) At least one person qualified to conduct individual diagnostic examinations of students and interpret the results of those assessments (as per the publisher's assessment administration criteria), such as a school psychologist, speech language pathologist, reading teacher or reading specialist, or special education teacher.
- (3) Determining the existence of a specific learning disability (34 CFR § 300.309; Rules II.J.11.b.3.).
- (a) The group described may determine that a student has a specific learning disability if:
    - (b) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:
      - (i) Oral expression;
      - (ii) Listening comprehension;
      - (iii) Written expression;
      - (iv) Basic reading skills;
      - (v) Reading fluency skills;
      - (vi) Reading comprehension;
      - (vii) Mathematics calculation;
      - (viii) Mathematics problem solving.
    - (c) The group determines that its findings are not primarily the result of:
      - (i) A visual, hearing, or motor disability;
      - (ii) Intellectual disability;
      - (iii) Emotional-behavioral disability;
      - (iv) Cultural factors;
      - (v) Environmental or economic disadvantage; or
      - (vi) Limited English proficiency.
- (4) The specific learning disability must adversely affect the student's educational performance.
- (5) The student with the specific learning disability must need special education and related services (34 CFR § 300.8(a); Rules II.J.11.b.5).
- (6) The group must determine that the specific learning disability is the student's primary disability.
- c. Evaluation (34 CFR § 300.309(b)–(c); Rules II.J.11.c).

- (1) An evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion.
- (2) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:
  - (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parent(s) or the student who is an adult.
- (3) District must promptly request parental consent or consent of the adult student to evaluate the student to determine if the student needs special education and related services, and must adhere to the 45-school-day evaluation timeframe, unless extended by mutual written agreement of the student's parent(s) or student who is an adult and a group of qualified professionals:
  - (a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time as determined by District when provided appropriate instruction, and
  - (b) Whenever a student is referred for an evaluation.
- (4) Observation (34 CFR § 300.310(a)–(c); Rules II.J.11.b.4)
  - (a) District must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of concern.
  - (b) The group must decide to:
    - (i) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
    - (ii) Have at least one member of the group conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent or consent of the student who is an adult is obtained.
  - (c) If the student is a home-schooled student, District may determine how to conduct the observation and who will conduct it.
  - (d) In the case of a student of less than school age or who is out of school, a group member must observe the student in an environment appropriate for a student of that age.
- (5) Specific documentation for the eligibility determination (34 CFR § 300.311; Rules II.J.11.b.5). The group's documentation of the determination of eligibility with a specific learning disability must contain a statement of:
  - (a) Whether the student has a specific learning disability;

- (b) The basis for making the determination, including an assurance that the determination has been made in accordance with Rules II.I.;
- (c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
- (d) The educationally relevant medical findings, if any; and
- (e) Whether the student meets the criteria of (f) below.
- (f) Alternative. The use of other alternative research-based procedures (e.g., Patterns of Strengths and Weaknesses (PSW) approved by District's board and submitted to the USBE.
  - (i) District uses a method that demonstrates the student does not make sufficient progress to meet State-approved age- or grade-level standards in one or more of the areas identified in the Rules II.J.11.b.(3)(a) when using District's local board approved research-based process (the group must refer to the USBE Specific Learning Disability Eligibility Guidelines when using this method).
  - (ii) The group must:
    - (A) Review data from multiple sources that examines the student's progress over time in the area(s) of concern when evidence-based instruction has been provided;
    - (B) Identify the student's strengths and weaknesses that are evident in both the classroom and standardized assessment results;
    - (C) Using standardized testing, determine a relationship between the student's cognitive processing delays and academic deficits exits;
    - (D) Consider whether the student's cognitive profile, from standardized testing, includes both a normative and an intraindividual weakness that is consistent with academic/classroom performance data;
    - (E) Consider whether the student's cognitive profile, from standardized testing, includes both a normative and an intraindividual strength that is consistent with academic/classroom performance data; and
    - (F) Identify that a relationship between the student's cognitive weakness and academic/classroom performance is evident over time.
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional- behavioral disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level;
- (7) The requirements of Rules II.D.–H. must be met.
- (8) Each group member must certify in writing whether the report reflects the member's conclusion (§ 300.311(b)). If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

12. Speech Language Impairment.

a. Definition.



- (1) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

b. Eligibility Criteria.

- (1) A group of qualified professionals and the student's parent(s) or student who is an adult, including a qualified speech language pathologist (SLP), determines eligibility as defined above.
- (2) The speech or language impairment must adversely affect the student's educational performance.
- (3) The student with the speech or language impairment must require special education and related services.
- (4) A student who qualifies in disability categories other than that of speech or language impairment may qualify for speech or language impairment services; however, in order for the student to be classified as having a speech or language impairment, the group must determine that the speech or language impairment is the student's primary disability.
- (5) In order for a student whose primary home language is other than English to be eligible for classification with a speech or language impairment, the group (including an SLP) must determine that the speech or language impairment exists in the student's primary language and is not the result of the student learning English.
- (6) The student with an Orofacial Myofunctional Disorder or OMD (formerly called Tongue Thrust) may be served only if there is an associated speech or language impairment.
- (7) Some students with mild hearing loss may be classified as having a speech or language impairment, if the manifestation of the disability is only as a speech or language impairment and the services of a teacher of the deaf and hard of hearing are not required.
- (8) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) are required for a student suspected of having a speech or language impairment (primary disability or requiring related services).
- (2) The student must be evaluated by a qualified SLP using assessment instruments and procedures appropriate for the determination and appraisal of a speech or language impairment.
- (3) Documentation must be provided indicating the student has an impairment in listening, reasoning, and/or speaking to such a degree where special education is needed.
- (4) For the student suspected of having an articulation-only speech sound impairment, the group shall consider the relationship of such an impairment to the use of phonological pattern errors and phonemic awareness.

- (5) A complete battery of assessments (e.g., intellectual, physical, or adaptive behavior) may not be needed to determine that a speech or language impairment exists. Needed assessments are determined by the group.
  - (6) The requirements of these SpEd Rules II.D.–H. must be met.
13. Traumatic Brain Injury.
- a. Definition.
    - (1) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech, that affects a student’s educational performance. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
  - b. Eligibility Criteria.
    - (1) While there must be prior documentation by a physician that a student has an acquired injury to the brain caused by an external physical force, a group of qualified professionals and the student’s parent(s) or student who is an adult determine eligibility.
    - (2) The traumatic brain injury must adversely affect the student’s educational performance.
    - (3) The student with the traumatic brain injury must require special education and related services.
    - (4) The group must determine that traumatic brain injury is the student’s primary disabling condition.
    - (5) The requirements of these SpEd Rules II.I. must be met.
  - c. Evaluation.
    - (1) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits. Informal assessment and diagnostic teaching must be part of the full evaluation. Data gathered must include information on the student’s developmental history and/or pre-injury learning and educational performance.
    - (2) The student’s prior medical history which may include a rehabilitative team evaluation, from a qualified health professional, must be on record regarding any specific syndromes, health concerns, medication, and information deemed necessary for planning the student’s education program.
    - (3) Although other evaluations could be considered, the following areas must be considered for evaluation:
      - (a) Augmentative communication assistive service needs,
      - (b) Self-help/adaptive behavior,

- (c) Academics,
- (d) Speech/language,
- (e) Social skills and classroom behavior,
- (f) Intellectual/cognitive,
- (g) Vocational (students in secondary settings), and
- (h) Gross/fine motor skills.

(4) The requirements of these SpEd Rules II.D.–H. must be met.

14. Visual Impairment (Including Blindness).

a. Definition.

- (1) *Visual impairment (including blindness)* means an impairment in vision that, even with correction, adversely affects a student’s educational performance. The term includes both partial sight and blindness that adversely affects a student’s educational performance.

b. Eligibility Criteria.

- (1) While the student’s vision history, including a recent eye report (conducted within the previous three years) from a qualified eye care professional must be on record (unless the student has an unchanging vision condition), a group of qualified professionals and the student’s parent(s) or student who is an adult determine eligibility as defined above.
- (2) The visual impairment must adversely affect the student’s educational performance.
- (3) The student with a visual impairment must require special education and related services.
- (4) The group must determine that the visual impairment is the student’s primary disability.
- (5) The requirements of these SpEd Rules II.I. must be met.

c. Evaluation.

- (1) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (2) A description of the student’s visual impairment and visual capabilities must be on record from a qualified eye care professional.
- (3) A licensed, endorsed teacher of the visually impaired must assess:
  - (a) The kind and extent of instruction needed, based on the student’s present level of performance, including the functioning level of the student in adjusting to visual problems and gaining educational and social success.
  - (b) The student’s current and future need for instruction in braille or the use of braille.

- (4) An orientation and mobility (O&M) assessment, as conducted by a certified orientation and mobility specialist, must be considered if the student is determined to be blind or visually impaired.
- (5) The group must consider whether other impairments interfere with the comprehension of visual and/or auditory stimuli (e.g., processing difficulties, reading disabilities).
- (6) The requirements of these SpEd Rules II.D.–H. must be met.

### **III. IEP DEVELOPMENT AND SERVICE DELIVERY**

#### **III.A. INDIVIDUALIZED EDUCATION PROGRAM (IEP) (RULES III.A.)**

1. District implements the following IEP requirements, including the Least Restrictive Environment (LRE) requirements, consistent with Part B of the IDEA and the Rules, as well as R277-750, R277-800, and R277-801.

#### **III.B. WHEN IEPS MUST BE IN EFFECT (34 CFR § 300.323; RULES III.B.)**

1. At the beginning of each school year, District must have an IEP in effect for each student with a disability within its jurisdiction.
2. District must ensure that:
  - a. A meeting to develop an IEP for a student is conducted within 30 calendar days of a determination that the student needs special education and related services; and
  - b. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.
  - c. District must ensure that the student's IEP is:
    - (1) Accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and
    - (2) Each teacher and provider is informed of:
      - (a) The teacher's specific responsibilities related to implementing the student's IEP; and
      - (b) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.
3. Documentation of IEP implementation shall be provided to USBE upon request.

#### **III.C. STUDENTS WHO TRANSFER (34 CFR § 300.323; RULES III.C.)**

1. Transfers within Utah.
  - a. In the case of a student with a disability with a current IEP who transfers from one LEA to another within the State within the same school year and enrolls in a new school, District, in consultation with the parent(s) or student who is an adult, must provide a FAPE to the

student, including services comparable to those described in the previously held IEP, until such time as District:

- (1) Adopts the previously held IEP, or
  - (2) Develops, adopts, and implements a new IEP that is consistent with Federal regulations and these Rules.
- b. The requirements of 34 CFR § 300.323 also apply for students transferring from an LEA placement to a local juvenile or adult correctional facility or temporary State placement for observation and assessment.
2. Transfers from out of State.
- a. In the case of a student with a disability with a current IEP who transfers LEAs within the same school year, who enrolls in a new school, and who has an IEP that was in effect in another State, District, in consultation with the parent(s) or student who is an adult, must provide the student with a FAPE, including services comparable to those described in the previously held IEP, until District:
    - (1) Conducts an evaluation, if determined to be necessary by District; and
    - (2) Develops a new IEP, if appropriate, that is consistent with Federal and State law.
  - b. The evaluation for eligibility that may be conducted by District is considered an initial evaluation, not a reevaluation (71 Federal Register 4668- 82).
3. To facilitate the transition for a student described above:
- a. District must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous LEA in which the student was enrolled; and
  - b. The previous LEA in which the student was enrolled must take reasonable steps to promptly respond to the request from District.
  - c. The LEA transferring the records must keep a copy of the records for at least three years after the transfer as outlined in Rule VIII.S.
4. Experiencing difficulty in obtaining the IEP from the previous LEA does not relieve the LEA where the student is currently enrolled of its obligation to have a current IEP in place for a student who is eligible.

### **III.D. LEA RESPONSIBILITY FOR IEP MEETINGS (34 CFR § 300.323(C)(1); RULES III.D.)**

1. District is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability age 3 through 21, consistent with these Rules.
2. A meeting to develop an IEP for a student who is eligible must be conducted within 30 calendar days of a determination that a student needs special education and related services.

