

## AN OVERVIEW OF IDEA 2004

The Individuals with Disabilities Education Act of 2004 includes significant changes from the previous authorization in 1997. This chapter provides an overview of the law, how the law is organized, and new requirements in IDEA 2004. This information is a summary of IDEA as presented in Wright's Law 2008.

### **Accountability, Improved Outcomes, Research Based Instruction**

When Congress reauthorized the law, it focused on accountability and improved outcomes by bringing IDEA 2004 into conformity with the No Child Left Behind Act (NCLB). IDEA 2004 requires schools to use "proven methods of teaching and learning" based on "replicable research." Many schools continue to use educational methods that are not research-based. Pressure from litigation and No Child Left Behind requirements are forcing school districts to adopt research-based methods of teaching. IDEA 2004 also includes new requirements for early intervening services and highly qualified special education teachers.

### **The IDEA of 2004 is broken into five parts:**

Part A – General Provisions (Sections 1400 – 1409)

Part B – Assistance for Education of All Children with Disabilities (Sections 1411 – 1419)

Part C – Infants and Toddlers with Disabilities (Sections 1431 – 1444)

Part D – National Activities to Improve Education of Children with Disabilities (Sections 1450 – 1482)

Part E – National Center for Special Education Research (Section 9567)

Parents, advocates, attorneys, and educators will refer most often to the following sections:

Section 1400 – Findings and Purposes

Section 1401 – Definitions

Section 1412 – State Responsibility (the Catch-all Section)

Section 1414 – Evaluations, Eligibility, Individual Education Programs, Educational Placements

Section 1415 – Procedural Safeguards

### **Part A – General Provisions**

Part A of the Individuals with Disabilities Education Act of 2004 includes Sections 1400 through Section 1409. and describes the Findings and Purposes of the law. The legal definitions in alphabetical order are in Section 1401. Section 1403 advises that states are not immune from suit if they violate IDEA. Section 1408 is a new section about paperwork reduction.

#### **Section 1400: Findings & Purposes**

The most important section in the Individuals with Disabilities Education Act is Section 1400 which describes the Findings and Purposes of the law.

#### **Findings**

The history and findings that led Congress to pass the federal special education law that is now the Individuals with Disabilities Education Improvement Act (IDEA 2004) are in Section 1400(c). When Congress enacted the Education for All Handicapped Children Act (Public Law 94-142) in 1975, fewer than half of all children with disabilities were receiving an appropriate education. More than one million children were excluded from school. Initially, the law focused on ensuring that children had access to an education and due process of law. In Findings of IDEA, Congress described obstacles to implementation of the law:

1. Implementation has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities. Congress reported that "over 30 years of research and experience" demonstrated that special education would be more effective by:

2. Having high expectations for such children and ensuring their access to the general education curriculum in regular classrooms, to the maximum extent possible
3. Meeting the challenging expectations that have been established for all children; and be prepared to lead productive and independent lives to the maximum extent possible. When Congress reauthorized the Individuals with Disabilities Education Act in 2004, they added new language to the findings about meeting the “developmental goals” and “challenging expectations that have been established for nondisabled children” so children will “be prepared to lead productive and independent adult lives.”

### **Purposes**

The most important statute in IDEA is Purposes in Section 1400(d). The main purposes are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to **meet their unique needs and prepare them for further education, employment and independent living**” and “to ensure that the **rights of children with disabilities and parents** of such children **are protected**
2. the purposes is the mission statement of IDEA. When you are developing IEPs, use this mission statement as your long-term goal. If you are confused about a term or section in the law, go back and re-read Section 1400, especially Purposes in Section 1400(d).

### **Section 1401: Definitions**

Section 1401 of IDEA 2004 includes thirty-six legal definitions. Read these definitions carefully, especially the definitions of child with a disability, free appropriate public education, highly qualified teacher, special education, and transition services (below). Six new definitions were added to IDEA 2004: core academic subjects, highly qualified teacher, homeless children, limited English proficient, universal design, and ward of the state.

### **Child with a Disability**

For parents, the most important definition is likely to be “child with a disability.” The child’s classification as a “child with a disability” determines whether your child is eligible for special education and related services under the law.

A child with a disability is not automatically eligible for special education and related services under IDEA. The key phrase is “who, by reason thereof, needs special education and related services.” Does the child’s disability adversely affect educational performance? To be eligible for a free, appropriate public education under the IDEA, the child must meet both criteria. If a child has a disability but does not need “special education and related services,” the child will not be eligible under IDEA but may be eligible for protections under Section 504 of the Rehabilitation Act.

### **Free Appropriate Public Education (FAPE)**

The definition of a “free appropriate public education” is special education and related services that are provided at public expense, meet state standards, are appropriate, and are provided in conformity with an IEP. Because the definition is vague, the term has been litigated extensively since the law was enacted.

### **Highly Qualified**

The requirements for “highly qualified” special education teachers are new and bring IDEA into conformity with the No Child Left Behind Act (NCLB). Special education teachers who teach core academic subjects must meet the highly qualified teacher requirements in NCLB and must demonstrate competence in the subjects they teach. Special educators who do not provide instruction in core academic subjects are not required to meet the highly qualified teacher requirements.

### **Special Education**

The law defines “special education” as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability . . . .” Special education encompasses a range of services and may include one-on-one tutoring, intensive academic remediation, services in the general education classroom, and 40-hour Applied Behavioral Analysis (ABA) programs. Special education is provided in different settings.

### **Specific Learning Disability**

Congress did not change the definition of “specific learning disability” but did change the requirements for evaluations of children who may have specific learning disabilities. Schools “shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability . . . .” to find a child eligible for special education services as a child with a specific learning disability.

### **Transition Services**

The definition of “transition services” was changed to emphasize that transition is “a results-oriented process” to improve “the academic and functional achievement of the child with a disability.” The goal of transition is to facilitate the child’s transition from school to employment and further education. Transition services must be based on “the individual child’s needs, taking into account the child’s strengths, preferences, and interests.”

### **Part B – Assistance for Education of All Children with Disabilities**

Part B governs special education and related services for children with disabilities between the ages of 3 and 21. Important statutes in Part B are Section 1412, Section 1414, and Section 1415. Section 1412 includes child find, least restrictive environment, unilateral placements, reimbursement, and state and district assessments. Section 1414 describes requirements for initial evaluations, parental consent, reevaluations, eligibility, IEPs, and educational placements. Section 1415 describes the procedural safeguards designed to protect the rights of children and their parents. These safeguards include the right to examine educational records and obtain an independent educational evaluation, and the legal requirements for prior written notice, procedural safeguard notice, due process complaint notice, due process hearings, resolution sessions, mediation, attorney’s fees, and discipline.

### **Section 1412: State Eligibility (“Catch-All Statute”)**

Section 1412 about State Eligibility is often called the “Catch-All” statute because it includes such diverse topics: child find, least restrictive environment, transition to preschool programs, equitable services for children in private schools, unilateral placements in private programs, tuition reimbursement, and new requirements about participation in assessments, accommodations guidelines, and alternate assessments. Although Extended School Year (ESY) is not cited in the IDEA statute, the special education regulations that interpret Section 1412 describe and clarify Extended School Year.

### **Free Appropriate Public Education (FAPE)**

To receive federal funds, states must provide assurances to the U. S. Department of Education that they have policies and procedures in place to ensure that all children with disabilities receive a free appropriate public education. The right to a free appropriate public education extends to children with disabilities who have been suspended or expelled from school. To address problems with evaluations that led to an over-representation of minority children in special education programs, evaluations must be administered in the child's native language or mode of communication and no single procedure shall be the only criterion for eligibility.

### **CHILD FIND**

Child find requires school districts to identify, locate, and evaluate all children with disabilities, including children who are homeless, home schooled, wards of the state, and children who attend private schools. Child find also determines which children are and are not receiving special education and related services. If a child has a disability and is eligible for special education services, the school does not have to give the child a special education label before providing services. School districts must report this data about the number of children who have been evaluated, found eligible and provided services. These requirements also apply to children who attend religious and private schools within the district.

### **Children Who Attend Private Schools**

The law includes new requirements about participation of children who attend private schools and consultation between public and private school officials. Children who attend private school are entitled to equitable services. Special education and related services may be provided on the premises of the religious or private school.

### **Tuition Reimbursement**

The law about reimbursement for parental placements in private schools is unchanged. If the parent removes the child from a public school program and places the child into a private program, the parent may be reimbursed for the costs of the private program if a hearing officer or court determines that the public school did not offer a free, appropriate public education (FAPE) "in a timely manner." If a parent requests a due process hearing for tuition reimbursement, they should be familiar with the federal statute and regulations, and the state statute and regulations.

### **Least Restrictive Environment (LRE), Inclusion and Mainstreaming**

The description of "least restrictive environment" did not change in IDEA 2004. Schools are required to educate children with disabilities with children who are not disabled, "to the maximum extent appropriate." A child may only be removed from the regular educational setting if the nature or severity of the disability is such that the child cannot be educated in regular classes, even with the use of supplementary aids and services.

### **Qualifications of Special Education Teachers**

The requirements about qualifications of special education teachers are new and track the highly qualified teacher requirements in the No Child Left Behind Act. The requirements for related services providers and paraprofessionals did not change.

### **Participation in State and District Assessments**

Congress changed the language in IDEA about participation in assessments to include all children with disabilities in all general State and district wide assessment programs with appropriate accommodations.

The accommodations are detailed in the individualized education plans. The requirements that schools include all children with disabilities in all state and district assessments may have a negative impact on schools that refuse to use research-based methods to teach children to read, write, spell, and do arithmetic, because these schools are less likely to meet their annual progress goals.

### **Over-Identification of Minority Children**

Congress has found that African-American children are identified with mental retardation and emotional disturbances at far greater rates than white children. Congress required States to develop policies and procedures “to prevent the inappropriate over identification or disproportionate representation by race and ethnicity as children with disabilities . . . .”

### **Mandatory Medication Prohibited**

IDEA prohibits school personnel from requiring a child to obtain a prescription for a controlled substance (i.e., Ritalin, Adderal) in order to attend school, to receive an evaluation, or to receive special education.

### **Section 1413: Local Educational Agency Eligibility**

Section 1413 includes requirements for school district (LEA) and charter school eligibility. IDEA includes new requirements about purchasing instructional materials, records of migratory children, and early intervening services.