### **III.E. IEP TEAM MEMBERSHIP (34 CFR § 300.321; RULES III.E.)**

1. District must ensure that the IEP Team for each student with a disability includes:

- a. The parents of the student or the student who is an adult;
- b. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
- c. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
- d. A representative of District who:
  - (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
  - (2) Is knowledgeable about the general education curriculum; and
  - (3) Is knowledgeable about the availability of resources of the LEA.
  - (4) District may designate a District member of the IEP Team to also serve as the LEA representative, if the above criteria are satisfied.
- e. A representative of USDB and the LEA of residence when the student's placement is at USDB, when the IEP Team is considering placement at USDB, or when the student receives 180 minutes or more of special education and/or related services from USDB.
- f. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section of these Rules;
- g. At the discretion of the parent or student who is an adult or the LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- h. Whenever appropriate, the student with a disability.
- i. The determination of knowledge or special expertise of any individual described in these Rules III.E.6 above must be made by the party (parents or student who is an adult or LEA) who invited the individual to be a member of the IEP Team.
- j. If a purpose of the IEP Team meeting is consideration of the postsecondary goals for the student and the postsecondary transition services needed to assist the student in reaching those goals, the LEA must invite the student with a disability to attend the student's IEP meeting. If the student does not attend the IEP meeting, District must take other steps to ensure that the student's preferences and interests are considered.
- k. To the extent appropriate, with the written consent of the parents or student who is an adult, District must invite a representative of any participating agency that is likely to be responsible for providing or paying for postsecondary transition services.
- l. Signatures on an IEP denote participation of IEP Team members in the development of the IEP.

**III.F. IEP TEAM ATTENDANCE (34 CFR § 300.321; RULES III.F.)**

1. A required member of the IEP Team is not required to attend a particular IEP Team meeting, in whole or in part, if the parents of a student with a disability or student who is an adult and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
  - a. The parents or student who is an adult, in writing, and the LEA consent to the excusal; and
  - b. The member submits, in writing, to the parents or student who is an adult and the IEP Team, input into the development of the IEP prior to the meeting.

### **III.G. PARENT PARTICIPATION (34 CFR § 300.322; RULES III.G.)**

1. District must take steps to ensure that one or both of the parents of a student with a disability or the student who is an adult are present at each IEP meeting or are afforded the opportunity to participate, including:
  - a. Notifying parents or student who is an adult of the meeting early enough to ensure that they will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed-on time and place.
2. If the parents or student who is an adult cannot attend, District must use other methods to ensure participation of the parents or the student who is an adult, including individual or conference telephone calls. The parents of a student with a disability or the student who is an adult and District may agree to use alternative means of meeting participation, such as video conferences and conference calls (34 CFR § 300.328).
3. A meeting may be conducted without a parent or the student who is an adult in attendance if District is unable to convince the parent(s) or the student who is an adult that they should attend. In this case, District must keep a record of its attempts to arrange a mutually agreed-on time and place, such as:
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence sent to the parents or student who is an adult and any responses received; and
  - c. Detailed records of visits made to the parents' or student who is an adult home or place of employment and the results of those visits.
4. District must take whatever action is necessary to ensure that the parent(s) or student who is an adult understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parent(s) or student who is an adult with deafness or whose native language is other than English.
  - a. Under UCA 35A-13-604, an individual is required to be certified as an interpreter if that individual provides interpreter services for deaf and hard of hearing individuals.
  - b. An individual providing interpreting services other than those for deaf and hard of hearing individuals shall be trained.
5. The parent(s) of a student with a disability or student who is an adult are participants along with school personnel in developing, reviewing, and revising the IEP for their student. This is an active role in which the parent(s) or student who is an adult:
  - a. Provide critical information regarding the strengths of the student and express their concerns for enhancing the education of the student;

- b. Participate in the discussion of the student's need for special education and related services, and supplementary aids and services; and
  - c. Join with other participants in deciding how the student will be involved and progress in the general curriculum, how the student will participate in State- and LEA-wide assessments, and what services District will provide to the student and in what setting.
6. District must give the parent(s) or adult student a copy of the student's IEP at no cost to the parent(s) or student who is an adult.

**III.H. NOTICE OF MEETING (34 CFR § 300.322; RULES III.H.)**

1. The notice of meeting required to be provided to the parent(s) or student who is an adult must:
  - a. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - b. Inform the parent(s) or student who is an adult of the provision for participation of other individuals who have knowledge or special expertise about the student on the IEP Team.
  - c. Inform the parent(s) that at their request the Part C service coordinator or other representatives of the Part C system may be invited to participate at the initial IEP Team meeting for a student previously served under Part C of the IDEA.
2. For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, the IEP notice of meeting also must:
  - a. Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and postsecondary transition services for the student; and
  - b. Indicate that District will invite the student; and
  - c. Identify any other agency that will be invited, with parental or student who is an adult consent, to send a representative.
3. When conducting IEP Team meetings and placement meetings and carrying out administrative matters, the parent(s) of a student with a disability or student who is an adult and District may agree to use alternative means of meeting participation such as video conferences and conference calls (34 CFR § 300.328).

**III.I. DEVELOPMENT, REVIEW, AND REVISION OF THE IEP (34 CFR § 300.324; RULES III.I.)**

1. Development, review, and revision of the IEP.
  - a. In developing each student's IEP, the IEP Team must consider:
    - (1) The strengths of the student;
    - (2) The concerns of the parent(s) or adult student for enhancing the education of the student;
    - (3) The results of the initial or most recent evaluation of the student, and
    - (4) The academic, developmental, and functional needs of the student.
  - b. The IEP Team, in conducting a meeting to develop, review and, if appropriate, revise a student's IEP, must consider the following special factors:



- (1) In the case of a student with limited English proficiency (LEP), consider the language needs of the student as those needs relate to the student's IEP;
- (2) In the case of a student who is blind or visually impaired, provide for instruction in braille and the use of braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in braille or the use of braille), that instruction in braille or the use of braille is not appropriate for the student;
  - (a) Prior to determining whether a student who is blind should use braille as the primary reading mode, the student's IEP Team must be provided (through pertinent literature or discussions with competent braille users and educators, or both) with detailed information about the use and efficiency of braille as a reading medium, in order to make an informed choice as to the student's primary reading.
- (3) Consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;
- (4) Consider whether the student needs assistive technology devices and services in school and on a case-by-case basis, in a student's home or other setting; and
- (5) In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address that behavior.
  - (a) When making decisions on behavior interventions, the IEP Team must refer to the USBE Technical Assistance (TA) manual that outlines the Least Restrictive Behavior Interventions (LRBI) for information on research-based intervention procedures.
    - (i) Emergency safety interventions may only be included in an IEP as a planned intervention when the IEP Team agrees that less restrictive means which meet circumstances in R277-608 have been attempted, an FBA has been conducted, and a BIP based on data analysis has been developed and implemented (R277- 609).
  - (b) The purpose of the LRBI related to the use of positive behavior supports and behavior interventions in schools is to:
    - (i) Protect the safety and well-being of all students;
    - (ii) Provide protection for students, teachers, other school personnel, and LEAs; and
    - (iii) Ensure that parent(s) or students who is an adult are involved in the consideration and selection of behavior interventions to be used.
  - (c) When an emergency situation occurs that requires the immediate use of an emergency safety intervention to protect the student or others from harm, the

staff shall comply with requirements in R277-609 with regards to time limitations and parental or student who is an adult notification.

- (d) As appropriate, the student should receive an FBA and behavior intervention services and modifications that are designed to address the behavior (34 CFR § 300.530(d)(1)(ii)).
  - c. If, in considering the special factors described above, the IEP Team determines that a student needs a particular device or services for educational purposes (including an intervention, accommodation, or other program modification) in order for the student to receive a FAPE, the IEP Team must include a statement to that effect in the student's IEP.
  - d. A regular education teacher of a student with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:
    - (1) Appropriate positive behavior interventions and supports and other strategies for the student; and
    - (2) Supplementary aids and services, program modifications, and support for school personnel consistent with the IEP.
2. Changes to the IEP.
- a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent(s) of a student with a disability or student who is an adult and District may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.
    - (1) The LEA shall convene a meeting with the IEP Team regarding material or substantial changes to the IEP (e.g., the amount of service time, change in placement, termination of services).
  - b. Upon request, the parent(s) or student who is an adult must be provided with a revised copy of the IEP with the amendments incorporated.
  - c. If changes are made to the student's IEP through the amendment process, District must ensure that the student's IEP Team is informed of those changes.
3. To the extent possible, District must encourage the consolidation of reevaluation meetings and other IEP Team meetings for the student (34 CFR § 300.324(a)(5)).
4. Review and revision of the IEP.
- a. District must ensure that the IEP Team:
    - (1) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and
    - (2) Revises the IEP, as appropriate, to address:
      - (a) Any lack of expected progress toward the annual goals in the IEP and in the general education curriculum, if appropriate;
      - (b) The results of any reevaluation;

- (c) Information about the student provided to, or by, the parent(s) or adult student;
  - (d) The student's anticipated needs; or
  - (e) Other matters.
- (3) In conducting a review of the student's IEP, the IEP Team must consider the special factors in these Rules III.I.1.b.
  - (4) A regular education teacher of the student, as a member of the IEP Team, must participate in the review and revision of the IEP of the student, if the student is or may be participating in the general education classroom.
  - (5) If a participating agency, other than District, fails to provide the postsecondary transition services described in the IEP, District must reconvene the IEP Team to identify alternative strategies to meet the postsecondary transition objectives for the student set out in the IEP.
  - (6) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any postsecondary transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

**III.J. DEFINITION OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP) (34 CFR § 300.320; RULES III.J.)**

1. The term *individualized education program* (IEP) means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting. The IEP is designed to meet the student's unique needs based on their disability, and prepare them for further education, employment, and independent living.
2. The IEP must include:
  - a. A statement of the student's present levels of academic achievement and functional performance (PLAAFP), including:
    - (1) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same grade- level curriculum as for students who are non-disabled); or
    - (2) For students in preschool, as appropriate, how the disability affects the student's participation in appropriate activities; and
    - (3) For students who are blind, the results obtained from a braille-related or braille skills assessment;
  - b. A statement of measurable annual goals, that describes what the student is reasonably expected to accomplish in a year and the conditions in which the goals will be performed, including academic and functional goals designed to:
    - (1) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the grade- level general education curriculum; and
    - (2) Meet each of the student's other educational needs that result from the student's disability;

- c. For a student with a disability, ages 14 and older, an annual IEP goal related to the student's postsecondary transition service needs.
- d. For eligible students with significant cognitive disabilities who will participate in grade-level alternate achievement standards (i.e., Essential Elements):
  - (1) Notification to the parent(s) or adult student that the student's academic achievement will be measured through an assessment of the grade-level Utah alternate achievement standards and how participation in such alternate achievement assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and
  - (2) A description of benchmarks or short-term objectives for each annual goal;
- e. A description of:
  - (1) How the student's progress toward meeting the annual IEP goals will be measured; and
  - (2) When periodic reports to the parent(s) or adult student on the progress the student is making toward meeting the annual IEP goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- f. A statement of the special education and related services and supplementary aids and services (including assistive technology), based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:
  - (1) To advance appropriately toward attaining the annual goals;
  - (2) To be involved in and make progress in the grade-level general education curriculum, and to participate in extracurricular and other nonacademic activities; and
  - (3) To be educated and participate with other similar-aged students with disabilities and non-disabled students in the activities described in this section;
- g. An explanation of the extent, if any, to which the student will not participate with similar-aged non-disabled students in the regular education environment and in the activities described in this section;
- h. A statement of:
  - (1) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on all grade-level State- and LEA-wide assessments; and
  - (2) If the IEP Team determines that the student must take an alternate assessment instead of a particular regular State- or LEA-wide assessment of student achievement, a statement of why:
    - (a) The student cannot participate in the regular assessment; and
    - (b) The particular alternate assessment selected is appropriate for the student;

- (c) All students, including students with disabilities, participate in statewide assessments. District reports the results of statewide assessments on the website. If more than one percent of students with significant cognitive disabilities participate in an alternate assessment, District will submit justification to the USBE on the need to exceed the cap; and
- i. The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
- j. A statement of school to post-school transition services.
  - (1) For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:
  - (2) Appropriate measurable postsecondary goals based upon age- appropriate postsecondary transition assessments related to training or education, employment, and, where appropriate, independent living skills; and
  - (3) The postsecondary transition services (including courses of study) needed to assist the student in reaching those goals.
- k. Transfer of rights at age of majority.
  - (1) Beginning not later than one year before the student reaches the age of majority (age 18 in Utah), the IEP must include a statement that the student has been informed of the student's rights under Part B of the IDEA that will transfer to the student on reaching the age of majority. The transfer of rights also occurs upon notification to the LEA that a student has married or become emancipated before age 18.
- l. Nothing in this section shall be construed to require that additional information be included in a student's IEP beyond what is explicitly required in Section 614 of Part B of the IDEA, or require the IEP Team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.
- m. IEP Teams should discuss and address, if appropriate, student participation in not only the grade-level Utah Core Standards, but other general education activities and courses (e.g., health and maturation, suicide prevention), as well as the Statewide Online Education Program (SOEP) or other online, distance, blended, or competency-based courses, as well as courses taken through Career and Technical Education (CTE) programs and concurrent enrollment. Students with disabilities may require special education and related services and accommodations for equitable participation, in conjunction with Part B of the IDEA, these Rules, R277-418, R277-713, and R277-726.

**III.K. IEP AND SERVICES FOR PRESCHOOL STUDENTS AGES THREE THROUGH FIVE (RULES III.K.)**

- 1. IEP Development and Contents (34 CFR § 300.323):
  - a. In developing the IEP for a student with a disability age three through five or, at the discretion of District, a two-year-old student with a disability who will turn age three during the school year, the IEP Team must consider the contents of an IFSP that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre- literacy, language, and numeracy skills.
  - b. The IFSP may not serve as the IEP of the student.

- c. The LEA must develop an IEP for the student in accordance with the procedures in these Rules.
- 2. Services for students with disabilities ages three through five, served in preschool programs of District, are to be provided consistent with the Rules including consideration of the continuum of alternative placement options (34 CFR § 300.124).
- 3. Preschool transition planning for students referred from Part C providers must be conducted consistent with the State's current interagency preschool transition agreement with Part C. This planning shall be implemented at least 90 calendar days, as required by Part C regulations 637(a)(9), before the student is eligible for the preschool program under Part B of the IDEA in accordance with the Rules. District will participate in the preschool transition planning meeting arranged by the lead agency for the Part C program (34 CFR § 300.124).
- 4. Services for students age three.
  - a. By the eligible student's third birthday, District must ensure that an IEP has been developed and is being implemented for the student (34 CFR § 300.124(b)).
  - b. If a student's third birthday occurs after the end of the school year, District must ensure that an IEP has been developed, and the student's IEP Team shall determine the date in the next school year when services under the IEP will begin, except that the IEP Team may determine that extended school year services are needed outside the school year.
- 5. Students counted under the preschool program who are being served by Head Start must meet all of the requirements in the Rules, including the eligibility criteria and provision of a FAPE.

### **III.L. PHYSICAL EDUCATION (34 CFR § 300.108; RULES III.L.)**

- 1. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving a FAPE, unless District enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.
- 2. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to students who are nondisabled unless:
  - a. The student is enrolled full time in a separate facility; or
  - b. The student needs specially designed physical education, as prescribed in the student's IEP.
- 3. If specially designed physical education (e.g., adapted physical education) is prescribed in a student's IEP, the LEA responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- 4. District responsible for the education of a student with a disability who is enrolled in a separate facility must ensure that the student receives appropriate physical education services.

### **III.M. ASSISTIVE TECHNOLOGY (34 CFR § 300.105 AND R277-495; RULES III.M.)**

- 1. District must ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability if required as a part of the student's:

- a. Special education,
  - b. Related services, or
  - c. Supplementary aids and services.
2. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP Team determines that the student needs access to those devices in order to receive a FAPE.

**III.N. EXTENDED SCHOOL YEAR (ESY) SERVICES (34 CFR § 300.106; R277-751; RULES III.N.)**

1. *Extended school year services* mean special education and related services that:
- a. Are provided to an eligible student with a disability:
    - (1) Beyond the normal school year of District;
    - (2) In accordance with the student's IEP; and
    - (3) At no cost to the parent(s) of the student or student who is an adult; and
  - b. Meet the standards of the USBE in R277-751.
2. District shall ensure that:
- a. Extended school year services are available as necessary to provide FAPE, consistent with the Rules and considered for each individual student with a disability during an IEP, based upon a review of multiple data sources and factors.
  - b. ESY student programs are provided in the least restrictive environment.
  - c. ESY teachers and paraeducators meet USBE's and IDEA requirements.
3. Extended school year services must be provided only if a student's IEP Team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student. The annual IEP shall reflect the IEP Team's decision regarding the need for ESY services.
- a. Parent(s) or the student who is an adult shall be provided with prior written notice of proposal or refusal to provide ESY services.
  - b. If determined as eligible for ESY services, the IEP Team shall determine the appropriate ESY program, based on the student's individual needs.
  - c. ESY eligibility decisions and prior written notice of ESY programs shall be provided to parent(s) or student who is an adult in sufficient time to permit accessing dispute resolution options of the procedural safeguards, in the event of a dispute.
4. In implementing the requirements of this section, District may not:
- a. Limit extended school year services to particular categories of disability, age, or grade level;
  - b. Unilaterally limit the type, amount, or duration of those services; or
  - c. Limit data consideration by IEP Teams to only an analysis of regression and recoupment.

### **III.O. LEAST RESTRICTIVE ENVIRONMENT (LRE) (34 CFR § 300.114; RULES III.O.)**

1. District must ensure that:
  - a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities (e.g., nursing homes), are educated with similar-aged students who are nondisabled; and
  - b. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In the case of a student who is deaf or hard of hearing, consideration of a special class or school may be the least restrictive environment in that it provides opportunities for direct communication and instruction in the student's language and communication mode with professional personnel and peers.
  - c. LRE provisions apply to transition programs (i.e., preschool and postsecondary) and placement.
2. A state funding mechanism must not result in placements that violate the LRE requirements of the Rules III.P.–S.

### **III.P. INCLUSIONARY PRACTICES TO PROVIDE A FULL EDUCATIONAL OPPORTUNITY (34 CFR § 300.109; RULES III.P.)**

1. District must develop inclusionary practices that include the components in the definition using evidence-based practices. LEA's may benefit from USBE Technical Assistance, and other resources.

### **III.Q. CONTINUUM OF ALTERNATIVE PLACEMENTS (34 CFR § 300.115; RULES III.Q.)**

1. District must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.
2. The continuum required must:
  - a. Include the following alternative placements for instruction:
    - (1) Regular classes,
    - (2) Special classes,
    - (3) Special schools,
    - (4) Home instruction, and
    - (5) Instruction in hospitals and institutions; and
  - b. Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

### **III.R. PLACEMENTS (34 CFR § 300.116; RULES III.R.)**

1. In determining the educational placement of a student with a disability, including a preschool or postsecondary transition-aged student with a disability, District must ensure that:
  - a. The placement decision:



- (1) Is made by a group of persons, including the parent(s) or student who is an adult and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and
  - (2) Is made in conformity with the LRE provisions above.
- b. The student's placement:
    - (1) Is determined at least annually;
    - (2) Is based on the student 's IEP; and
    - (3) Is as close as possible to the student 's home;
  - c. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that the student would attend if nondisabled;
  - d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs; and
  - e. A student with a disability is not removed from education in age- appropriate regular classrooms solely because of needed modifications in the general education curriculum.

**III.S. PARENTAL INVOLVEMENT IN PLACEMENT DECISIONS (34 CFR §§ 300.327, 300.501; RULES III.S.)**

- 1. District shall ensure that the parent(s) of each student with a disability or adult student are members of any group that makes decisions on the educational placement of the parent's student or the student who is an adult (Rules IV.B).
- 2. In implementing this requirement, District shall use procedures for parent or student who is an adult involvement in placement decisions consistent with those used for parent participation in IEP meetings.
- 3. If neither parent or the student who is an adult can participate in a meeting in which a decision is to be made relating to the educational placement of the student, District shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.
- 4. A group may make a placement decision without the involvement of the parent(s) or student who is an adult if District is unable to obtain either parent's or student who is an adult participation in the decision. In this case, the LEA must have a record of its attempts to ensure their involvement.

**III.T. NONACADEMIC SETTINGS AND EXTRACURRICULAR ACTIVITIES (34 CFR § 300.117; UCA 53G-6-709; RULES III.T.)**

- 1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities in Rules III.V, District must ensure that each student with a disability participates with students who are nondisabled in the extracurricular services and activities to the maximum extent appropriate to the needs of that student.
- 2. District must ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.

3. A student with a disability (under the age of 22 who has not graduated from high school with a regular high school diploma, whose IEP Team recommends participation) may not be denied the opportunity of participating in public school programs or extracurricular activities solely because of the student's age, unless the participation threatens the health or safety of the student. District, in cooperation with the Utah Department of Health, shall establish criteria used to determine the health and safety factor (UCA 53G-6- 709).

#### **III.U. NONACADEMIC SERVICES (34 CFR § 300.107; RULES III.U.)**

1. District must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
2. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by District, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by District and assistance in making outside employment available.

### **IV. PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENT(S) AND STUDENTS (IDEA SUBPART E)**

1. Consistent with the requirements of Part B of the IDEA and these Rules District shall establish, maintain, and implement procedural safeguards for students with disabilities and their parent(s) or students who is an adult. (34 CFR § 300.500).

#### **IV.A. PARENTAL OPPORTUNITY TO EXAMINE RECORDS AND PARTICIPATE IN MEETINGS (34 CFR § 300.501; RULES IV.A.)**

1. Opportunity to examine records.
  - a. The parent(s) of a student with a disability or student who is an adult must be afforded, in accordance with these Rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student.
2. Parent participation in meetings.
  - a. The parent(s) of a student with a disability or student who is an adult must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student.
  - b. District must provide notice, consistent with the Rules, to ensure that parents of students with disabilities or adult students have the opportunity to participate in meetings.
  - c. A meeting does not include informal or unscheduled conversations involving District personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that District personnel engage in to develop a proposal or a response to a parent or student who is an adult proposal that will be discussed at a later meeting.

3. Parent involvement in placement decisions.
  - a. District must ensure that a parent of each student with a disability or student who is an adult is a member of any group that makes decisions on the educational placement of the parent's student (34 CFR § 300.327), including notifying the parent(s) or student who is an adult of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed-on time and place (34 CFR § 300.322(a)).
  - b. The notice of meeting must indicate the purpose(s), time, and location of the meeting, who will be in attendance, and inform the parents or student who is an adult of their right to bring other individuals who have knowledge or special expertise about the student (34 CFR § 300.322(b)).
  - c. If neither parent or the student who is an adult can participate in a meeting in which a decision is to be made relating to the educational placement of the student, District must use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.
  - d. A placement decision may be made by a group without the involvement of a parent or student who is an adult if District is unable to obtain the parents or student who is an adult participation in the decision. In this case, District must have a record of its attempt to ensure their involvement.

#### **IV.B. INDEPENDENT EDUCATIONAL EVALUATION (34 CFR § 300.502; RULES IV.B.)**

1. Definitions.
  - a. *Independent educational evaluation* (IEE) means an evaluation conducted by a qualified examiner who is not employed by District responsible for the education of the student in question.
  - b. *Public expense* means that District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent or student who is an adult.
2. District has established and implemented policies and procedures related to independent educational evaluation that meet the requirements of Part B of the IDEA and the Rules.
3. The following requirements must be addressed:
  - a. The parents of a student with a disability or student who is an adult have the right to obtain an IEE of the student at public expense if they disagree with an evaluation obtained by District.
  - b. District must provide to the parents or student who is an adult, upon request for an IEE, information about where an IEE may be obtained and the District criteria applicable for IEEs.
  - c. If a parent or student who is an adult requests an IEE at public expense, District must, without unnecessary delay, either:
    - (1) File a request for a due process complaint and hearing to show that its evaluation is appropriate; or

- (2) Ensure that an IEE is provided at public expense, unless District demonstrates in a due process hearing that the evaluation obtained by the parent or student who is an adult did not meet District criteria.
  - d. If District files a due process complaint and request for hearing, and the final decision is that District's evaluation is appropriate, the parent or student who is an adult still has the right to an IEE, but not at public expense.
  - e. If a parent or student who is an adult requests an IEE, District may ask for the parents' or student who is an adult's reason why the student who is an adult objects to the public evaluation. However, the explanation by the parent or student who is an adult may not be required and District may not unreasonably delay either providing the IEE at public expense or requesting a due process hearing to defend the public evaluation.
  - f. A parent or student who is an adult is entitled to only one IEE at public expense each time District conducts an evaluation with which the parent or adult student who is an adult disagrees.
  - g. If the parent or adult student who is an adult either obtains an IEE at public expense or shares an evaluation obtained at private expense with District, the results of the evaluation:
    - (1) Must be considered by District, in any decision made with respect to the provision of a FAPE to the student provided that the IEE meets District criteria; and
    - (2) May be presented by any party as evidence at a hearing on a due process complaint regarding that student.
  - h. If a hearing officer requests an IEE as part of a due process hearing, the cost of the evaluation must be at public expense.
  - i. If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that District uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or student who is an adult right to an IEE.
  - j. Except for the criteria described above, District may not impose additional conditions or timelines related to obtaining an IEE at public expense.
4. An IEE conducted at District's expense becomes the property of District, in its entirety.