### **Services to Children Who Attend Charter Schools**

School districts must serve children with disabilities who attend charter schools in the same manner as children who attend other public schools, and must provide supplementary services and related services at the charter school.

### **Early Intervening Services**

Early intervening services require that schools use “proven methods of teaching and learning” based on “replicable research.”

### **Section 1414: Evaluations, Eligibility, Individualized Education Programs, and Educational Placements**

#### **Initial Evaluations**

Parents, state departments of education, state agencies, and school district staff can request an initial evaluation of a child. IDEA includes a requirement that initial evaluations and eligibility be completed within 60 calendar days of receiving parental consent.

#### **Parental Consent**

The school must obtain informed parental consent before conducting an initial evaluation. If the parent does not consent to an initial evaluation, or does not respond to a request to provide consent, the district may pursue a due process hearing against the parent. Parental consent for an evaluation is not the same as consent for the child to receive special education services. The school must obtain informed parental consent before providing special education services. If the parent does not consent to special education services, the district may not pursue a due process hearing against the parent. If the parent refuses consent for services, the district has not violated the IDEA, and is not required to meet at an IEP team or develop an IEP.

### **Reevaluations**

The school is not required to reevaluate a child more often than once a year, unless the parent and school agree to more frequent evaluations. The school shall evaluate at least every three years, unless the parent and school agree that a reevaluation is unnecessary. The school must reevaluate if the child's educational needs change or if the child's parent or teacher requests a reevaluation. IDEA requires the IEP to include statements of the child's present levels of academic achievement and functional performance. If a child has not been evaluated for a year or more, the IEP team will not have current information about the child's present levels of academic achievement and functional performance on which to base a new IEP.

### **Evaluation Procedures**

Information from evaluations will be used to determine the content of the child's IEP and to help the child make progress in the general education curriculum. Again, the school shall "not use any single measure or assessment as the sole criterion" for determining if a child is eligible for special education services. The school must ensure that assessments are not discriminatory on a racial or cultural basis . . . and are administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally in addition to being administered by trained and knowledgeable personnel. When a child transfers to a new school, the receiving school must complete assessments "as expeditiously as possible to ensure prompt completion of full evaluations.

### **Eligibility and Educational Need**

The heading "Determination of Eligibility" was changed to "Determination of Eligibility and Educational Need." A team of qualified professionals and the child's parent determine if the child is a child with a disability as well as the educational needs of the child. The school shall give the parents copies of all evaluation reports and a documentation of eligibility. If the school decides that a child with a disability is not eligible for special education services under IDEA, or if the parent disagrees with the school's classification or label, the parent can consider obtaining a comprehensive psycho-educational evaluation by an expert in the private sector.

### **Lack of Appropriate Instruction**

Many experts in the field of learning disabilities believe that a majority of children identified with specific learning disabilities are "victims of poor teaching." Almost all children can learn to read if taught appropriately, but many do not get appropriate instruction because teachers are not adequately trained or prepared. A child shall not be found eligible if the child's problems are due to "lack of appropriate instruction in reading, including in the essential components of reading instruction, lack of instruction in math, or a limited English proficiency. Adding this into IDEA brings conformity with NCLB.

The essential components of reading instruction are defined as explicit and systematic instruction in (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies.

### **Identifying Children with Specific Learning Disabilities**

The school is not required to consider if a child has a severe discrepancy between achievement and intellectual ability to determine if the child has a specific learning disability and needs special education services. The school district may use Response to Intervention (RTI) to determine if the child responds to scientific, research-based intervention as part of the evaluation process. The legal definition of "scientifically based reading research" is found in No Child Left Behind. The law includes new language that allows school personnel to decide that "no additional data are needed" to determine the child's

educational needs or eligibility. This language appears to be at odds with the requirement that the school reevaluate at least once every three years.

### **Additional Requirements for Evaluations and Reevaluations**

Information from evaluations and reevaluations shall be used to determine the needs of the child and the present levels of academic achievement and related developmental needs of the child. The school must review evaluations and information provided by the parents. If the IEP team and other qualified professionals decide they do not need additional data to determine if the child is eligible or the child's educational needs, the school can notify the parents that they do not intend to reevaluate. The school must provide the reasons for this decision. The school must evaluate the child before terminating the child's eligibility for special education services. The school is not required to evaluate when the child graduates from high school with a regular diploma or "ages out" of special education. However, if the child graduates with a regular diploma or is no longer eligible for services because of age, the school must provide the child with a summary of their academic and functional performance and make recommendations to help the child meet his/her postsecondary goals.

### **Individualized Education Programs (IEP s)**

#### **Present Levels of Academic Achievement and Functional Performance**

The child's IEP must include a statement of the his/her present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and performance in the general education curriculum.

#### **Measurable Goals**

The IEP must also include "a statement of measurable annual goals" to address the child's present levels of academic achievement and functional performance, using research based goals. The child's IEP must include "a statement of the special education and related services and supplementary aids and services. This is based on peer reviewed research and provided to the child as well as a statement of program modifications or supports for school personnel that will be provided for the child.

#### **Educational Progress**

The IEP must include a description of how the child is progressing toward meeting the annual goals. How this will be measured and when reports on the progress the child is making toward meeting the annual goals will be provided.

#### **Appropriate Accommodations and Alternate Assessments**

IDEA contains language about "individual appropriate accommodations" on state and district testing and new requirements for alternate assessments. The child's IEP must include "a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district assessments. If the IEP Team recommends that the child take an alternate assessment, the team must include a statement explaining why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.

#### **Transition Requirements**

On first IEP to be in effect when the child reaches 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments

related to training, education, employment, and, where appropriate, independent living skills as well as the transition services needed to assist the child in reaching these goals.

### **IEP Team Meetings**

A member of the IEP team may be excused from attending an IEP meeting if the member's area of curriculum or service will not be discussed or modified and if the parent and school agree. An IEP team member may also be excused from an IEP meeting that involves their area of curriculum or service if they submit input in written form and if the parent and school consent. The parent's consent must be in writing.

### **Children Who Transfer Schools**

If the child transfers to a district in the same state or another state, the receiving school must provide comparable services to those in the sending district's IEP until they develop and implement a new IEP.

### **Developing the IEP**

In developing the IEP, the IEP team must consider:

- • the child's strengths
- • the parent's concerns for enhancing the child's education
- • the results of the initial evaluation or most recent evaluation
- • the child's academic, developmental, and functional needs<sup>72</sup>

The IEP team will consider special factors for children:

- • whose behavior impedes learning
- • who have limited English proficiency
- • who are blind or visually impaired
- • who are deaf or hard of hearing

### **Reviewing and Revising IEPs**

The child's IEP must be reviewed at least once a year to determine if the child is achieving the annual goals. In addition, the IEP team must revise the IEP to address:

- • any lack of expected progress
- • results of any reevaluation
- • information provided by the parents
- • anticipated needs

If the parent and school decide to amend or modify the IEP that was developed at an annual IEP meeting, and they do not want to convene another IEP Team meeting, they may revise the IEP by agreement. The IEP Team must create a written document to amend or modify the IEP. This document must describe the changes or modification in the IEP and note that, by agreement of the parties, an IEP meeting was not convened. The parent should be provided with a copy of the revised IEP.

### **Multi-Year IEPs**

States may request approval to implement multi-year IEPs for periods of no longer than three years. IEP review dates must be based on transition points. Parents have the right to opt-out of this program and can request a review of the IEP without waiting for the natural transition point.



## **Placement Decisions**

Parents are members of the team that decides the child's placement. Decisions about the child's placement cannot be made until after the IEP team, which includes the parent, reaches consensus about the child's needs, program, and goals. The child's "label" or eligibility category often drives decisions about services and placement, leading school personnel to determine the child's placement before the IEP meeting. The law is clear on placement. These unilateral actions prevent parents from "meaningful participation" in educational decision-making for their child.

## **New Ways to Meet**

School meetings do not have to be face-to-face. IEP and placement meetings, mediation meetings, and due process (IEP) resolution sessions may be convened by conference calls or videoconferences.

## **Section 1415: Procedural Safeguards**

Section 1415 describes the safeguards designed to protect the rights of children with disabilities and their parents. These safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an Independent Educational Evaluation of the child. Section 1415 includes requirements for prior written notice, procedural safeguards notice, mediation, resolution sessions, due process hearings, the two-year statute of limitations, appeals, discipline, and age of majority.

## **Prior Written Notice (PWN)**

If the school district proposes to change or refuses to change the identification, evaluation, or educational placement of a child, the school must provide the parent with written notice.

The written notice must:

- • describe the action proposed or refused
- • explain why the school proposed or refused to take action
- • describe each evaluation procedures/assessment/record/reports used as a basis for the action
- • provide sources the parent can contact to obtain assistance
- • describe other options considered and why these options were rejected
- • describe the factors that were relevant to the school's proposal or refusal

## **Due Process Complaint Notice**

The party who requests a due process hearing must provide a detailed notice to the other party that includes identifying information about the child, the nature of the problem, facts, and a proposed resolution. A Due Process Complaint Notice can be a letter to request a due process hearing that includes the required components. A due process hearing may not be held until after this notice has been filed.

## **Procedural Safeguards Notice**

The Procedural Safeguards Notice provides parents with specific information about their rights and protections under the law, including the right to an Independent Educational Evaluation (IEE), prior written notice, the right to examine all educational records, notice of the statute of limitations within which "to make a complaint," mediation, due process, current educational placement, discipline, reimbursement for private placements, and attorneys' fees.

**Independent Educational Evaluation (IEE)**

Parents have a right to obtain an Independent Educational Evaluation of their child. School districts will supply a list of approved evaluators selected by the district.

**Mediation**

Mediation must be voluntary, may not be used to deny or delay a parent's right to a due process hearing, and must be conducted by a qualified, impartial mediator. Mediation is a confidential process in which the parties meet with a disinterested party in an effort to resolve their dispute. A successful mediation requires the parties to discuss their views and differences openly. Before starting mediation, both parties should understand their rights and the law. A due process hearing does not have to be pending for a party to request mediation.

**Written Settlement Agreements**

The requirements for legally binding written settlement agreements are new in IDEA 2004. Now, a party can use the power of federal courts to ensure that settlement agreements are honored.