#### **IV.C. PRIOR WRITTEN NOTICE (34 CFR § 300.503; RULES IV.C.)**

- 1. Prior written notice must be given to the parents of a student with a disability or student who is an adult a reasonable time before District:
  - a. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or
  - b. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student.
- 2. The notice required must include:
  - a. A description of the action proposed or refused by District;
  - b. An explanation of why District proposes or refuses to take the action;

- c. A description of each evaluation procedure, assessment, record, or report District used as a basis for the proposed or refused action;
  - d. A statement that the parent(s) of a student with a disability or student who is an adult have protection under the procedural safeguards of Part B of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - e. Sources for the parent(s) or student who is an adult to contact to obtain assistance in understanding the provisions of Part B of the IDEA;
  - f. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - g. A description of other factors that are relevant to District's proposal or refusal.
3. The notice must be:
- a. Written in language understandable to the general public; and
  - b. Provided in the native language of the parent or student who is an adult or other mode of communication used by the parent or student who is an adult, unless it is clearly not feasible to do so.
    - (1) If the native language or other mode of communication of the parent or student who is an adult is not a written language, District must take steps to ensure that:
      - (a) The notice is translated orally or by other means to the parent or student who is an adult in the parent's or student who is an adult native language or other mode of communication;
      - (b) The parent or student who is an adult understands the content of the notice; and
      - (c) There is written evidence that the requirements above have been met.

**IV.D. PROCEDURAL SAFEGUARDS NOTICE (34 CFR § 300.504; RULES IV.D.)**

- 1. A copy of the procedural safeguards available to the parent(s) of a student with a disability or student who is an adult must be given to the parent(s) or student who is an adult only one time a year, except that a copy also must be given to the parent(s) or student who is an adult:
  - a. Upon initial referral or parent or student who is an adult request for evaluation;
  - b. Upon receipt of the first State complaint or a due process complaint in that school year;
  - c. In accordance with the discipline procedures in 34 CFR § 300.530(h) and Rules V.F.; and
  - d. Upon request by a parent or student who is an adult.
- 2. District may place a current copy of the procedural safeguards notice on its website if a website exists.
- 3. The procedural safeguards notice must include a full explanation of all the procedural safeguards relating to:
  - a. Independent educational evaluations;
  - b. Prior written notice;

- c. Parental or student who is an adult consent;
  - d. Access to educational records;
  - e. The opportunity to present and resolve complaints through the, including:
    - (1) The time period in which to file a due process complaint or State complaint;
    - (2) The opportunity for the agency to resolve the due process hearing complaint or State complaint; and
    - (3) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
  - f. The availability of mediation;
  - g. The student's placement during pendency of hearings on due process complaints;
  - h. Procedures for students who are subject to placement in an interim alternative educational setting (IAES);
  - i. Requirements for unilateral placement by parent(s) of students or by a students who is an adult in private schools at public expense;
  - j. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
  - k. State-level appeals;
  - l. Civil actions, including the time period in which to file those actions; and
  - m. Attorneys' fees.
4. The notice required must be in language understandable to the parent(s) or student who is an adult as set forth in 34 CFR § 300.503(c) and Rules IV.C.3.
  5. A parent of a student with a disability or student who is an adult may elect to receive prior written notice, procedural safeguards notice, and prior written notice following a due process complaint pursuant to Rules IV.H.6 by an electronic mail communication, if District makes that option available (34 CFR § 300.505).

**IV.E. STATE COMPLAINT PROCEDURES (34 CFR § 300.151–153; RULES IV.E.)**

District follows all requirements found in Rules IV.E regarding State complaint procedures.

**IV.F. MEDIATION (34 CFR § 300.506; RULES IV.F.)**

District follows all requirements found in Rules IV.E regarding Mediation.

**IV.G. FILING A DUE PROCESS COMPLAINT (34 CFR § 300.507; UCA 53E-7- 208; RULES IV.G.)**

District follows all requirements found in Rules IV.G regarding filing a due process complaint.

**IV.H. DUE PROCESS COMPLAINT (34 CFR § 300.508; RULES IV.H.)**

District follows all requirements found in Rules IV.H regarding due process complaints.

**IV.I. RESOLUTION PROCESS (34 CFR § 300.510; RULES IV.J.)**

District follows all requirements found in Rules IV.J regarding the resolution process.

**IV.J. IMPARTIAL DUE PROCESS HEARING (34 CFR § 300.511; RULES IV.K.)**

District follows all requirements found in Rules IV.K regarding impartial due process hearings.

**IV.K. HEARING RIGHTS (34 CFR § 300.512; RULES IV.L.)**

District follows all requirements found in Rules IV.L regarding hearing rights.

**IV.L. HEARING DECISIONS (34 CFR § 300.513; RULES IV.M.)**

District follows all requirements found in Rules IV.M regarding hearing decisions.

**IV.M. FINALITY OF DECISION (34 CFR § 300.514; RULES IV.N.)**

District follows all requirements found in Rules IV.N regarding finality of decisions.

**IV.N. STATE ENFORCEMENT MECHANISMS (34 CFR § 300.537; RULES IV.O.)**

District follows all requirements found in Rules IV.O regarding State enforcement mechanisms.

**IV.O. TIMELINES AND CONVENIENCE OF HEARINGS (34 CFR § 300.515; RULES IV.P.)**

District follows all requirements found in Rules IV.P regarding timelines and convenience of hearings.

**IV.P. CIVIL ACTION (34 CFR § 300.516; RULES IV.Q.)**

District follows all requirements found in Rules IV.Q regarding civil action.

**IV.Q. ATTORNEY'S FEES (CFR §300.517; UCA 53E-7-208(4)(B); RULES IV.R.)**

District follows all requirements found in Rules IV.R regarding attorneys' fees.

**IV.R. STUDENT'S STATUS DURING PROCEEDINGS (34 CFR § 300.518; RULES IV.S.)**

District follows all requirements found in Rules IV.S regarding student's status during proceedings.

**IV.S. SURROGATE PARENTS (34 CFR § 300.519; RULES IV.T.)**

1. District must ensure that the rights of a student are protected when:
  - a. No parent (as defined under 34 CFR § 300.30 and Rules I.E.34.) can be identified for a student under the age of majority;
  - b. District after reasonable efforts, cannot locate a parent for a student under the age of majority;
  - c. The student is a ward of the State under the laws of Utah; or
  - d. The student is an unaccompanied youth experiencing homelessness under the age of majority.

2. The duties of District include the assignment of an individual to act as a surrogate for the parent(s) for a student under the age of majority. This must include a method for determining whether a student under the age of majority needs a surrogate parent and for assigning a surrogate parent to the student.
3. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements.
4. District may select a surrogate parent in any way permitted under State law.
5. District must ensure that a person selected as a surrogate parent:
  - a. Is not an employee of the USBE, District, or any other agency that is involved in the education or care of the student;
  - b. Has no personal or professional interest that conflicts with the interest of the student that the surrogate parent represents; and
  - c. Has knowledge and skills that ensure adequate representation of the student.
6. A person otherwise qualified to be a surrogate parent is not an employee of District solely because the person is paid by District to serve as a surrogate parent.
7. In the case of a student who is an unaccompanied youth experiencing homelessness, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates until a surrogate can be appointed that meets all of the requirements.
8. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student.
9. The USBE and District must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after District determines that the student needs a surrogate.

**IV.T. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (34 CFR § 300.520; RULES IV.U.)**

1. When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students, except for a student with a disability who has been determined to be incompetent under State law, or the student with a disability marries or becomes emancipated:
  - a. District must provide any notice required by Part B of the IDEA to both the individual and the parent(s); and
  - b. All other rights accorded to parents under Part B of the IDEA transfer to the student.;
2. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution; and
3. Whenever a state transfers rights, District must notify the individual and the parent(s) of the transfer of rights within a reasonable time frame.



#### IV.U. CONFIDENTIALITY OF INFORMATION (34 CFR §§ 300.610–300.626; R277-487; RULES IV.V.)

1. District takes appropriate steps to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by District pursuant to Part B of the IDEA and R277-487. District follows all requirements found in Rules IV.V.1-19 regarding confidentiality of information including.
2. Definitions as used in Rules (34 CFR § 300.611). (Rules IV.V.2)
  - a. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
  - b. *Education records* means the type of records covered under the definition of “education records” in 34 CFR § 99, implementing regulations for the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g (FERPA).
  - c. *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.
3. Record of access (34 CFR § 300.614). (Rules IV.V.6)
  - a. District must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA and the Rules (except access by parents or student who is an adult and authorized employees of District), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
4. Records on more than one student (34 CFR § 300.615). (Rules IV.V.7)
  - a. If any education record includes information on more than one student, the parent(s) of those students or the student who is an adult have the right to inspect and review only the information relating to their student or themselves or to be informed of that specific information.
5. List of types and locations of information (34 CFR § 300.616). (Rules IV.V.8)
  - a. On request, District must provide parents or student who is an adult with a list of the types and locations of education records collected, maintained, or used by District.
6. Fees (34 CFR § 300.617). (Rules IV.V.9)
  - a. District may charge a fee for copies of records that are made for parent(s) or student who is an adult under Part B of the IDEA if the fee does not effectively prevent the parent(s) or student who is an adult from exercising their right to inspect and review those records.
  - b. District may not charge a fee to search for or to retrieve information under Part B of the IDEA.
7. Consent for disclosure of PII (34 CFR § 300.622). (Rules IV.V.14)
  - a. Except as to disclosures addressed in referral to and action by law enforcement and judicial authorities, for which parental consent is not required by 34 CFR § 99, parental or adult student consent must be obtained before PII is:
    - (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under Part B of the IDEA or the Rules: or

- (2) Used for any purpose other than meeting a requirement of Part B of the IDEA or the Rules.
  - b. District may not release information from education records to participating agencies without parental or adult student consent unless authorized to do so by 34 CFR §§ 99.31 and 99.34 (FERPA):
    - (1) 34 CFR § 99.31 allows an LEA to disclose PII from the education records of a student without the written consent of the parent(s) of the student or student who is an adult, if the disclosure is:
      - (a) To other school officials, including teachers, within the LEA who have been determined by the LEA to have legitimate educational interests.
      - (b) To officials of another school or school site in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR § 99.34 below.
    - (2) 34 CFR § 99.34 requires that an LEA transferring the education records of a student pursuant to 34 CFR § 99.34 above shall make a reasonable attempt to notify the parent of the student or student who is an adult of the transfer of records at the last known address of the parent or student who is an adult, except that the LEA does not have to provide any further notice of the transfer of records when:
      - (a) The transfer is initiated by the parent(s) or student who is an adult at the sending LEA.
      - (b) The LEA includes in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which a student seeks or intends to enroll.
      - (c) The LEA transferring the records must keep a copy of the records for three years after the transfer.
  - c. District, upon receiving PII from another educational agency or institution may make further disclosure of the information on behalf of the LEA without the prior written consent of the parent(s) or student who is an adult if the conditions of 34 CFR §§ 99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements.
  - d. If the parent(s) or student who is an adult refuses consent for the release of PII to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.
  - e. Note: As authorized in 34 CFR § 99.31 (FERPA), District includes in the annual procedural safeguards notice that it is their policy to forward educational records of a student with disabilities without parental or student who is an adult consent or notice to officials of another school or school district in which a student seeks or intends to enroll.
8. Safeguards (34 CFR § 300.623). (Rules IV.V.15)
- a. District must protect the confidentiality of PII at collection, storage, disclosure, and destruction stages.
  - b. One official at District must assume responsibility for ensuring the confidentiality of any PII.

- c. All persons collecting or using PII must receive training or instruction regarding the State's policies and procedures in this section and 34 CFR § 99.
  - d. District must maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to PII on students with disabilities.
9. Destruction of information (34 CFR § 300.624). (Rules IV.V.16)
- a. District must inform parents or student who is an adult when PII collected, maintained, or used under Part B of the IDEA and these Rules is no longer needed to provide educational services to the student.
  - b. The information no longer needed must be destroyed at the request of the parent(s) or student who is an adult. However, a permanent record of a student's name, address, phone number, the student's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
  - c. Each student's records may be considered "no longer needed to provide educational services" and may be destroyed three years after the student graduates or three years after the student turns 22 under IDEA. Medicaid requires that records be maintained for at least five years after the provision of services.
10. Students' rights (34 CFR § 300.625). (Rules IV.V.17)
- a. The rights of privacy afforded to parent(s) are transferred to the student who reaches the age of 18, providing the student has not been declared incompetent by a court order or the student has married or become emancipated.