**Due Process Hearings**

A due process hearing is held in the same way as a trial at the courthouse. The parties present evidence to the Hearing Officer who acts as both judge and jury. The due process hearing is independent of the school district and does not influence the Hearing Officer's decision in any way. Most pre-trial procedures and timelines for due process hearings are new. Section 1415 includes the requirements and timelines for the Due Process Complaint Notice and the Amended Complaint Notice.

**Statute of Limitations**

If the state does not have a statute of limitations, the request for a due process hearing must be within two years. Contact your State Department of Education / State Education Agency (SEA) to request the statute of limitations in your state. Be sure to get this information in writing.

**New Procedures and Timelines**

If the school did not provide prior written notice to the parents previously, the school must send that notice within 10 days. After receiving the due process complaint notice, the other party must file a response that specifically addresses the issues raised in the complaint within 10 days. If the notice is insufficient, the receiving party must complain to the hearing officer within 15 days. The hearing officer must determine if the complaint is sufficient within 5 days. A party may only amend its due process complaint notice if the other party consents in writing and is given the opportunity to resolve the dispute by using a resolution session. This requirement is similar to the "12(b)(6)" Motion to Dismiss proceeding in the Federal Rules of Civil Procedure (FRCP).

**Resolution Session**

After the school district receives the parent's due process complaint notice, it is required to convene a resolution session within 15 days, even if the Notice is not sufficient. The resolution session provides the parties with an opportunity to resolve their dispute before a due process hearing. The school district must send the "relevant member or members of the IEP team" who have knowledge about the facts in the parent's complaint and a district representative who has decision-making authority settlement authority. The school board attorney may not attend the resolution session unless an attorney accompanies the parent. The parent and the district may agree to waive the resolution session or use mediation. If the district has not resolved the complaint to the parents' satisfaction within 30 days of receiving the Complaint, the due process hearing can be held.

### **“Five-Day Rule”**

The law requires that evaluations and recommendations be disclosed within 5 business days before a due process hearing. Most state statutes and regulations, and standards of practice, require that all exhibits, exhibit lists, and witness lists be disclosed at least 5 days before a hearing. Failure to comply with these requirements about disclosure often causes hearing officers to dismiss cases.

### **Substantive v. Procedural Issues**

IDEA 2004 clarifies that “a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.” Examples of substantive issues include determining if the child has a disability that adversely affects educational performance or if the child received a free appropriate education (FAPE). Examples of procedural issues include delays in scheduling evaluations or convening meetings, or not having all appropriate personnel at an IEP meetings.

### **Minimum Standards for Hearing Officers**

IDEA now requires that hearing officers be knowledgeable about the law, federal and state regulations, and case laws. Hearing officers must also have the knowledge and ability to “conduct hearings and write decisions in accordance with appropriate standard legal practice.”

### **Attorneys’ Fees from Parents and Their Attorneys**

Parents who prevail can recover attorneys’ fees from school districts. Under IDEA 2004, school districts may recover attorneys’ fees from the parent or the parent’s attorney under specific limited circumstances. If the parent or the parent’s attorney files a complaint that is frivolous, unreasonable, for an improper purpose, to harass, cause unnecessary delay, or needlessly increase the cost of litigation, the Court may award attorneys’ fees to the school district.

### **Discipline**

Section 1415(k) includes requirements for disciplinary placements in interim alternative educational settings, manifestation determinations, placements, appeals, and authority of the hearing officer. IDEA allows schools to place a child with a disability in an interim alternative setting if the child violates a code of student conduct. To prevent zero-tolerance abuses, Congress added new language to the law that school personnel “consider any unique circumstance on a case-by-case basis” in determining whether to change a child’s placement.

### **Suspensions & Placements in Interim Alternative Educational Settings**

If a child with a disability violates a code of student conduct, school officials may suspend the child for up to 10 days. If the school removes a child for 10 days or more, regardless of the severity of the child’s misconduct, the school must continue to provide the child with a FAPE. The child will continue to receive educational services, participate in the general education curriculum, and make progress on the IEP goals. The child will receive “as appropriate, functional behavioral assessment, behavioral intervention services and modifications” to prevent the behavior from reoccurring.

### **Manifestation Determination**

The law requires the IEP team, which includes the child’s parent, to review all relevant information in the child’s file, including information provided by the parent, to determine if the negative behavior was caused by the disability, had a direct and substantial relationship to the disability, or was a result of the school’s failure to implement the IEP.

### **Functional Behavioral Assessments and Behavior Intervention Plans**

If the IEP team determines that the child's behavior was a manifestation of the disability, the IEP Team will conduct a functional behavioral assessment and implement a behavioral intervention plan. If the child already has a behavior intervention plan, the IEP Team shall modify the plan to address the child's behavior.

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### **45-Day Suspension: Dangerous Weapon, Drugs, and Serious Bodily Injury**

If the child carries a dangerous weapon to school, knowingly possesses or uses illegal drugs at school, or inflicts serious bodily injury upon another person while at school, the school may remove the child to an interim alternative placement for not more than 45 school days. The school must continue to provide the child with FAPE.

### **Part C: Infants and Toddlers with Disabilities**

Part C governs early intervention services for infants and toddlers under the age of 3, with some exceptions Part C includes Section 1431 through Section 1444 of Title 20 of the U.S. Code (U. S. C.).

### **Findings and Policy**

Congress made significant changes to Findings and Policy in Section 1431 and added new language about the "urgent and substantial need . . . to recognize the significant brain development that occurs during a child's first 3 years of life." Congress also found that there is an "urgent and substantial need to maximize the potential for individuals with disabilities to live independently in society." According to the Policy Statement: It is the policy of the United States to provide financial assistance to States to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.

### **Definitions:**

#### **Infant or Toddler with a Disability**

An infant or toddler with a disability is "an individual under 3 years of age who needs early intervention services because the individual is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures" in one or more areas of development. At the state's discretion, an infant or toddler with a disability may also include "at-risk infants and toddlers" and children who previously received early intervention services until they enter kindergarten or elementary school.

#### **Early Intervention Services**

Early intervention services must be designed to meet the child's developmental needs, including physical, cognitive, communication, social and emotional, and adaptive areas, and must be provided by qualified personnel. Many school districts offer one-size-fits-all school-based programs that are not "designed to meet the developmental needs" of a particular infant or toddler. Early intervention services "are provided at no cost except where a federal or State law provides for payments by families, including a schedule of sliding fees . . . ."

#### **Requirements for Early Intervention Programs**

States must have policies to ensure that early intervention services are based on scientifically based research. The evaluation of the child must be timely, comprehensive and multidisciplinary and must include "a family-directed identification of the needs of each family." States must have comprehensive child find systems and public awareness programs and must maintain central information directories

about early intervention services, resources, and experts, and demonstration programs. States must have comprehensive systems of personnel development, including training for paraprofessionals and primary referral sources, policies and procedures to ensure that personnel are appropriately and adequately trained, and that early intervention services are provided in natural environments. States may continue to provide early intervention services to young children with disabilities until they are eligible to enter kindergarten. These early intervention services must “include an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills.

### **Individualized Family Service Plan (IFSP)**

The legal requirements for Individualized Family Service Plans (IFSPs) are similar to the requirements for Individualized Education Plans, but with some important differences. The assessment and program development process includes a “family-directed assessment” of the family’s resources, priorities, and concerns. Congress added new requirements for Individualized Family Service Plans which must now include “measurable results or outcomes expected to be achieved . . . including pre-literacy and language skills” and the “criteria, procedures, and timelines” that will be used to measure the child’s progress. IDEA 2004 includes a new requirement that the IFSP include “a statement of specific early intervention services based on peer-reviewed research . . . necessary to meet the unique needs” of the child and family.

### **Procedural Safeguards**

The protections and safeguards for young children with disabilities and their parents in the Procedural Safeguards section of Part C are similar to those in Part B, but with some important differences. Parents of young children have a right to accept or decline any early intervention service without jeopardizing their right to other early intervention services. The law includes a procedure to protect the rights of the child when the parents are not known or cannot be found by appointing an individual to act as a surrogate for the parents.

## **Part D – National Activities to Improve Education of Children with Disabilities**

### **Findings**

Congress made significant changes to Findings in Part D. Section 1450 describes the critical need for adequately trained personnel<sup>120</sup> and for “high quality, comprehensive professional development programs . . . to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the needs of those children.”

### **Personnel Development**

Section 1462 about Personnel Development to Improve Services and Results for Children with Disabilities focuses on the need to ensure that all teachers “have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children . . .”

### **Parent Training and Information Centers (PTI)/Parent Resource Centers (CPRC)**

The Education Department shall award grants to at least one parent organization in each state for a Parent Training and Information Center. These Centers are to help parents learn about their children’s disabilities and educational needs, their legal rights and responsibilities, how to communicate effectively with school personnel, and how to participate in educational decision-making. The Education Department may also award grants to parent organizations that do not meet the criteria for a PTI but

focus on helping under-served parents. For example, a center may focus on helping low-income parents, parents with limited English proficiency, and parents with disabilities.

#### **Part E – National Center for Special Education Research**

Part E is new in IDEA 2004 and establishes the National Center for Special Education Research, referred to as the Special Education Research Center. The duties of the Center include improving services, identifying scientifically based educational practices that improve academic achievement and educational results, and identifying scientifically based related services and interventions that promote participation and progress in general education.

### **CHILD FIND**

Sun Valley Charter School is required by federal and state law (34 CFR 300.220.34 CFR 300.121) to conduct "Child Find" activities as a means to locate, identify, and evaluate all resident children with disabilities, regardless of the severity of their disabilities. The purpose of Child Find is to locate these children so that a free appropriate public education can be made available to eligible students. All district employees have Child Find responsibilities and must refer children of all ages. Students entering Kindergarten must be screened by the child's teacher within 45 days of enrollment, as must any enrolling child new to the school, to identify at risk students.

### **MULTIDISCIPLINARY EVALUATION TEAM/ EVALUATION**

The determination of the need to evaluate a student for Special Education is a multidisciplinary team decision. A multidisciplinary team must conduct the evaluation, and the team must include at least one education specialist in a field relevant to the student's suspected disability. All students considered for placement in a special education program must have a comprehensive evaluation of the capabilities and limitations of the student that establishes the student's eligibility for such placement.

#### **I. Multidisciplinary Evaluation Team Members**

##### **A. Participants**

The multidisciplinary evaluation team (MET) is a school district team of qualified professionals, including the parent that determines whether a student is eligible for special education based on evaluation results. Required members of the MET are in bold below. Other members of the MET may include, but are not limited to the following: related service providers, counselor, Adaptive P.E. teacher, etc.

**\* Parent**

**\* Student**

**\* Special Education Teacher or specialist with knowledge in the area of the suspected disability**

**\* Evaluator**

**\* General Education Teacher directly instructing the student or a teacher in an age appropriate grade level**

**\*District representative**

**\* Individual to Interpret the Instructional Implications of the Evaluation**

## **B. Roles**

### Participant Roles

**Parent:** To provide current information about the student (developmental, medical, functional, or other pertinent information) To be involved in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

**Student:** To provide information about strengths, preferences and interests. To provide information about educational goals and progress made.

**Special Education Teacher:** To provide expertise regarding appropriate accommodations and modifications. To report relevant performance information toward IEP goals (if a continuing IEP student). To report the results of any classroom observations that may have been conducted. To be involved in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

**Related Service Provider:** To report current data regarding the students present level of performance. To provide an analysis of the impact of the services on the students progress in special education. To provide suggestions for accommodations and/or modifications to help the student succeed in the general curriculum. To be involved in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

**General Education Teacher:** To provide a summary of all classroom data collected about the student's progress. To provide information about additional strategies implemented to help the student succeed. Report behavioral observations and provide data. Participate in decision making about the need for additional data and eligibility for special education services. Provide information about the general education context. To be involved in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

**School Psychologist:** To guide the team in discussing all areas of the suspected disability. To provide interpretation of any existing assessment data. To provide the team with eligibility criteria to help in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

**District representative:** Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, who is knowledgeable about the

general curriculum and is able to commit the resources of SVCS. To be involved in the decision making as to whether the existing data is sufficient to determine eligibility or if additional data is needed.

Individual to Interpret the Educational Implications of the Evaluation: Is able to inform team members of the impact of the child's unique needs on the student's ability to participate with the general education curriculum. Is able to recommend accommodations and modifications needed to allow the child access to the curriculum.

## II. Initial Special Education Evaluation or Re-evaluation Procedures

It is the responsibility of the multidisciplinary evaluation team (MET) to consider all available and relevant information about the student before determining the need to evaluate. This can occur in the form of a formal meeting or a less formal process whereby the primary evaluator collaborates with team MET team members to review existing data. This process must begin early enough not to allow the MET to lapse for students under re-evaluation, e.g. 90 days+ prior to the triennial due date.

### C. Review of Existing Data

1. The primary evaluator is responsible for consulting with team members regarding the following sources of information:

A. Background information about the student including educational records, attendance, discipline, previous evaluation reports if any are available, the student's developmental, medical, and family history.

B. Any outside reports or evaluations provided by the parent

C. Current vision and hearing screening test results

D. Results of district and state assessments over time

E. The student's native language, the extent to which disadvantage is a factor, and documentation of efforts to educate the student in general education.

F. For initial evaluations, pre-referral interventions attempted, and their impact on the child's difficulties

2. The team will review existing evaluation data regarding the student, including evaluations and information provided by the parents, current classroom-based assessments and observations, and observations by teachers and related services providers.

3. Based upon this review of data, the team will identify what additional data, if any, are needed to determine the following:

a. Whether the student has a category of disability, or in the case of re-evaluation, if the student continues to have a disability.



b. Whether the impairment has an adverse effect on the student's ability to participate with the general curriculum.

c. Whether the student needs special education and related services, or in the case of reevaluation, if the student continues to need special education and related services.

d. The present levels of performance and other educational needs of the student.

e. In the case of a re-evaluation, any additions or modifications to the special education and related services that will be needed to enable the student to meet the measurable annual goals established in the IEP and to participate in the general curriculum, as appropriate.

4. If the team determines that no additional data are needed, the team will complete the MET report and meet formally to continue eligibility for special education services. The completed report and prior written notice should be provided to the parent following the formal meeting.

The MET team should be guided by additional "best practices" policies as follows:

a. A child should receive a minimum of two complete psychoeducational batteries K-8, to include cognitive and achievement batteries. If the child's cognitive skills are inconsistent between iterations of cognitive assessments, additional evaluations should be completed to ensure valid data.

b. Students with a Specific Learning Disability should be assessment with a minimum of an achievement battery each time a re-evaluation is due, regardless of the number of times the student has been assessed previously.

c. Students with mental retardation must have adaptive measures completed by both parents and school staff in order to determine this eligibility category.

5. If the team determines that additional assessment(s) is/are necessary to determine eligibility and performance and classroom needs are needed, then the team obtains written permission. The parents will sign the consent to evaluate and a prior written notice and procedural safeguards notice must be provided to the parent.

#### **D. Parent permission**

1. A school's evaluation team must obtain informed, written parent consent before conducting an initial evaluation. Reasonable attempts to obtain informed, written parent consent must be made for students under re-evaluation. The MET team must complete the re-evaluation within three years of the last eligibility to be in compliance and unavailability or unresponsiveness of the parent is not a valid reason not to conduct a timely re-evaluation.

2. If the parent refuses consent for initial evaluation, the evaluation may not proceed. SVCS may file a due process hearing request to compel the parent to submit the child for evaluation, but the parent has the ultimate authority in giving consent to the initial placement. Therefore, a sensible approach to such a situation is to work with the parent and provide mediation to ameliorate the dispute.

3. A court-appointed educational surrogate parent must provide written permission for an evaluation for students for whom:

a. No parent can be identified.

b. After reasonable efforts, the parents cannot be located.

c. The child is a ward of the state. Case managers from state agencies such as the Division of Developmental Disabilities, Child Protective Services, or group home personnel may not authorize evaluations.

4. Relatives of a legal age caring for the child in a parental role may give permission to evaluate.

5. Foster parents may give permission to evaluate.

6. Behavioral health and medical professionals have no authority over whether or not the school district conducts an evaluation

#### **E. Additional Procedures for Reevaluations**

1. Triennial Re-evaluations - The evaluation team must conduct a reevaluation at least every three years after a student has been placed in special education. Reevaluations can occur more frequently if conditions warrant, or if the parents or the student's teacher requests a reevaluation. The need for a reevaluation must also be considered and documented with a prior written notice before determining that a student no longer has a disability. Excessive requests for re-evaluations must be carefully considered by the team prior to proposing or refusing to evaluate the child.

2. Re-Evaluation for Preschool Transition to Kindergarten - All preschoolers with IEP's who are transitioning to kindergarten must be reevaluated prior to end of the school year to determine if the student will continue to qualify for special education services. A new MET must be completed if the student's preschool disability is Preschooler with a Severe Disability. If the student's preschool eligibility is any other, the team will conduct the review of existing data to determine whether information on hand is sufficient to determine continued eligibility. The transition process may begin as early as January of the final year in preschool. Any evaluations of preschool students that takes place in the second half of the year should take into consideration both the preschool and school age disability.

#### **F. Evaluations**

1. Test Materials - The assessment tests, materials, and strategies included in the evaluation:

a. Will be provided and administered in the language and form most likely to yield accurate academic and developmental information, unless it is clearly not feasible to do so.

b. Will be selected and used so as not to be racially or culturally discriminatory.

c. Will be selected and used to measure the extent to which a child with limited English proficiency has a disability and needs special education, rather than measuring the child's English language skills.

d. Will be used for the purposes for which the assessments or measures are valid and reliable.

e. Will be the most current (within one year) revision of the assessments.

f. Will be administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of such tests.

g. Will be used to provide relevant information that directly assists in determining the educational needs of the child.

h. Will be used to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

i. Will be used to determine whether the child has a disability and the nature and extent of the special education and related services that the child needs.

2. Evaluating all Areas of Disabilities - The team will assess the student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and the need for assistive technology. The team will consult with appropriate discipline representatives (HI, VI) when these are possible areas of concern. The team will use the evaluation to gather relevant functional and developmental information about the student, information provided by the parents, and information related to helping the student be involved in and progress in general curriculum, or for a preschool child to participate in appropriate activities. If a Permission to Evaluate form has been signed to conduct an evaluation, all evaluations listed must be conducted. If during the course of the overall evaluation a particular area is deemed not necessary a Prior Written Notice must be provided to explain the reason why the evaluation was not conducted.

3. Considering Language Proficiency – the primary evaluator will consult student records before beginning an evaluation to ascertain the student's PHLOTE (Primary Home Language Other Than English) status and/or current AZELLA scores. The evaluator should contact SVCS office if requesting a bilingual evaluator (Psychologist or Speech/Language Pathologist). If the student has limited English proficiency, the evaluator should be fluent in English and in the student's language of proficiency, should use a qualified interpreter, or should assess the student using acceptable tests that do not stress spoken language. If English is not the primary language of the student's home, the evaluator may include an adaptive behavior assessment when cognitive delays. There is to be caution used with the adaptive measure and the normative measure (some measures are not normed on all populations). The evaluation and MET must reflect that assessments and other evaluation materials were administered in a non-discriminatory racial or cultural manner and that they were administered in a form and language most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally unless it was not feasible. The Evaluator needs to explicitly describe

both in the evaluation and in the MET what strategies, materials and/or tests were used to address any issues related to the student's language proficiency.

4. Evaluation Report - The evaluation report will be reviewed in conjunction with other information by the evaluation team, including the parents, at a multidisciplinary conference. A draft copy of the evaluation report will be provided to the parent at the MET meeting and a final version of the document will be provided within 5 days of the MET meeting. SVCS is not obligated to provide the report in the native language of the parent, but must ensure that the information is translated using an interpreter who is fluent in the parent's native language, with subsequent opportunities to conference about the evaluation, as requested.

#### **Disability Category Primary District Evaluator & Required Evaluators/ Components**

Autism: School psychologist, speech-language pathologist

Emotional Disability: School psychologist

Hearing Impairment: Hearing impairment teacher, audiologist

Mild/Moderate/Severe Cognitive impairment: School psychologist

Multiple Disabilities: School psychologist and other evaluators required to meet the requirements for each disability considered as part of the multiply disabling condition

Orthopedic Impairment: School psychologist, medical certification required

Other Health Impairment: School psychologist, medical certification required

Specific Learning Disability: School psychologist

Speech/Language Impairment: Speech-language pathologist

Traumatic Brain Injury:\* School psychologist, medical certification required

Visual Impairment: Vision impairment teacher, ophthalmologist or optometrist

\*TBI cannot stand alone as a disability, but must be paired with at least one other disability category.