## **V. DISCIPLINE PROCEDURES**

### **V.A. DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES (34 CFR § 300.530; RULES V.A.)**

- 1. Consistent with the requirements of Part B of the IDEA and the Rules, District shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

### **V.B. AUTHORITY OF SCHOOL PERSONNEL (34 CFR § 300.530(A–C); RULES V.B.)**

- 1. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.
- 2. School personnel may remove a student with a disability who violates a code of student conduct from the student's current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than ten consecutive school days (to the same extent those alternatives are applied to students without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, (as long as those removals do not constitute a change of placement because of disciplinary removal as set forth in 34 CFR § 300.536 and Rules V.D.).

3. After a student with a disability has been removed from the student's current placement for ten school days in the same school year, during any subsequent days of removal District must provide services to the extent required under 34 CFR § 300.530(d) and Rules V.C.
4. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except after the tenth day of removal that constitutes a change in placement, District must provide services to the student as outlined in Rules V.C.

**V.C. SERVICES (34 CFR § 300.530(D); RULES V.C.)**

1. A student with a disability who is removed from the student's current placement must:
  - a. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
  - b. Receive, as appropriate, an FBA, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
2. The services may be provided in an IAES.
3. District is only required to provide services during periods of removal to a student with a disability who has been removed from the student's current placement for ten school days or less in that school year if it also provides services to a student without disabilities who is similarly removed.
4. After a student with a disability has been removed from the student's current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under 34 CFR § 300.536 and Rules V.D., school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
5. If the removal is a change of placement, the student's IEP Team determines appropriate services to be provided during the removal.

**V.D. CHANGE OF PLACEMENT DUE TO DISCIPLINARY REMOVALS (34 CFR § 300.536; RULES V.D.)**

1. For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if:
  - a. The removal is for more than ten consecutive school days, including shortened school days; or
  - b. The student has been subjected to a series of removals that constitute a pattern, including shortened school days:
    - (1) Because the series of removals total more than ten school days in a school year;
    - (2) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

- (3) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.
2. As used in the Rules, shortened school days occur when a student's school day is reduced solely by school personnel in response to the student's behavior for disciplinary purposes, rather than the student's IEP team or placement team for that student to receive a FAPE.
  - a. In general, the use of informal removals to address a student's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement. Therefore, the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536 and Rules V. would generally apply unless all three of the following factors are met:
    - (1) The student is afforded the opportunity to continue to appropriately participate in the general curriculum;
    - (2) The student continues to receive the services specified on the student's IEP; and
    - (3) The student continues to participate with nondisabled children to the extent they would have in their current placement. 71 Fed. Reg. 46715 (Aug. 14, 2006).
3. District determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

**V.E. MANIFESTATION OF DETERMINATION (34 CFR § 300.530(E–G, I); RULES V.E.)**

1. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent or adult student, and relevant members of the student's IEP Team (as determined by the parent or student who is an adult and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent(s) or adult student to determine:
  - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
  - b. If the conduct in question was the direct result of District's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the student's disability if the LEA, the parent or student who is an adult, and relevant members of the student's IEP Team determine that:
  - a. The misconduct was caused by or had a direct and substantial relationship to the student's disability; or
  - b. The misconduct was the direct result of District 's failure to implement the IEP.
3. If the LEA, the parent or student who is an adult, and relevant members of the student's IEP Team determine that the misconduct was the direct result of the District 's failure to implement the IEP, District must take immediate steps to remedy those deficiencies.
4. If the LEA, the parent(s) or student who is an adult, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team must:

- a. Either:
    - (1) Conduct a functional behavior assessment (FBA), unless District had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or
    - (2) If a BIP has already been developed, review the BIP, and modify it, as necessary, to address the behavior;
  - b. And, unless the misconduct falls under the definition of special circumstances in Rules V.E.5., return the student to the placement from which the student was removed, unless the parent or adult student and the LEA agree to a change of placement as part of the modification of the BIP.
5. Special circumstances.
- a. School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:
    - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
    - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction District; or
    - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of District.
  - b. Definitions.
    - (1) For purposes of this section, the following definitions apply:
      - (a) *Controlled substance* means a drug or other substance that cannot be distributed without a prescription, identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)).
      - (b) *Illegal drug means* a controlled substance but does not include a drug controlled, possessed, or used under the supervision of a licensed health- care professional or one legally possessed or used under the Controlled Substances Act or under any other provision of Federal law (21 USC § 812).
      - (c) *Serious bodily injury* means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC § 1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (18 USC § 1365).
      - (d) *Weapon* means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches (18 USC § 930).

**V.F. PROCEDURAL SAFEGUARDS NOTICE (34 CFR § 300.530(H); RULES V.F.)**

1. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, District must notify the parent(s) or student who is an adult of that decision and provide the parent(s) or student who is an adult the procedural safeguards notice.

**V.G. DETERMINATION OF SETTING (34 CFR § 300.531; RULES V.G.)**

1. The student's IEP Team determines the IAES for services if the behavior that gives rise to the removal is not a manifestation of the student's disability, the removal constitutes a change of placement, or the behavior falls under the special circumstances in Rules V.E.5.

**V.H. APPEALS BY PARENT OR LEA (34 CFR § 300.532; RULES V.H.)**

1. The parent(s) of a student with a disability or student who is an adult who disagrees with any decision regarding placement or the manifestation determination, or if District believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by filing a due process hearing complaint and requesting a hearing.
2. Authority of hearing officer.
  - a. A due process hearing officer hears and makes a determination regarding an appeal under Rules V.H.1.
  - b. In making the determination, the hearing officer may:
    - (1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the discipline procedures under Part B of the IDEA or the Rules or that the student's behavior was a manifestation of the student's disability; or
    - (2) Order a change of placement of the student with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
  - c. The appeal procedures may be repeated if District believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.
3. Expedited due process hearing.
  - a. Whenever a hearing is requested, the parent(s) or student who is an adult or District in the dispute must have an opportunity for an impartial due process hearing.
  - b. District is responsible for arranging the expedited due process hearing with the State Director of Special Education, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing.
  - c. Unless the parent(s) or student who is an adult and District agree in writing to waive the resolution meeting, or agree to use mediation:
    - (1) A resolution meeting must occur within seven calendar days of receiving notice of the due process complaint; and

- (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process complaint.
- d. Parties may not mutually agree to extend the resolution period to resolve an expedited due process complaint. Therefore, when the parties have participated in a resolution meeting or engaged in mediation and the dispute has not been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the expedited due process hearing may proceed.
- e. A hearing officer may not extend the timeline for making a determination in an expedited due process hearing.
- f. The decisions on expedited due process hearings are final, unless meeting the requirements of 34 CFR § 300.514(b) or 34 CFR § 300.516.

**V.I. PLACEMENT DURING APPEALS (34 CFR § 300.533; RULES V.I)**

- 1. When an appeal through a due process complaint has been made by either the parent or student who is an adult or District, the student must remain in the IAES pending the decision of the hearing officer or until the expiration of the time period specified, whichever occurs first, unless the parent(s) or adult student and District (or USBE if appropriate) agree otherwise.

**V.J. PROTECTIONS FOR STUDENTS NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES (34 CFR § 300.534; RULES V.J.)**

- 1. A student who has not been determined to be eligible for special education and related services under Part B of the IDEA, and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if District had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- 2. District must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:
  - a. The parent(s) of the student or student who is an adult expressed concern in writing to supervisory or administrative personnel of District, or a teacher of the student, that the student is in need of special education and related services;
  - b. The parent(s) of the student or student who is an adult requested an evaluation of the student pursuant to 34 CFR §§ 300.300 through 300.311; or
  - c. The teacher of the student, or other personnel of District, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of District or to other supervisory personnel of District.
- 3. District would not be deemed to have knowledge that a student is a student with a disability if:
  - a. The parent(s) of the student or the student who is an adult:
    - (1) Has not allowed an evaluation of the student pursuant to 34 CFR §§ 300.300 through 300.311; or
    - (2) Has refused services under this part; or



- b. The student has been evaluated in accordance with 34 CFR §§ 300.300 through 300.311 and determined to not be a student with a disability under Part B of the IDEA.
4. If District does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors.
- a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
    - (1) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
    - (2) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by District and information provided by the parent(s) or adult student, District must provide special education and related services.

**V.K. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (34 CFR § 300.535; RULES V.K.)**

- 1. Nothing in Part B of the IDEA prohibits District from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.
- 2. Transmittal of records.
  - a. If District reports a crime committed by a student with a disability, it must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom District reports the crime.
  - b. If District reports a crime under this section, it may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by FERPA.

**VI. STUDENTS WITH DISABILITIES IN OTHER SETTINGS**

**VI.A. PRIVATE SCHOOL PLACEMENTS BY LEAs (34 CFR § 300.325; RULES VI.A.)**

- 1. District follows all requirements found in Rules VI.A regarding private school placements.

**VI.B. STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENT(S) IN PRIVATE SCHOOLS WHEN FAPE IS NOT AT ISSUE (UNILATERAL PLACEMENT) (34 CFR § 300.130; RULES VI.B.)**

- 1. District follows all requirements found in Rules VI.B regarding students with disabilities enrolled by their parent(s) in private schools when FAPE is not at issue (unilateral placement).

**VI.C. STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENT(S) IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE (34 CFR § 300.148; RULES VI.C.)**

1. District follows all requirements found in Rules VI.C regarding students with disabilities enrolled by their parent(s) in private schools when FAPE is at issue.

**VI.D. STUDENTS WITH DISABILITIES ENROLLED IN HOME SCHOOL (RULES IV.D.)**

1. District is responsible for location, identification, and evaluation for eligibility for home schooled students in its boundaries.
2. A student who is home schooled shall meet the eligibility criteria for students with disabilities in conformity with Rules II.C.–H., including proper documentation, using comparable procedures to those required for identifying a student eligible in a public school.
3. If a parent of a student or student who is an adult who is home schooled or placed in a private school by the parent(s) at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent or student who is an adult fails to respond to a request to provide consent (34 CFR § 300.300):
  - a. The school district may not use the dispute resolution procedures provided in the procedural safeguards, including mediation or due process procedures; and
  - b. The school district is not required to consider the student as eligible for services.
4. Students enrolled in home school full time.
  - a. No student with a disability who is home schooled full time has an individual right to receive any of the special education and related services the student would receive if enrolled in a public school.
5. District must make the final decision with respect to the services, if any, to be provided to eligible home-schooled students with disabilities.
6. District may develop a services plan for students who are home schooled with disabilities who are eligible for special education and related services under Part B of the IDEA and the Rules. The services plan shall describe the special education and related services, if any, District will provide to the student, and must, to the extent appropriate:
  - a. Meet the IEP content requirements with respect to the services provided; and
  - b. Be developed, reviewed, and revised consistent with the IEP provisions in Rules III.I.
7. District shall determine where and when any services specified in the services plan will be provided.
8. Dual enrollment (R277-438 and UCA 53G-6-702).
  - a. A student with a disability who is simultaneously enrolled in both home school or private school and a public school is considered a student in dual enrollment.
  - b. A student with a disability seeking dual enrollment is entitled to special education and related services, under an IEP, for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP Team. The IEP Team must consider the amount of time and courses needed for the provision of FAPE.
9. Home schools do not meet the definition of private schools (R277-438).

**VI.E. STUDENTS WITH DISABILITIES ENROLLED IN ADULT EDUCATION (R277- 733; UCA 53E-10-205; RULES VI.E.)**

1. Students with disabilities enrolled in Adult Education remain entitled to special education and related services until determined no longer meeting eligibility criteria, graduate with a regular high school diploma, or reach maximum age (i.e., age 22).
2. The responsibility for FAPE for students with disabilities enrolled in Adult Education classes remains with the school district of residence.

**VI.F. STUDENTS WITH DISABILITIES ENROLLED IN VIRTUAL SETTINGS (RULES VI.F.)**

1. Students with disabilities enrolled in public education virtual settings remain entitled to special education and related services until determined no longer meeting eligibility criteria, graduate with a regular high school diploma, or reach maximum age.
2. The responsibility for FAPE for students with disabilities enrolled in public education virtual settings remains with the LEA of enrollment, unless Board Rule specifies otherwise.