5. Primary Evaluator Responsibilities - The primary evaluator is responsible for:

a. Completing a comprehensive assessment as determined by the MET.

b. Administering and scoring appropriate tests for all areas of suspected disability and contact the relevant related services provider within the evaluation timeline if additional areas of suspected disability need to be assessed.

c. Adapting the tests and providing an interpretation of the test results that considers the student's sensory, motor and communication skills; racial and ethnic background; and language background.

d. Preparing a comprehensive evaluation report prior to the multidisciplinary evaluation team (MET) meeting and provide the parents a copy of the report.

6. Evaluation Criteria - No single procedure will be used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the student. The evaluation will be sufficiently comprehensive to identify all of 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. If an assessment used in the evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions will be included in the evaluation report.

#### 7. Evaluation Timelines

a. Initial evaluations must be conducted within 60 days of receiving parent consent for evaluation or a parent request for an evaluation. Re-evaluations must be conducted prior to the three-year due date regardless of when or if written parental request was obtained.

b. Exceptions to the 60 day timeline

i. Parent fails or refuses to produce the student for the evaluation

ii. Student enrolls in or leaves a school outside Paideia after the evaluation process has begun

iii. A Prior Written Notice must be completed noting one of the reasons above

c. Extensions of 30 days beyond the 60 day timeline are allowed if in the best interest of the child. Examples include child illness or death in the family. Extensions cannot occur for the following reasons:

i. Personnel scheduling conflicts

ii. Personnel illness

iii. Lack of personnel

#### **G. Eligibility Determination Procedures**

1. The evaluation team will complete the evaluation and determine the student's eligibility for special education within 60 calendar days from the date on which the parents provided informed written consent or the date on which the parents provided a written request for an evaluation.

2. A meeting notice will be sent at least 10 days or sooner if agreed upon by parent and district staff, prior to the proposed meeting. All members of the MET will be informed of the meeting. Parents can verbally excuse team members that are not able to be present for the meeting.

3. The team will review the evaluation results and any other relevant information at the meeting and will document the eligibility decision using appropriate forms.

4. The evaluation of specific learning disability must also include a classroom observation of the student's academic and behavioral performance. The observation must take place within the regular classroom conducted by at least one team member other than the student's regular teacher. Additionally, if oral expression or listening comprehension is a suspected area of disability, a speech pathologist will conduct an evaluation to assess those areas.

5. If the student is eligible, the team may proceed with IEP development. While the team technically has up to 30 days to develop the IEP, the team must assure that:

a. Following a re-evaluation and re-determination of eligibility, a new IEP must be written even if the old IEP is still in force.

b. Every reasonable effort must be made to accommodate parents. For example, it is preferable that a draft IEP be presented following the eligibility determination to ensure parental participation. For some families, having a separate IEP meeting following the eligibility decision may be more appropriate.

6. The case manager must provide the parents a copy of the procedural safeguards at the meeting.

7. Within 5 days of the MET meeting, the case manager must provide parents with a Prior Written Notice of the team's decision, and a copy of the final MET report.

**H. Consideration of Other Factors** - The evaluation results establish that the student's current functional or educational difficulties are not primarily the result of any of the following factors:

a. Environmental or economic disadvantage — Ongoing abuse, neglect, family instability, social isolation, malnutrition, lack of normal childhood opportunities, frequent substance abuse, student employment, family income at or below the poverty level.

b. Health or medical problems — Long-term or chronic illnesses, medical syndromes, medications affecting learning, short-term illnesses that result in poor achievement.

c. Educational disadvantage — Frequent changes in schools, lack of continuous school enrollment, frequent school absences, lack of previous remediation attempts, previous instructional deficiencies.

d. Language factors — Language experience deprivation, multiple language background, poor language development (language immaturity).

e. Cultural factors — Migrant farming, recent immigration from another country, cultural practices that are distinctly different from those of the majority culture, reservation life.

#### **I. Special Considerations for Specific Learning Disability Eligibility**

1. To be eligible in the SLD category, Sun Valley Charter School uses a discrepancy model that will show a significant discrepancy between the best estimate of the student's ability using a comprehensive test of intelligence and at least one area of achievement as identified below using a comprehensive

achievement test. The evaluator will draw upon information from a variety of sources and must conclude that the following conditions are present:

a. There is a significant discrepancy between the student's ability and achievement in one or more of the following areas: oral expression, listening comprehension, basic reading, reading fluency skills, reading comprehension, math calculation, math reasoning, and written expression.

#### **J. Parent Request for Initial Evaluation**

1. The parent of a child may initiate a request for an initial evaluation to determine if their child has a disability. Upon *written* receipt of parent request, the MET team must take these steps:

a. Within 30 days, a review of existing data must be conducted to determine whether information on hand is sufficient for educational decision making.

i. If information on hand is sufficient, then the team must determine eligibility within 60 days of receipt of the parent request.

ii. If information on hand is not sufficient, then the prior written notice should reflect SVCS's intention to conduct formal testing.

b. Within 60 days of the receipt of request, SVCS must determine eligibility for special education, with or without testing.

c. SVCS may also refuse to conduct the evaluation, but Sun Valley Charter School's policy is that unless there are a number of exclusionary factors in place, the full evaluation as per parent request should go forward.

d. There is no obligation to conduct repeated evaluations if they are requested more than what would be reasonable given a particular student's individual situation.

#### **K. Parent Request for an Independent Educational Evaluation (IEE)**

1. Special education regulations allow parents to obtain an independent educational evaluation at public expense if they disagree with an evaluation provided by SVCS. School staff must notify the Special Education Director when parents request an independent evaluation in writing. SVCS will provide the parents with a list of qualified evaluators available to complete such an evaluation.

2. SVCS reserves the right to challenge the parent's request by asking for a due process hearing. If the hearing decision is that the school's evaluation is appropriate, the parents will be responsible for the cost of the independent evaluation. An independent evaluation must meet the same requirements as a SVCS evaluation. If an independent evaluation is conducted, SVCS will consider it in making decisions about the student's education.

## **L. Out-of-District Evaluations**

1. The evaluation team may determine a student's eligibility for special education using a non district evaluation. This most commonly occurs when a special education transfer student has been evaluated by the previous school district or when parents obtain an independent evaluation.

2. The appropriate assigned school psychologist will review the evaluation report to determine its adequacy in relation to state and federal evaluation requirements as well as district policies. The psychologist must presume eligibility for in-state evaluations but should review the report to ensure all required components are present. As other states have different criteria for meeting federal eligibility regulations, the psychologist cannot presume eligibility for out-of-state evaluations. If any written evaluation components are missing from the non-district evaluation, the MET will determine which additional evaluations need to be completed. If the student has a current IEP, the student's special education services will not be interrupted during the evaluation process.

## **ELIGIBILITY CATEGORIES**

The team determines if the student meets the criteria of a disability and whether the child does or does not need special education services. A student shall not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading, (including the essential components of reading instruction), lack of appropriate instruction in math, or limited English proficiency. Parent is provided with a notice regarding this decision that meets prior written notice requirement under IDEA.

Primary services can be in any of the categories of disability listed below. Related services **must be attached** to a Primary service. They cannot be the only service provided to a child. Related services are supportive services which are required to assist a child with a disability to benefit from their special education services. Related services such as speech-language (can also be a primary service), physical and occupational therapy, and adaptive physical education have eligibility criteria and will have goals in the IEP. Other related services can include: audiology services, interpreting services, transportation, counseling, school health services and school nurse services.

The categories of disability are listed below along with specific information for each category of eligibility:

### **Child with Autism Spectrum Disorder (A)**

#### **Determination of Eligibility**

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a developmental disability that significantly affects verbal and nonverbal communication and social interaction and that adversely affects performance in the educational environment.
2. Characteristics of autism include irregularities and impairments in communication, engagement in repetitive activities and stereotypical movements, resistance to environmental change or changes in daily routines and unusual responses to sensory experiences.
3. Autism does not include children with emotional disabilities as defined in A.R.S.15.761.



4. The student was evaluated in all areas related to the suspected disability.

### **Child with a Developmental Delay (DD)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant Senate Bill 1196 and the following requirements:

1. The child who is at least three years of age but under ten years of age\* demonstrates performance on a norm-referenced test that measures at least 1.5 but not more than 3.0 standard deviations below the mean for children of the same age in two or more of the following areas:
  - o Cognitive development
  - o Social and emotional development
  - o Physical development
  - o Adaptive development
  - o Communication development
2. The results of the norm-referenced measure(s) are corroborated by information from other sources including parent input, judgment-based assessments and/or surveys.
3. The child was evaluated in all of the areas of development listed above, which, taken together, comprise a comprehensive developmental assessment.

\*Developmental Delay should be determined as a last resort for school-aged students. It is extremely important to accurately diagnose and use specific categories when appropriate. Students who are nine years old should not be diagnosed with Development Delay when it is an Initial Placement.

### **Child with an Emotional Disability (ED)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student exhibits one or more of the following characteristics over a long period of time and to a marked degree and the behavior adversely affects performance in the educational environment:
  - o An inability to build and maintain satisfactory interpersonal relationships with peers and teachers;
  - o Inappropriate types of behavior or feelings under normal circumstances;
  - o A general and pervasive mood of unhappiness or depression;
  - o A tendency to develop physical symptoms or fears associated with personal or school problems
  - o An inability to learn that cannot be explained by intellectual, sensory, or health factors.

The disability includes children who are schizophrenic but does not include children who are socially maladjusted unless it is determined that they have an emotional disability.

1. The emotional disability has been verified by a psychiatrist, licensed psychologist, or certified school psychologist.
2. The student was evaluated in all areas related to the suspected disability.

### **Child with Hearing Impairment (HI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a loss of hearing acuity which adversely affects performance in the educational environment.
2. The hearing loss has been verified by an audiologist through an audio logical evaluation.
3. A communication/language proficiency evaluation has been conducted.
4. The student was evaluated in all areas related to the suspected disability

### **Child with Mild Mental Retardation**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student exhibits cognitive impairment that adversely affects performance in the educational environment as evidenced by performance on a standard measure of intellectual functioning that is between two and three standard deviations below the mean for students of the same age.
2. The student demonstrates adaptive behaviors that are between two and three standard deviations below the mean for students of the same age as evidenced by a standardized adaptive behavior scale.
3. The student was evaluated in all areas related to the suspected disability.

### **Child with Moderate Mental Retardation**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student exhibits cognitive impairment that adversely affects performance in the educational environment as evidenced by performance on a standard measure of intellectual functioning that is between three and four standard deviations below the mean for students of the same age.
2. The student demonstrates adaptive behaviors that are between three and four standard deviations below the mean for students of the same age as evidenced by a standardized adaptive behavior scale.
3. The student was evaluated in all areas related to the suspected disability.

### **Child with Severe Mental Retardation**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student exhibits cognitive impairment that adversely affects performance in the educational environment by performance on a standard measure of intellectual functioning that more than four standard deviations below the mean for students of the same age.
2. The student demonstrates adaptive behaviors that are between at least four standard deviations below the mean for students of the same age as evidenced by a standardized adaptive behavior scale.
3. The student was evaluated in all areas related to the suspected disability

### **Child with Multiple Disabilities (MD)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has learning and developmental problems resulting from multiple disabilities that cannot be provided for adequately in a program designed to meet the needs of children with less complex disabilities and that adversely affect performance in the educational environment:
2. The student is a student with a disability with two or more of the following conditions:
  - o A hearing impairment;
  - o An orthopedic impairment;
  - o Moderate mental retardation
  - o A visual impairment
3. One or more of the following disabilities existing concurrently with any of the above – mild mental retardation, an emotional disability, or a specific learning disability.
4. The student was evaluated in all areas related to the suspected disability.

### **Child with Multiple Disabilities with a Severe Sensory Impairment (MDSSI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a severe visual or hearing impairment in combination with one or more of the following disabilities that, taken together, adversely affect performance in the educational environment:
  - o Autism;
  - o Orthopedic impairment;
  - o Moderate or severe cognitive impairment;
  - o Multiple disabilities;
  - o Emotional disability requiring private or public intensive therapeutic placement.
2. The student has a severe visual **and** a severe hearing impairment.
3. The student was evaluated in all areas related to the suspected disability.

### **Child with Other Health Impairment (OHI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a health impairment that limits his/her strength, vitality, or alertness (including a heightened alertness that results in limited alertness with respect to the education environment) that is due to chronic or acute health problems including but not limited to as asthma, attention deficit disorder, diabetes, epilepsy, heart conditions. The health impairment adversely affects performance in the educational environment.
2. The other health impairment has been verified by a doctor of medicine or doctor of osteopathy through provision of a written statement. Form can be accessed by a psychologist.
3. The student was evaluated in all other areas related to the suspected disability.

Additional note: Medical Certification needs to be updated at least every three years and must directly address whether the health impairment “limits his/her strength, vitality, or alertness (including a

heightened alertness that results in limited alertness with respect to the education environment) that is due to chronic or acute health problem” and which adversely affected educational performance. When considering special education eligibility for the category of OHI, it is not sufficiently comprehensive for the team to simply obtain the medical documentation of the disability. The team must also demonstrate that the student’s educational performance has been adversely affected. Though every individual situation is different, the standard way to assess educational performance is through a minimum of academic testing and a comprehensive review of educational records.

### **Child with Orthopedic Impairment (OI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has one or more severe orthopedic impairments caused by a congenital anomaly, disease or other causes such as amputation, or cerebral palsy that adversely affects performance in the educational environment.
2. The orthopedic impairment has been verified by a doctor of medicine or doctor of osteopathy through provision of a written statement.
3. The student was evaluated in all areas related to the suspected disability.

Additional note:

Medical Certification needs to be updated at least every three years and must indicate that the condition adversely affects educational performance. When considering special education eligibility for the category of OI, it is not sufficiently comprehensive for the team to simply obtain the medical documentation of the disability. The team must also demonstrate that the student’s educational performance has been adversely affected. Though every individual situation is different, the standard way to assess educational performance is through a minimum of academic testing and a comprehensive review of educational records.

### **Child with a Specific Learning Disability (SLD)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a specific learning disability in one or more of the following areas: (check all that apply)
  - o Oral expression
  - o Listening comprehension
  - o Mathematics calculation
  - o Written expression
  - o Reading comprehension
  - o Math reasoning
  - o Basic reading skills
  - o Reading fluency skills

Eligibility was determined by: (check all that apply)

1. Norm-referenced psychometric testing which identified a severe discrepancy between ability and achievement\*
2. A failure to respond to scientifically based interventions and progress monitoring through the **PEA’s State approved** Response to Intervention Plan (not applicable for SVCS at this time)

3. The student was evaluated in all areas related to the suspected disability.
4. Additional Requirements (document the following):
  - o Whether the child is/ is not achieving on grade level.
  - o Whether the child is / is not making sufficient progress to meet grade level standards.
  - o Whether the child does/ does not exhibit a pattern of strengths and weaknesses in performance and/or achievement relative to grade level standards or intellectual development.
  - o Team decision regarding the presence of a disability:
  - o Whether or not the student **does** meet the criteria as a child with a specific learning disability.
  - o Team decision regarding the need for special education services
    - If the student **does not** need special education services.
    - The student **does** need special education services.

Special Rule: The team may not identify a student as having a Specific Learning Disability if the discrepancy between ability and achievement is **primarily** the result of a visual, hearing, or motor impairment, cognitive impairment, emotional disturbance, or environmental, cultural or economic disadvantage. Each team member must indicate agreement or lack of agreement with the eligibility decision; dissenting opinions may attach comments to the completed MET. Decisions are made by consensus to the greatest degree possible, but SVCS representative will make the final decision should the team fail to meet consensus.

**Note: SVCS uses a discrepancy between ability and achievement in determining SLD eligibility.**

### **Child with a Speech and Language Impairment (SLI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a communication disorder such as stuttering, impaired articulation, severe disorders of syntax, semantics or vocabulary, or functional language skills, or voice impairment to the extent that it calls attention to itself and interferes with communication or causes the child to be maladjusted.
2. An evaluation by a certified speech/language pathologist has been conducted.
3. The student was evaluated in all areas related to the suspected disability. However, if the impairment appears to be limited to articulation, voice, or fluency problems the evaluation may be limited to the following:
  - o An audiometric screening within the past calendar year;
  - o A review of academic history and classroom functions;
  - o An assessment of the student's functional communication skills

### **Child with a Traumatic Brain Injury (TBI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant A.R.S. 15-766 and the following requirements:

1. The student has an acquired open or closed injury to the brain that is caused by an external physical force and that has resulted in a total or partial functional disability or psychosocial impairment, or both, that adversely affects performance in the educational environment.

Resulting impairments include such areas of disability as cognition, language, memory, attention, reasoning, behaviors, physical function, information processing, and speech.

2. The injury is not congenital or degenerative or induced by birth trauma.
  3. The injury has been verified by a doctor of medicine or doctor of osteopathy through a written statement.
  4. The student was evaluated in all areas related to the suspected disability.
  5. For funding purposes, a student with TBI must be listed in SAIS with another disability.
- Therefore, the team should identify another disability category that most closely resembles the manifestation of the student's TBI and complete eligibility documentation for that disability to the extent appropriate.

### **Child with a Visual Impairment (VI)**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant to the IDEA, A.R.S. 15-766 and the following requirements:

1. The student has a loss of visual acuity or loss of visual field that, even with correction, adversely affects performance in the educational environment. The term includes both partial sight and blindness.
2. The visual impairment has been verified by an ophthalmologist or optometrist through a written statement.
3. Specific Evaluation Considerations:
  - o Central visual acuity of 20/70 or less in the better eye after conventional correction
  - o Reduced visual field to 50 degrees or less in the better eye
  - o Other ocular pathologies that are permanent and irremediable
  - o Cortical visual impairment
  - o A degenerative condition that is likely to result in a significant loss of vision in the future.
4. The student was evaluated in all areas related to the suspected disability.

### **Non-Eligible Child**

#### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant A.R.S. 15-766 and the following requirements:

1. The student was evaluated in all areas related to the suspected disability.
2. A team decision was made regarding the presence of a disability (ineligible).

Note: A student shall not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading, (including the essential components of reading instruction), lack of appropriate instruction in math, or limited English proficiency.

### **Preschool Categories of Eligibility**

Preschool categories of eligibility are limited to SLI, DD, HI, VI, PSD.

## **Child with a Preschool Severe Delay (PSD)**

### Determination of Eligibility

The determination of eligibility for special education is based on an evaluation pursuant A.R.S. 15-766 and the following requirements:

1. The child demonstrates performance on a norm-referenced test that measures more than 3.0 standard deviations below the mean for children of the same age in one or more of the following areas:
  - o Cognitive development
  - o Social and emotional development
  - o Physical development
  - o Adaptive development
  - o Communication development
2. The results of the norm-referenced measure(s) are corroborated by information from other sources including parent input, judgment-based assessments and/or surveys.
3. The child was evaluated in all of the areas of development listed above, which, taken together, comprise a comprehensive developmental assessment.

## **INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

The Individualized Education Program (IEP) is both a process and a written document whereby parents and special educators develop special education services for a student with disabilities, monitor the student's educational progress, and make needed changes in the student's program as circumstances change. The IEP must be based on the individual needs of the student, must enable the student to receive educational benefit, and must meet state educational agency standards.

In developing each student's IEP, the IEP team will consider the strengths of the student and the concerns of the parents for enhancing the education of their child. The team also will consider the results of the initial or most recent comprehensive evaluation of the student, and the results of the student's performance on any State or district-wide assessment programs.

A draft IEP may be prepared before an IEP meeting as long as the parents are informed that the proposed goals, objectives and services are only recommendations for review and discussion. Copies of proposed Present Levels (**IEP Section D**) and Annual Goals (**IEP Section F**) may be shared with the parent prior to the IEP meeting if desired. The provided copies must be clearly identified as draft documents.

Parents must be given the opportunity to be active participants in the IEP process. Parents or school staff may request an IEP review meeting if they believe the child is not making satisfactory progress or if there is a problem with the child's current IEP.