**VI.G. STUDENTS WITH DISABILITIES CONVICTED AS ADULTS AND INCARCERATED IN ADULT PRISONS (34 CFR § 300.324; RULES VI.J.)**

1. District follows all requirements found in Rules VI.J regarding students with disabilities convicted as adults and incarcerated in adult prisons.

**VI.H. STUDENTS WITH DISABILITIES WHO ARE ALSO IN STATE CUSTODY/CARE (R277-709; UCA 62A-4A-701; RULES VI.K.)**

1. District follows all requirements found in Rules VI.K regarding students with disabilities who are also in state custody/care.

**VI.I. STUDENTS WITH DISABILITIES WHO RESIDE IN NURSING HOMES (RULES VI.L.)**

1. District follows all requirements found in Rules VI.L regarding students with disabilities who reside in nursing homes. Students with disabilities residing in nursing homes and their parent(s) or students who is an adult have the same rights under IDEA as all other students who are IDEA-eligible students with disabilities.

## **VII. PRESCHOOL AND POSTSECONDARY TRANSITIONS**

**VII.A. PRESCHOOL TRANSITION FROM PART C TO PART B OF THE IDEA (RULES VII.A.)**

1. At the beginning of each school year, District must have an IEP in effect for each student with a disability ages three through five within its jurisdiction (34 CFR § 300.323).
2. The USBE and District must have in effect policies and procedures to ensure that (34 CFR § 300.124):
  - a. Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs;
  - b. By the eligible student's third birthday, an IEP has been developed and is being implemented for the student;

- c. If a student's third birthday occurs after the end of the school year, the student's IEP Team shall determine the date in the next school year when services under the IEP will begin, except that the IEP Team may determine that extended school year services are needed outside the school year; and
  - d. District will participate in preschool transition planning conferences arranged by the designated lead agency for Part C.
3. In developing the IEP for a student with a disability ages three through five or, at the discretion of District, a student who is two-years-old with a disability who will turn age three during the school year, the IEP Team must consider the contents of an IFSP that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre- literacy, language, and numeracy skills (34 CFR § 300.323).
  4. In the case of a student who was previously served under Part C of the IDEA, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services (34 CFR § 300.321).

**VII.B. POSTSECONDARY TRANSITION SERVICES—SCHOOL TO POST-SCHOOL (RULES VII.B.)**

1. Purpose (34 CFR § 300.1; Rules VII.B.1.).
  - a. To ensure that all students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.
2. Definition (34 CFR § 300.43; Rules VII.B.2.)
  - a. *Postsecondary Transition services* means a coordinated set of activities for a student with a disability that:
    - (1) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability, to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, competitive integrated employment (including supported employment), continuing and adult education, adult services, independent living, or full community participation;
    - (2) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and includes:
      - (a) Instruction;
      - (b) Related services;
      - (c) Community experiences;
      - (d) The development of employment and other post-school adult living objectives; and
      - (e) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
  - b. Postsecondary Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

3. Parent or student who is an adult participation (34 CFR § 300.322; Rules VII.B.3).
  - a. For a student with a disability age 14 and older, or younger if determined appropriate by the IEP Team, the notice of meeting must indicate:
    - (1) That a purpose of the meeting will be the consideration of the postsecondary goals and postsecondary transition services for the student;
    - (2) That the LEA will invite the student; and
    - (3) Identify any other agency that will be invited, with the consent of the parent(s) or student who is an adult, to send a representative.
4. IEP Team (34 CFR § 300.321; Rules VII.B.4).
  - a. For an IEP Team meeting that includes as a purpose the development of a postsecondary transition plan:
    - (1) District must invite the student with a disability to attend the student's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the postsecondary transition services needed to assist the student in reaching those goals.
    - (2) If the student does not attend the IEP meeting, District must take other steps to ensure that the student's preferences and interests are considered.
    - (3) To the extent appropriate, with the consent of the parent(s) or adult student, District must invite a representative of any participating agency that is likely to be responsible for providing or may be paying for postsecondary transition services.
5. Definition of IEP (34 CFR § 300.320(b); Rules VII.B.5).
  - a. For a student with a disability, ages 14 and older, an annual IEP goal related to the student's postsecondary transition service needs.
  - b. Postsecondary transition services. For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:
    - (1) Realistic and reasonable measurable postsecondary goals based upon annual age-appropriate postsecondary transition assessments related to training or education, employment, and, where appropriate, independent living skills;
    - (2) Postsecondary transition services (e.g., activities, experiences, specially designed instruction), that will reasonably enable the student to reach the postsecondary goals identified on the IEP;
    - (3) Multi-year courses of study that will reasonably enable the student to reach the postsecondary goals identified on the IEP;
    - (4) Evidence that the student was invited to the IEP Team meeting where transition services are to be discussed. If the student does not attend the IEP meeting, the IEP Team must take other steps to ensure the student's preferences and interests are considered;
    - (5) If appropriate, evidence that a representative of any participating agency that might be providing or paying for any postsecondary transition services was invited to the

IEP Team meeting with written consent of the parent or adult student prior to the meeting; and

- (6) Any modifications to graduation requirements, as permitted under R277-700.
- c. Students with disabilities must have access to all school services related to college and career readiness planning and must be actively invited and included in school activities which address course planning (including online courses), graduation, and postsecondary education and employment (i.e., college week, scholarship opportunities, ACT, and concurrent enrollment) (R277-462).
6. Transfer of rights at age of majority (34 CFR §§ 300.320(c), 300.520; Rules VII.B.6).
  - a. Not later than the student's 17th birthday, the IEP must include a dated statement, signed by the student, parent, and an LEA Representative, that the student and the student's parent(s) have been informed of parent's rights under Part B of the IDEA (i.e. Procedural Safeguards) that will transfer to the student on reaching the age of majority (i.e., age 18), except for a student with a disability who has been determined to be incompetent by a court.
  - b. All rights accorded to parents under Part B of the IDEA transfer to the student on the student's 18th birthday unless the IEP Team determines that:
    - (1) The parent has obtained legal guardianship, power of attorney, or conservatorship; or
    - (2) The student has married or become emancipated (in which case the rights transfer at that time).
  - c. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution.
  - d. When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students, except for a student with a disability who has been determined to be incompetent under State law, or the student with a disability marries or becomes emancipated:
    - (1) District must provide any notice required by Part B of the IDEA to both the individual and the parent(s); and
    - (2) All other rights accorded to parents under Part B of the IDEA transfer to the student;
    - (3) All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution; and
  - e. Whenever a state transfers rights, District must notify the individual and the parent(s) of the transfer of rights within a reasonable time frame.
7. Termination of eligibility as a change of placement (34 CFR § 300.305; Rules VII.B.7).
  - a. An evaluation is not required before the termination of a student's eligibility under this part due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE under Utah law.
  - b. For a student whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE under Utah law, District must provide the student with a summary of the student's academic achievement

and functional performance which shall include a statement of the student's postsecondary goals, recommendations on how to assist the student in meeting the student's postsecondary goals, and a statement of when and how accommodations were used for instruction and assessment.

- (1) District develops the summary of student's academic achievement and functional performance with the IEP Team and additional individuals as appropriate (e.g., school counselors, CTE teachers, Pre-Employment Transition Service representatives).
  - c. Receipt of a general educational development (GED) credential does not end eligibility for FAPE.
8. Failure to meet postsecondary transition objectives (34 CFR § 300.324; Rules VII.B.8)
- a. If a participating agency, other than District, fails to provide the postsecondary transition services described in the IEP, District must reconvene the IEP Team to identify alternative strategies to meet the postsecondary transition objectives for the student set out in the IEP.
  - b. Nothing relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any postsecondary transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that LEA (34 CFR § 300.324).
  - c. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or an interagency agreement, to provide or pay for any services that are also considered special education or related services such as, but not limited to, services relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and postsecondary transition services, that are necessary for ensuring a FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement or as provided in an interagency agreement.
9. Students with disabilities in adult prisons (34 CFR § 300.324; Rules VII.B.9).
- a. The requirements relating to postsecondary transition planning and postsecondary transition services do not apply with respect to those students whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
  - b. The obligation to make FAPE available to all students with disabilities does not apply with respect to students ages 18 through 21 to the extent that State law does not require that special education and related services under Part B of the IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility (34 CFR § 300.102):
    - (1) Were not actually identified as being a student with a disability; and
    - (2) Did not have an IEP under Part B of the IDEA.
  - c. The exception does not apply to students with disabilities ages 18 through 21 who:
    - (1) Had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or

- (2) Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability.

#### **VII.C. GRADUATION (UCA 53E-7-202; R277-705; RULES VII.C.)**

1. The obligation of District to make FAPE available to all students with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma (34 CFR §300.102(a)(3)(i)).
  - a. The exception in these Rules VII.C.1 does not apply to students that have graduated from high school but have not been awarded a regular high school diploma (34 CFR § 300.102(a)(3)(ii)).
  - b. District may not withhold a regular high school diploma from a student who has met State or LEA graduation requirements.
  - c. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice that must contain all the requirements in these Rules IV.D, including being given a reasonable time before the LEA proposed to terminate the student's eligibility under the IDEA by issuing the student a diploma (34 CFR § 300.503).
  - d. The term "regular high school diploma" does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a GED (34 CFR § 300.102(a)(3)(iv)).
2. A student with a disability served by a special education program shall satisfy high school completion or graduation criteria, consistent with State and federal law and the student's IEP. District may modify graduation requirements consistent with the student's IEP (R277-700-6(25)). District may award a student a certificate of completion consistent with state and federal law and the student's IEP.
3. The IEP Team must refer to the USBE Special Education Graduation Guidelines for additional information regarding modifying graduation requirements and IEP substitutions.

#### **VII.D. TERMINATION OF SERVICES UPON REACHING AGE 22 (UCA 53E-7-201; R277-419-2(23)(B); RULES VII.D.)**

1. If a student with a disability turns 22 any time after July 1, District must continue to provide FAPE until the end of that school year.

### **VIII. RESPONSIBILITIES OF THE UTAH STATE BOARD OF EDUCATION**

#### **VIII.A. GENERAL SUPERVISORY AUTHORITY (RULES VIII.A.)**

1. In addition to the requirements listed below, District provides data as required for State and Federal reports and other State functions as listed in Rules VIII.
2. LEA special education program funding (Rules VIII.A.3.)
  - a. District shall provide, either singly or in cooperation with other school districts or public institutions, a FAPE for all students with disabilities who are residents of the district. The



program shall include necessary special facilities, instruction, and education-related services. The costs of District's program, or share of a joint program, shall be paid from LEA funds.

- b. District shall receive funds under UCA 53F-2-1, State Funding--Minimum School Program (MSP), and other applicable laws to provide special education services in accordance with these Rules.
- c. District may, singly or in cooperation with other public entities, provide education and training for persons with disabilities who are younger than 3 or older than 22. The cost of such a program may be paid from fees, contributions, and other funds received by LEA for support of the program but may not be paid from public education funds.
- d. The requirements of Part B of the IDEA and these Rules are binding on each LEA and other public agency that has direct or delegated authority to provide special education and related services in the State of Utah.

#### **VIII.B. STATE ELIGIBILITY (RULES VIII.B.)**

1. Program options (34 CFR § 300.110; RULES VIII.B.3.)
  - a. District takes steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to students who are nondisabled in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

#### **VIII.C. USBE PROGRAM MONITORING (RULES VIII.D.2-3.)**

1. District is involved in the UPIPS monitoring system, as required under Part B of the IDEA, R277-709, and R277-114-3.
2. District shall complete the required activities according to the timeline provided by the USBE staff.
3. Results of the monitoring process are publicly available, upon request.