### **A. IEP Process**

#### **1. Compliance Requirements:**

1. Develop an IEP within 30 calendar days of determining the student's eligibility for special education and related services. The team may develop the IEP following the eligibility determination if parents were notified on the **IEP Meeting Request**.
2. Develop the IEP before providing any special education or related services.

3. Complete the annual IEP within 364 days of the last IEP.
4. Revise the IEP if the student is not making expected progress toward his or her goals or upon parent request.
5. Develop a new IEP **after** a reevaluation is completed. The IEP date must be either the same date, or within 30 days, of the reevaluation date.
6. If additional information about the student's needs becomes available an IEP review may be appropriate to reflect necessary changes based on the new information.
7. For IEP's which are due in August of the following school year, complete those IEP's by the last day of school during the current school year.
8. The IEP team will give parents **IEP Meeting Request** of proposed IEP meetings so they may participate. When reasonable, the notice will be in the primary home language, will be written in understandable language and will explain the purpose of the meeting, time, location, and the positions held by the staff who will attend. The notice will inform the parents of their right to review the child's educational records before the meeting and have a representative with them at the meeting. The team will ensure that the parents understand the proceedings at an IEP meeting. If needed, the team will provide an interpreter for parents who are hearing impaired or who have limited English proficiency.

## 2. IEP participants

The following persons (highlighted in bold must attend the IEP meeting. The other individuals listed are encouraged to attend as appropriate:

1. Parent/guardian: The student's parents, guardian, or educational surrogate.
2. **General education teacher:** At least one of the student's general education teachers (if the student is, or may be, participating in any general education environment) who will help develop the IEP, including positive behavioral interventions and strategies, supplementary aids and services, program modifications, and support for school personnel, as appropriate.
3. **Special education teacher/Service provider:** At least one of the student's special education teachers or providers who will lead the team in writing the IEP, work with the student to carry out the IEP, and work with other school staff, particularly the general education teachers, to provide expertise about addressing the student's unique needs.
4. **District representative/Designee:** A representative of the school district who is qualified to provide or supervise the provision of specifically designed instruction to meet the unique needs of children with disabilities and who is knowledgeable about the general curriculum and the availability of district resources.
5. **Evaluator/Representative:** An individual who can interpret the instructional implications of the evaluation results.
6. Related service provider: Depending on the student's individual needs, the related service providers attending the meeting might include a behavior specialist, occupational therapist, physical therapist, speech-language pathologist, transportation representative, interpreter and/or other related service member.
7. Transition representative: Representatives of any other agencies that may be responsible for paying for or providing transition services (if the student is at least 16 years old or, if appropriate, younger) can be invited. If an agency invited to send a representative to a meeting does not do so, the school will take steps to obtain participation of any other relevant agency in the planning of transition services.
8. Student: The student, if appropriate. If transition needs or services will be discussed at the meeting, the student must be invited to attend. If the student does not attend, the school



will take other steps to ensure that the student's preferences and interests are considered.

9. Private school representative: An individual who represents an out of district educational setting.

10. Counselor: A school counselor.

11. Other individuals who have knowledge or special expertise about the student (at the discretion of the parent or district).

NOTE: An IEP team member may fill up to three of the team positions if properly qualified and designated, only as follows: If the Teacher of the Hearing Impaired, the Teacher of the Visually Impaired or the Speech/ Language Pathologist is the primary case manager, he/ she may sign in three places (District Representative, Evaluator, and HI, VI or SLI). In general, for students who have other categories of disabilities, each team member should sign in no more than two roles.

### 3. IEP Team Attendance Exceptions:

1. A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, **IF** the parent of the child and the LEA agree, in writing (**IEP Attendance Form, Section A.1.**), 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 member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to, or discussion of the member(s) area of the curriculum or related services IF:

- o The parent consents in writing (**IEP Attendance Form, Section A.2.**) to the excusal; and

- o The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

### 4. Initial IEP Procedures

a. The IEP team will send a **IEP Meeting Request** to the parents at least 10 days prior to the proposed meeting or a mutually agreed upon time.

b. At the meeting, the team will document components of the IEP using the **Staffing Notes** form.

c. All IEP participants will sign the IEP (**IEP Section B**) to document their participation. If the parents are unwilling to participate, the IEP team may meet without them and document, using **IEP Meeting Request**, their attempts to include the parents. If a required member of the IEP team is unable to attend, the parent and a school representative may excuse that member using the **IEP Attendance Form**. The roles that may not be excused include SVCS representative and one special education teacher/primary service provider.

d. After the IEP Team has met to develop the IEP, the team will obtain the parent's written permission for initial services using the **IEP Signature Page Initial Placement**. Once the signature is obtained the team will provide the agreed-upon services as indicated on the IEP. The IEP Signature Page Initial Placement is required only once upon initial placement into special education. Special Education services cannot be delivered until the IEP Signature Page Initial Placement is signed by the parent.

e. The IEP team will provide the parents procedural safeguards and prior written notice (**PWN - IEP**) indicating implementation of the new IEP.

f. The case manager will ensure that everyone who will be involved in implementing the

IEP has access to the document and knows each person's specific responsibilities for carrying out the student's IEP.

**g.** The special education teacher or primary service provider will send the original signature pages (Participation page, Meeting Notice, Medicaid Consent, Initial Placement Statement) along with required documentation to The Dean of Students within five days of the IEP meeting for filing in the student's central file. Final copies must also be provided to the parents following the meeting.

**h.** The student's special education teacher and any other service providers will assess the student's progress toward the mastery of IEP annual goals and will provide the student's parents with a trimester progress report.

**i.** If the student is receiving special education transportation services, the special education teacher/primary service provider will complete an updated SVCS Transportation Form and sent the form to the SPED Compliance Coordinator.

## **5. Annual IEP Procedures**

The IEP team will review the student's IEP at least once a year, or more frequently if needed, to determine whether the student is achieving the annual goals. Either the parents or the school can ask to hold an IEP meeting to revise the IEP. IEP revisions may be needed to address:

1. Documented lack of expected progress toward the annual goals and in the general curriculum,
2. The results of any reevaluation (within 30 days a new IEP must be written),
3. New information about the student provided by the parents or school staff,
4. Following a manifestation determination or,
5. Other matters that may negatively impact progress towards goals (progress reports).

The student's special education teacher or primary service provider will send an **IEP Meeting Request** to the parents at least 10 days prior to the proposed meeting or at a mutually agreed upon time. If the parents waive the right to participate or unable to attend after three notices, the IEP team may meet without them and document their attempts to include the parents using **IEP Meeting Request** form. If a required member of the IEP team is unable to attend, the parent and a school representative may excuse that member using the **IEP Attendance Form**. The roles that may not be excused include SVCS representative and one special education teacher/Primary service provider.

At the IEP meeting, the teacher will review the progress of previous IEP goals and document current classroom performance and assessment data in the present levels of performance section of the new IEP.

The teacher then will lead the team in developing a new IEP.

## **6. Addendum Procedures**

Changes to the IEP may be made:

1. By convening an IEP team meeting or,
2. If the parents and the team agree not to convene an IEP meeting for the purposes of making changes, a document will be developed to amend or modify the current IEP.

Changes made by an amendment must include:

1. Input by IEP team members
2. A signed Participation Page
3. A Prior Written Notice must document the change(s) made to the IEP

4. Mailing or giving a copy of the revised IEP to the parents within five days.
5. Giving a copy of the revised IEP to the student's teachers, counselor and administrators within five days.
6. Send original documentation to The Dean of Students within five days of the IEP meeting for filing in the student's central file.

## **7. Correcting IEP Errors**

Thorough proofreading should prevent errors in IEPs. For minor clerical errors, such as incorrect dates, grammatical errors, or incorrect type of meeting (initial vs. annual, etc.), these items can be corrected before the document is finalized. However, if the IEP has been finalized, errors in the disability category, date of the IEP and the service code are locked and these fields cannot be edited even if the document is unlocked. In such cases, the IEP team will need to meet again to amend the in-force IEP and correct the errors.

## **8. Dismissal of services**

### **a. Primary Services**

An evaluation is required prior to determining that a child no longer has a disability. When a student no longer requires specialized instruction the following IEP Team process needs to occur:

1. Review of Data
2. Evaluation in areas determined by Review of Data (psychological, educational, developmental history, classroom observation, etc)
3. MET to determine continued eligibility or dismissal (complete MET Determination Report)
4. Close out IEP goals if dismissing
5. Complete a Prior Written Notice

### **b. Related Services**

If related services (Occupational Therapy, Physical Therapy, Speech/Language, Adaptive PE, or Counseling) are being considered for dismissal, there are two different ways to accomplish this.

1. If the related service being proposed for dismissal is related to the eligibility of the student, for example, a delay in communication is part of a student's Developmental Disability, or the student is receiving occupational therapy related to an Orthopedic Impairment, the the team must do a review of existing data and complete a new MET with all service providers participating with both activities. A new eligibility must be completed.
2. If the related service being proposed for dismissal is not related to the eligibility of the student, such as a student with occupational therapy whose eligibility is Specific Learning Disability, then the team may dismiss the student from OT services through accomplishment of IEP goals and objectives. The team must ensure that documentation through a comprehensive present levels of performance section in the IEP is provided at a formally convened IEP meeting.

## **9. Revocation of Consent**

A parent may revoke consent for special education services at any time. The Revocation of Consent will be for **all** Special Education services being provided (the parent can not pick and choose the services they want to revoke/keep as this would be an IEP Team responsibility). The parental

revocation of consent for discontinuing special education and related services must be in writing. A parent may revoke consent for special education services at any time. The Revocation of Consent will be for **all** Special Education services being provided (the parent can not pick and choose the services they want to revoke/keep as this would be an IEP Team responsibility). The parental revocation of consent for discontinuing special education and related services must be in writing. The **Informed Parent Withdrawal Consent** form is utilized. Upon receipt of the **Informed Parent Withdrawal Consent** form, the case manager will:

1. Send a Prior Written Notice to the parent regarding the change in educational placement within five days.
2. Send original documentation to The Dean of Students within five days of the IEP meeting for filing in the student's central file.

Services to the child will continue until the Prior Written Notice has been provided to the parents, and at that point services will be discontinued and the child will be considered a general education student. The parent does not have to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services.

If a parent who revoked consent for special education and related services later request that their child be reenrolled in special education, this must be treated as a request for an initial evaluation (rather than a reevaluation). This requires a MET review of existing evaluation data that includes classroom based, local or state assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability.