#### **VIII.D. PERSONNEL QUALIFICATIONS (34 CFR § 300.156; RULES VIII.K.3-5.)**

1. Qualifications for special education teachers (34 CFR § 300.156; R277-301).
  - a. The USBE and IDEA established qualifications for each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school.
  - b. The qualifications established by USBE and IDEA ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school –
    - (1) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii)), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher;

- (2) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
  - (3) Holds at least a bachelor's degree.
- c. A teacher will be considered to meet the standard of this section if that teacher is participating in an alternate route to special education certification program under which:
- (1) The teacher:
    - (a) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
    - (b) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
    - (c) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
    - (d) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
  - (2) The State ensures, through its certification and licensure process, that the provisions of this section are met.
- d. An adapted physical education endorsement, attached to a general or special education license, is requirement for educators to teach adapted physical education.
2. Related services personnel and paraeducators (R277-301, R277-306, and R277- 324).
- a. The qualifications include qualifications for related services personnel and paraeducators that:
- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
  - (2) Ensure that related services personnel who deliver services in their discipline or profession:
    - (a) Meet the requirements; and
    - (b) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
  - (3) Allow paraeducators and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part, to be used to assist in the provision of special education and related services under Part B of the IDEA to students with disabilities.
  - (4) Interpreters for the Deaf.
    - (a) Under UCA 35A-13-604, an individual is required to be certified as an interpreter if that individual provides interpreter services for students who are deaf and hard of hearing.

3. Notwithstanding any other individual right of action that a parent, student who is an adult, or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the USBE or District, or other public agency employee to be highly qualified, or to prevent a parent or adult student from filing a State complaint or due process complaint about staff qualifications with the State Director of Special Education.

#### **VIII.E. REPORTING ON SUSPENSION AND EXPULSION RATES (34 CFR § 300.170; RULES VIII.M.)**

1. Through daily uploads, District shall report to the USBE staff, through the UTREx reporting system, on the rates of long-term suspensions and expulsions of students with disabilities and students who are nondisabled, including data disaggregated by race and ethnicity. The USBE staff shall examine these data to determine if significant discrepancies are occurring:
  - a. Between students who are nondisabled and students with disabilities within District.
2. If discrepancies are occurring, the USBE staff shall review and, if appropriate, require revisions in both USBE and LEA policies, procedures, and practices to ensure compliance with Part B of the IDEA.
3. Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:
  - a. The development and implementation of IEPs;
  - b. The use of positive behavior interventions and supports; and
  - c. Procedural safeguards.

#### **VIII.F. PROHIBITION ON MANDATORY MEDICATION (34 CFR § 300.174; RULES VIII.X.)**

1. The USBE prohibits State and District personnel from requiring parents or student who is an adult to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act for a student as a condition of attending school, receiving an evaluation, or receiving services under Part B of the IDEA (21 USC § 812(c)).
2. Nothing in Rules VIII.X.1. shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom- based observations with parent(s) or student who is an adult regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services related to child find.

### **IX. LEA ELIGIBILITY AND RESPONSIBILITIES**

#### **IX.A. LEA ELIGIBILITY FOR IDEA PART B FUNDS (34 CFR §§ 300.211–212, 220; RULES IX.A.)**

1. Federal special education funding is made available through a grant to the state from the OSEP. These funds are restricted and may only be used to provide services and program for students who qualify under Part B of the IDEA. Funds are available for students who are 3–5 (section 619 Preschool) and for students age 3– 21 (section 611 School-Age). Some funds are retained at the state level for administration and for state level activities. The remaining funds are distributed to Utah Local Education Agencies (LEAs) by formula.

2. Annually, the USBE staff shall notify District of the availability of Federal funds under Part B of the IDEA. In order to receive IDEA Part B flow-through funds, District must have in effect a USBE-approved special education program (Rules X.B.2.), including policies and procedures that are consistent with the Rules.
3. District must have a USBE-approved special education program (UCA 53F-2- 307). District's program is approved by the state board when District 's special education policies and procedures are approved by the USBE special education staff and then by District's local board in a public meeting. The LEA must submit documentation of the local board's approval to the USBE special education staff.
4. The USBE approval of District's policies and procedures includes the approval of any supporting documentation necessary to ensure their implementation. All required minimum components of Rules IX.A.4.a-e are addressed in this policies and procedures manual.
5. As part of establishing eligibility for Part B funds, District must have revised policies and procedures in alignment with the IDEA 2004 final regulations and current rules within one year of the final Board approval of the Rules.
6. Policies and procedures submitted by District in accordance with this section, and approved by the USBE staff, remain in effect until any of the following occur (34 CFR § 300.220):
  - a. District submits modifications to the USBE staff that the USBE or LEA determines are necessary;
    - (1) The provisions of the Rules apply to any modifications in an LEA's policies and procedures in the same manner and to the same extent as the LEA's original policies and procedures.
  - b. The USBE staff gives District notice of a new interpretation of the IDEA by Federal or State courts, or a change in Federal statute; or
  - c. There is an official finding of noncompliance with Federal or State law or regulations that requires a change in District 's policy and procedures.
7. District must have on file with the USBE staff information to demonstrate that it will make available to parents of students with disabilities or student who is an adult and to the general public all documents relating to the eligibility of the LEA under Part B of the IDEA (34 CFR § 300.212).
8. District creates annual improvement goals based on the State Performance Plan (SPP) and Annual Performance Report (APR) Indicators to improve outcomes for students with disabilities (Rules IX.A.4.d(2)(s)).
9. District collects and provides additional information which the USBE may require in order to meet Federal reporting requirements, including suspension and expulsion rates, LRE environments, disproportionality data, personnel information, and others (Rules IX.A.4.e).

**IX.B. USE OF PART B FEDERAL FUNDS BY THE LEA (34 CFR §§ 300.200–206, 208; RULES IX.B.)**

1. District submits a plan that provides assurances to the USBE that District meets each of the conditions in this section (34 CFR § 300.200).
2. District, in providing for the education of students with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established in Rules (34 CFR § 300.201).

3. Use of amounts (34 CFR § 300.202).
  - a. District must have on file with the USBE staff information to demonstrate that amounts provided to the LEA under Part B of the IDEA:
    - (1) Must be expended in accordance with the applicable provision of the Rules;
    - (2) Must be used only to pay the excess costs of providing special education and related services to students with disabilities consistent with the Rules; and
    - (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.
4. The excess cost requirement prevents District from using funds provided under Part B of the IDEA to pay for all the costs directly attributable to the education of a student with a disability.
5. District meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students with disabilities before funds under Part B of the IDEA are used.
6. Maintenance of effort (MOE) (34 CFR § 300.203).
  - a. Eligibility standard.
    - (1) For purposes of establishing District's eligibility for an award for a fiscal year, the USBE must determine that District budgets for the education of students with disabilities for at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:
      - (a) Local funds only;
      - (b) The combination of State and local funds;
      - (c) Local funds only on a per capita basis; or
      - (d) The combination of State and local funds on a per capita basis.
    - (2) When determining the amount of funds that District must budget to meet the requirement in these Rules IX.B.6.a.(1), District may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 CFR §§ 300.204 and 300.205 that District:
      - (a) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which District is budgeting; and
      - (b) Reasonably expects to take in the fiscal year for which District is budgeting.
    - (3) Expenditures made from funds provided by the Federal government for which the USBE is required to account to the Federal government or for which District is required to account to the Federal government directly or through the USBE may not be considered in determining whether District meets the standard in Rules IX.B.6.a.(1).
  - b. Compliance standard.
    - (1) Except as provided in 34 CFR §§ 300.204 and 300.205, funds provided to District under Part B of the IDEA must not be used to reduce the level of expenditures for

the education of students with disabilities made by District from local funds below the level of those expenditures for the preceding fiscal year.

- (a) District may (UCA 53F-2-209)
  - (i) Use up to 35% of its state restricted funding for each state special education funding program listed in the SpEd Rules X.D–L to flexibly and without restriction respond to changing circumstances and student needs, and
  - (ii) Transfer fund balances between funds as necessary to flexibly expend funds as described in SpEd Rules IX.B.6.b.(a)(i).
  - (iii) District may not:
    - (A) Expend the transferred funds for capital projects or improvements;
    - (B) Violate federal law or federal restrictions on District’s funds.

(2) District meets this standard if it does not reduce the level of expenditures for the education of students with disabilities made by District from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 CFR §§ 300.204 and 300.205:

- (a) Local funds only;
- (b) The combination of State and local funds;
- (c) Local funds only on a per capita basis; or
- (d) The combination of State and local funds on a per capita basis.

(3) Expenditures made from funds provided by the Federal government for which the USBE is required to account to the Federal government or for which District is required to account to the Federal government directly or through the USBE may not be considered in determining whether an LEA meets the standard of Rules IX.B.6.b.(1) and IX.B.6.b.(2).

c. Subsequent years.

- (1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, District fails to meet the requirements of 34 CFR § 300.203 in effect at that time, the level of expenditures required of District for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not District’s reduced level of expenditures
- (2) If, in any fiscal year beginning on or after July 1, 2015, District fails to meet the requirement of Rules IX.B.6.b.(2)(a) or IX.B.6.b.(2)(c) and District is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of Rules IX.B.6.a or IX.B.6.b, the level of expenditures required of District for the fiscal year subsequent to the year of the failure is the amount that would have been required under Rules IX.B.6.b.(2)(a) or IX.B.6.b.(2)(c) in the absence of that failure, not District’s reduced level of expenditures.
- (3) If, in any fiscal year beginning on or after July 1, 2015, District fails to meet the requirement of Rules IX.B.6.b.(2)(b) or IX.B.6.b.(2)(d) and District is relying on the combination of State and local funds, or the combination of State and local funds on

a per capita basis, to meet the requirements of Rules IX.B.6.a or IX.B.6.b, the level of expenditures required of District for the fiscal year subsequent to the year of the failure is the amount that would have been required under Rules IX.B.6.b.(2)(b) or IX.B.6.b.(2)(d) in the absence of that failure, not District's reduced level of expenditures.

- d. Consequence of failure to maintain effort.
  - (1) If District fails to maintain its level of expenditures for the education of students with disabilities in accordance with Rules IX.B.6.b, the USBE is liable in a recovery action under section 452 of the GEPA (20 USC § 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which District failed to maintain its level of expenditures in accordance with Rules IX.B.6.b. in that fiscal year, or the amount of District's Part B subgrant in that fiscal year, whichever is lower.
  - (2) If the USBE is required to return funds to the Department because of District's failure to meet the Maintenance of Effort requirement, the USBE shall reduce the amount provided to the District's MSP Basic Program on a 1/12 basis.
7. Exception to maintenance of effort (34 CFR § 300.204).
  - a. District may reduce the level of expenditures by District under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:
    - (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
    - (2) A decrease in the enrollment of students with disabilities.
    - (3) The termination of the obligation of District, consistent with this part, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the USBE staff, because the student:
      - (a) Has left the jurisdiction of District;
      - (b) Has reached the age at which the obligation of District to provide a FAPE to the student has terminated; or
      - (c) No longer needs the program of special education.
    - (4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
    - (5) The assumption of cost by the high-cost fund (i.e., Intensive Services fund) operated by the USBE staff.
8. Adjustment to local fiscal efforts in certain fiscal years (34 CFR § 300.205).
  - a. For any fiscal year for which the allocation received by District under Part B of the IDEA exceeds the amount District received for the previous fiscal year, District may reduce the level of expenditures otherwise required by maintenance of efforts requirements by not more than 50 percent of the amount of that excess.
  - b. Use of amounts to carry out activities under ESEA/ESSA.

- (1) If District exercises the authority to reduce the level of expenditures due to an increase in Part B funds, District must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the ESEA/ESSA, regardless of whether District is using funds under the ESEA/ESSA for those activities.
  - c. The USBE staff must prohibit District from reducing the level of expenditures for a fiscal year, if the USBE staff determines that:
    - (1) District is unable to establish and maintain programs of FAPE that meet the requirements of Part B of the IDEA, or
    - (2) The USBE staff has taken action against District under Section 616 of the IDEA and subpart F of the regulations (Monitoring, Technical Assistance, and Enforcement).
  - d. The amount of funds expended by District for mandatory or voluntary Coordinated Early Intervening Services shall count toward the maximum amount of expenditures that District may reduce under the requirements of this section.
9. If the USBE staff determines that District is not meeting the requirements of Rules, the USBE staff may prohibit District from treating funds received under Part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the State constitution or State statute.
10. School-wide programs under Title I of the ESEA/ESSA (34 CFR § 300.206).
  - a. District may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the ESEA/ESSA, except that the amount used in any school-wide program may not exceed the amount received by District under Part B of the IDEA for that fiscal year:
    - (1) Divided by the number of students with disabilities in the jurisdiction of the LEA; and
    - (2) Multiplied by the number of students with disabilities participating in the school-wide program.
  - b. The funds described in this section must be considered as Federal Part B funds for purposes of the calculations required for excess costs and supplanting.
  - c. The funds may be used without regard to the requirements of 34 CFR § 300.202(a)(1) of the IDEA.
  - d. All other requirements of Part B of the IDEA must be met by District using Part B funds for school-wide programs under section 1114 of the ESEA/ESSA, including ensuring that students with disabilities in school-wide program schools:
    - (1) Receive services in accordance with a properly developed IEP; and
    - (2) Are afforded all of the rights and services guaranteed to students with disabilities under Part B of the IDEA.

**IX.C. CHARTER SCHOOLS AND THEIR STUDENTS (34 CFR § 300.209; RULES IX.C.)**

1. Nothing in these Rules prohibit school districts and charter schools from developing a Memorandum of Understanding (MOU) to address student specific needs and/or placements.



#### **IX.D. COORDINATED EARLY INTERVENING SERVICES (CEIS) (34 CFR § 300.226; RULES IX.D.)**

1. District may not use more than 15 percent of the amount District receives under Part B of the IDEA for any fiscal year, less any amount reduced by the LEA pursuant to maintenance of effort, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated early intervening services (CEIS), which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
2. In implementing CEIS, District may carry out activities that include:
  - a. Professional learning (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavior interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
  - b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
3. CEIS may not be used to limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a student suspected of having a disability.
4. District that develops and maintains coordinated early intervening services (either mandatory or voluntarily) under this section must annually report to the USBE staff on:
  - a. The number of students served under this section who received early intervening services; and
  - b. The number of students served under this section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.
5. Funds made available to carry out this section may be used to carry out coordinated early intervening services aligned with activities funded by, and carried out under, the ESEA/ESSA if those funds are used to supplement, and not supplant, funds made available under the ESEA/ESSA for the activities and services assisted under this section.

#### **IX.E. PERSONNEL DEVELOPMENT (34 CFR § 300.207; RULES IX.E.)**

1. District must ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements related to personnel qualifications and section 2122 of the ESEA/ESSA, as well as 34 CFR § 300.156; R277-304, R277-306, R277-320, and R277-324.
2. Paraeducators, when used to carry out Part B of the IDEA, must be appropriately trained and supervised, and utilized in accordance with the USBE Paraeducator Standards.
  - a. District shall provide documentation of training and supervision to USBE staff upon request.

**IX.F. FUNDED PREVALENCE OF DISABLING CONDITIONS (UCA 53F-2-307; RULES IX.F.)**

1. When calculating and applying the growth factor, a school district's total special education average daily membership (ADM) for a given year is limited to the following percentage of the school district's total student ADM for the same year:
  - a. For a school district in a county of the first, second, or third class, 14%; and
  - b. For a school district in the county of the fourth, fifth, or sixth class, 20%.

**IX.G. LEA PROVISION OF FAPE (34 CFR § 300.101; RULES IX.G.)**

1. District remains obligated to provide a student with a disability with a FAPE even when District has not personally engaged with the student during the prior ten consecutive days and therefore may no longer count the student as an eligible student under pupil accounting (R277-419).
2. District will oversee the caseload of each special educator (including psychologists, social workers, speech language pathologists, occupational therapists, physical therapists, adapted physical education specialists, and any other related servers) to ensure that a FAPE is available to all eligible students with disabilities.

**IX.H. ROUTINE CHECKING OF HEARING AIDS AND EXTERNAL COMPONENTS OF SURGICALLY IMPLANTED MEDICAL DEVICES (34 CFR § 300.113; RULES IX.H.)**

1. Hearing aids. District must ensure that hearing aids worn in school by students with hearing loss, including deafness, are functioning properly.
2. External components of surgically implanted medical devices.
  - a. Subject to Rules IX.H.2.b, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
  - b. For a student with a surgically implanted medical device who is receiving special education and related services, District is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

**IX.I. EDUCATOR LICENSE REQUIREMENTS (R277-301, R277-304, R277-306, AND R277-320; RULES IX.I.)**

1. Professionals providing services to students with disabilities must hold a Utah Professional Educator License or Endorsement in the area in which they provide services. This includes special education teachers, speech/language pathologists, school psychologists, school social workers, and other professionals. Physical and occupational therapists must hold appropriate Utah licensure. District superintendent or charter school administration shall be responsible for the evaluation of the appropriateness of licenses and endorsements when assigning staff members. District refers to the USBE Teaching, Leadership, and Paraeducator Standards.
2. "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:
  - a. Early Childhood;

- b. Elementary;
  - c. Secondary;
  - d. School Leadership
  - e. Career and Technical Education or "CTE";
  - f. School Counselor;
  - g. School Psychologist;
  - h. Special Education;
  - i. Preschool Special Education;
  - j. Deaf Education;
  - k. Speech-Language Pathologist;
  - l. Speech-Language Technician;
  - m. School Social Worker; and
  - n. Audiologist. (R277-301-2.7(a)).
3. Individuals providing psychological evaluation services for students with disabilities must hold a Utah education license for school psychologists or State licensure and meet the assessment publisher's criteria for administration.
  4. An adapted physical education endorsement is required for special educators and general educators to teach adapted physical education.

**IX.J. PURCHASE OF INSTRUCTIONAL MATERIAL IN ACCESSIBLE FORMATS (34 CFR § 300.210; RULES IX.J.)**

1. An LEA that chooses to coordinate with the NIMAC, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the USBE under Rules VIII.W.
2. If District chooses not to coordinate with the NIMAC, District must provide an assurance to the USBE that District will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
3. Nothing in this section relieves District of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
4. For all purposes of this section, the USBE defines timely manner as follows: the USBE and LEAs must take reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other students receive instructional materials.

**IX.K. SCHOOL DISTRICTS TO PROVIDE USDB CLASS SPACE (UCA 53E-8- 410; RULES IX.K.)**

1. If District has students who reside within the school district's boundaries and are served by the USDB shall make a good faith effort to provide the USDB with space required for programs offered by the USDB.

## X. SPECIAL EDUCATION FUNDING

1. The USBE has a responsibility under both Federal and State law to monitor implementation of the IDEA by LEAs through a system of general supervision that improves educational results and functional outcomes and ensures that public agencies meet program requirements. The special education program that is funded both from federal and state funds and it is critical to understand the similarities and differences of these funding sources.
2. *Federal special education funds* means funds paid to the State under IDEA Part B for the purposes of special education.
3. *State special education funds* means state funds appropriated to public education for the purposes of special education.
4. Federal special education funds are calculated, allocated, and classified differently than state special education funds. These Rules outline the regulations, restrictions, and allowable costs and activities applicable to each funding source; some requirements are the same for both funding sources and some provisions apply only to one or the other.

### X.A. STATE SPECIAL EDUCATION FUNDS GENERALLY (UCA 53F-2-307; RULES X.A.1-2.)

1. State special education funds may be spent only for direct costs and construction or altering existing facilities, as outlined in the Rules.
  - a. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.
  - b. Constructing facilities or altering existing facilities if:
    - (1) The costs are necessary costs and reasonable costs;
    - (2) The costs are not for the general purpose of bringing facilities into compliance with:
      - (a) Section 504 of the Rehabilitation Act of 1973; or
      - (b) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.;
    - (3) The construction or alteration meets the needs of one or more students with disabilities; and
    - (4) District submits an application for review by the state board;
    - (5) The state board approves the expenditure in accordance with rules, including requirements that:
      - (a) District has not been identified with significant disproportionality;
      - (b) District has no outstanding uncorrected findings of non-compliance;
      - (c) District has no dispute resolution findings related to FAPE in the past year;

(d) District has been determined to “meet requirements” based on the USBE’s programmatic Results Driven Accountability/Annual Performance Report (RDA/APR); and

(e) No other evidence, e.g., from school accreditation, fiscal audits, etc., indicators that District is not adequately providing FAPE.

2. State special education funds are appropriated to the MSP and provide restricted (categorical) monies that must be spent for the education of students with disabilities.

**X.B. ALLOCATION OF STATE SPECIAL EDUCATION FUNDS FOR PROGRAMS FOR STUDENTS WITH DISABILITIES (UCA 53F-2-307; R277-479; RULES X.B.3.)**

1. District must be current with the UPIPS monitoring requirements, including correction of noncompliance within one year of notification, annual Corrective Action Plan (CAP) and PIP reports, and desk audit submissions to be eligible for State special education funds.

**X.C. SPECIAL EDUCATION ADD-ON ALLOWABLE USE (FUND1205) (UCA 53F-2-307(1); RULES X.C.)**

1. District must use funds in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities.

**X.D. SPECIAL EDUCATION SELF-CONTAINED ALLOWABLE USE (FUND 1210) (UCA 53F-2-307, -308(3); RULES X.E.)**

1. *Self-contained* means a student in public-school with an IEP or a youth in custody/care (YIC) who receives 180 minutes or more of special education or YIC services during a typical school day per R277-419-2(35).
2. District must use Special Education Self-Contained funds only for direct costs attributable to the cost of the special education of students with disabilities whose placement is a special class or self-contained environment.

**X.E. STATE SPECIAL EDUCATION IMPACT AID ALLOWABLE USE (FUND 1225) (UCA 53F-2-307(1); RULES X.I.)**

1. Must be used for direct costs attributable to the cost of administering the special education program as follows:
  - a. Costs for students in state custody (prisons, detention facilities, and the state hospital)
  - b. Additional costs attributable for services to students with low-incidence disabilities
2. Funds must be used in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities.

**X.F. STATE SPECIAL EDUCATION EXTENDED SCHOOL YEAR (ESY) ALLOWABLE USE (FUND 1220) (UCA 53F-2-308(2); RULES X.K.)**

1. Must be used for direct costs attributable to the cost of ESY provided to students with disabilities, determined by the student’s IEP team to require ESY) in order to receive a FAPE and in accordance with R277-751.
2. Funds must be used in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities in accordance with R277-751.

**X.G. STATE EXTENDED SCHOOL YEAR STIPEND FOR SPECIAL EDUCATORS (EYSE) ALLOWABLE USE (FUND 1278) (UCA 53F-2-310; RULES X.M.)**

1. Must be used for salaries and allowable benefits of Special Education Teachers, or Speech Language Pathologists who provide eligible services under R277- 525- 2.
2. A special educator receiving a stipend shall: (a) work an additional day beyond the number of days contracted with the special educator's school district or school for each daily stipend; (b) schedule the additional days of work before or after the school year; and (c) use the additional days of work to perform duties related to the IEP process, including: administering student assessments, conducting IEP meetings, writing IEP's, conferring with parent(s) or student who is an adult, and preparing and maintaining records.

**X.H. STATE SPECIAL EDUCATION INTENSIVE SERVICES ALLOWABLE USE (FUND1230) (UCA 53F-2-309(1); RULES X.O.)**

1. Must be used for direct costs attributable to the cost of implementing IEPs for students with disabilities.
2. Cost of services to a student with a disability must be in excess of three times the annual average per pupil expenditure (APPE) as calculated by USBE Financial Operations.
3. Costs must meet the eligibility requirements outlined in R277-752.

**X.I. STATE SPECIAL EDUCATION FUNDS ALLOWABLE USE (UCA 53F-2-307; RULES X.P.)**

1. State special education funds may be spent only for direct costs and construction or altering existing facilities as outlined in Rules X.A. and X.B., Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities (Rules X.A.1.).
2. The costs of providing for specially designed instruction, related services, and supplementary aids and services provided in a regular class or other education- related setting to a student with a disability in accordance with the IEP of the student are allowable.
3. The costs of providing inclusive special education preschool services are an allowable excess cost.
4. The costs of including peer models in IEP services that require a peer model are allowable.
5. The costs of providing co-teaching, in which both a licensed general educator and licensed special education teacher plan and provide specially designed instruction are allowable.
6. District follows the allowable use of state special education funds as listed in Rules X.P.6

**X.J. ALLOWABLE COSTS FOR FEDERAL (IDEA) SPECIAL EDUCATION FUNDS (RULES X.R.1., 4-8.)**

1. Funds paid to the State under IDEA Part B for the purposes of special education ("Federal special education funds") are calculated, allocated, and classified according to 34 CFR §300.705.
2. District will use Federal special education funds for the costs of providing for specially designed instruction, related services, and supplementary aids and services provided in a

- regular class or other education- related setting to a student with a disability in accordance with the IEP of the student are allowable.
3. District will use Federal special education funds for the costs of providing inclusive special education preschool services are an allowable excess cost under IDEA (34 CFR § 300.16).
  4. District will use Federal special education funds for the costs of including peer models in IEP services that require a peer model are allowable.
  5. District will use Federal special education funds for the costs of providing co-teaching, in which both a licensed general educator and licensed special education teacher plan and provide specially designed instruction are allowable.
  6. District follows the allowable use of Federal special education funds, as listed in Rules X.R.8.