#### **10. Individualized Family Service Plans**

For students with disabilities who are parentally placed in a private or parochial school, or who are being home schooled by the parent, services are provided through an Individualized Family Service Plan. Services under the IFSP are provided on a proportional basis and do not resemble the level of service that would be provided if the student were attending a district school. The location of services is at the discretion of the team. Please contact the SPED Compliance Coordinator for additional information, if needed.

#### **B. The IEP Document**

The IEP document is a written plans developed by the IEP team, including the parents, to help a student with a disability achieve specific educational goals. The written IEP should clearly outline the student's current skill levels, including functional and educational needs, the educational services the student requires, who will provide those services, and how the student's progress will be measured. All legally required contents of the IEP will be documented using the following district IEP forms and instruction.

##### **1. IEP Section A: Coversheet**

The computer will automatically generate the student's demographic and current special education information. It is important to verify the students address with the parent guardian. Explain to the parents the use of a draft IEP. Document the date of the meeting and projected end date.

##### **2. IEP Section B: IEP Team Members**

Document, with signatures and dates, the attendance of the IEP participants. If parents do not participate, document attempts to contact them on the **IEP Meeting Request** form, including reminder phone calls and notices, and the day of the meeting.

Documentation of reasonable efforts to contact parents must include:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence (**IEP Meeting Request**) sent to the parents and any responses received

### **3. IEP Section C: Pertinent Medical Information**

Ensure that the current health information is documented by the health assistant and parent input prior to the IEP meeting.

### **4. IEP Section D: Present Levels of Academic Achievement and Functional Performance**

The IEP team must consider the student's present level of academic and functional performance (PLAAFP). All areas pertinent to the student's needs must be addressed in the PLAAFP. This can be determined by a combination of tests, observations, evaluations, and classroom reports by the teacher. The PLAAFP must document:

1. a narrative summary of the student's strengths and needs,
2. concerns of the parent's for enhancing their child's education,
3. how the student's disability affects his or her involvement and progress in the general curriculum (or for preschool children, how the child's disability affects the child's participation in appropriate activities), and
4. By the age 16, the student's current knowledge, skills, and abilities in relation to targeted post-school areas must be addressed.

Disability category names such as cognitive impairment or speech/language impairment may not be used as a substitute for the description of present levels of performance. Evaluation/assessment scores cannot stand alone for description of student's present level.

There should be a direct relationship between the present levels of educational performance, the annual goals, and the other components of the IEP. There should be a clear alignment between the student needs (as articulated in the evaluation and PLAAFP) and the goals and services identified on the IEP.

Identify the student's needs that result from the student's disability and that require specially designed instruction (special education services). For an initial placement, needs would be identified through the child's multidisciplinary evaluation results. For subsequent IEPs, sources of information would include classroom-based assessments and observations by teachers and service providers, new information provided by the parents, information reviewed, and any additional reevaluation data. Each identified need should be addressed within the goals and objectives.

### **5. IEP Section E: Special Consideration**

The IEP team needs to specify whether each of the following factors is relevant to the student:

1. Assistive technology devices or services to maintain or improve the student's functional capabilities.
2. Student behavior that interferes with the learning of self or others.
3. English language learner status.
4. Provision of Braille instruction, unless determined inappropriate based on evaluation, if the child is blind or visually impaired.
5. Communication needs and, for a student who is deaf or hard of hearing, opportunities for communication and instruction in the student's language and communication mode.

If a behavior plan is checked as needed, the psychologist must initiate the development of a behavior plan located in the behavior section of the student documents.

## **6. IEP Section F: Annual Goals and Objectives**

The annual goals are measurable statements that describe what the student can reasonably accomplish in a year. The goals must be based on the student's present levels of performance, and be designed to help the student be involved and progress in the general curriculum.

Annual goals must be S.M.A.R.T:

- **Specific** – include baseline data, instructional area (relates to statements of need in the PLAAFP) and statement of what the student will be able to do (the standards-based goal)
- **Measurable** - The criteria for meeting the goal and the evaluation method (how data will be gathered)
- **Attainable** within the duration of the IEP
- **Realistic** given the student's baseline performance
- **Time Driven** - The evaluation frequency and when it will be expected to be met

If a student receives related services, the related service provider is responsible for writing and documenting progress of the goal(s) for which they provide direct and/or consult services. Collaborative (previously consultative) services should have documented needs in the PLAAFP and an associated goal.

If the student is eligible for Alternate Assessments, objectives or benchmarks **must** be written for each goal.

The student's progress toward meeting the annual IEP goals will be provided in a trimester progress report concurrent with the issuance of report cards (**IEP Progress Reports – Annual Goals**). These progress reports will be based on data gathered on the annual goals and the data will be sited in the progress reports.

## **7. IEP Section G: Statement of Special Education/Related Services**

Identify the specific special education and related services the student will receive, the date services will begin, the number of minutes or hours services will be provided, the frequency (number of sessions per month), the location, and the ending date for services.

Collaborative (Indirect) Services are usually only used by related service providers, typically when they are moving towards dismissal of services. The collaborative service needs must be addressed in the PLAAFP and they do need to have a goal.

1. There must be direct student contact at least once per quarter.
2. The staff providing the consult is responsible for the progress report.
3. Collaborative services are not eligible for Medicaid reimbursement.

Related services are support services determined by the IEP team to be required so that the student can benefit from special education. Students, who require a specific related service, except for transportation and nursing services, must be evaluated in that particular area by an appropriate related service provider. Following the evaluation, the provider will advise the team about the student's need for the service, the type of service, frequency, amount of service, and appropriate goals and objectives. The team will decide the student's need for transportation based upon the unique needs of the student caused by the disability and/or the location of the program. If the team makes a determination that transportation is needed then this would be indicated in the related

service portion. The team will document the student's need for a related service in the present levels of performance, goals and objectives, related services, and, if appropriate, the general classroom adaptations section of the IEP. Before recommending a needed related service that is not readily available at the student's school, the IEP team will contact the school psychologist or designee. If speech/language impairment, visual impairment, or hearing impairment is the student's primary disability, identify the service to be provided in the special education services section rather than the related service section.

Counseling services may be determined as necessary by the IEP team regardless of the student's category of eligibility, based upon the presence of significant and persistent social, emotional, or behavioral difficulties that interfere with the student's progress in school. Counseling services may be provided when they are needed to support the student's IEP goals. Examples of appropriate services include assisting the student with developing effective decision-making skills, anger management, increasing frustration tolerance and impulse control, and increasing self awareness of strengths and deficits. Social/Emotional goals may be written and implemented by the teacher. If the team determines the need is significant or severe enough to require counseling services, the psychologist, social worker or counselor should assist the team in the IEP meeting to develop appropriate goals based upon social history, observations, and current performance. This individual should also indicate who will be providing the service.

HI and VI services may be provided as primary or secondary services, as both are eligibility categories and services. Case management services are provided as follows:

1. If HI or VI Only – HI or VI teacher should be Case Manager
2. If HI or VI and another disability, e.g., HI/SLD – Case Manager is the special education teacher

## **8. IEP Section H: Supplementary Aids and Services (Accommodations and Modifications)**

Specify the general classroom adaptations, if any, that the student will need in order to progress toward achieving annual goals and in order to participate in and benefit from general education. It is expected that any accommodations that are required on testing (Section J) are also required for the student on a daily basis in the classroom. Identify any supports for school staff necessary for the student to achieve annual goals, be involved in and progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated and participate with non-disabled students to the maximum extent appropriate. Examples of supports are in-service and training about the student's disability, ways to adapt the content standards, and consultation with special education staff. Contact the school principal or Special Education Assistant Director before recommending any supports not readily available at the school site or within the school district. Document supports in "Other" in the Supplemental Aides & Services portion.

## **9. IEP Section I: Extended School Year (ESY)**

Specify whether ESY services are needed. Eligibility based on the current recoupment/retention data or critical learning stage justification. If eligible, ESY eligibility documentation data is submitted using the ESY required documents per timelines. If further data is needed in order to determine the student's need for extended school year services, the team must ensure that this is determined least 45 days prior to the last day of school). Use the **IEP ESY Eligibility Profile** to document recoupment/retention data or critical learning stages.

## 10. IEP Section J: Testing

Arizona statute (§15-741), the Individuals with Disabilities Education Act (§300.160), and the Elementary Secondary Education Act (§1111) mandate that all students who are educated with Arizona's public funds must participate in state assessments, including all students with disabilities and all students identified as English Language Learners. Student participation is based on the enrolled grade level (based on Arizona Academic Standards). Students participate in state assessments (AZMerit) and all specified district assessments.

The Arizona Department of Education publishes **Testing Accommodations: Guidelines** every school year. As stated in the annually published ADE Testing Accommodations: Guidelines, "Students should receive the same accommodations for classroom instruction, classroom assessments, district assessments, and state assessments. No accommodations should be provided during assessments that are not also provided during instruction. However, not all accommodations appropriate for instruction are appropriate for use during a standardized state assessment. **The accommodations available to students while testing on AZMerit are limited to those** (specified annually by ADE in the Accommodations Guidelines publication)."

It is the responsibility of the Special Education teacher (and any other staff administering state assessments, i.e., psychologists, related service staff, etc.) to read and follow those guidelines before administering state and district assessments. This document can be found at <http://ade.az.gov/standards/AIMS/Administering/Default.asp>.

### **Alternate Assessments**

For those few students who cannot meaningfully participate in enrolled grade level tests because of the severity of the disability, the IEP team, may consider qualification for alternate assessments by determining eligibility as mandated by ADE. The alternate assessment eligibility criteria form is a required IEP Attachment if the student is being considered as a participant. Eligible students' participation in district assessments is determined on an individual basis. **Eligibility for state alternate assessments is based on the ADE criteria and not based solely on disability category.** Eligibility criteria as required by ADE are as follows:

- o There is evidence of a significant cognitive disability.
- o The student has access to high quality instruction based on Alternate Academic Standards and the student's IEP goals and objectives focus on enrolled grade level Alternate Academic Standards
- o Due to the student's academic deficits, it is extremely difficult for the student to acquire, maintain, generalize and apply academic skills across environments even with high quality, intensive, individualized instruction in multiple settings across all areas tested.

Once a student qualifies for an alternate assessment, the IEP team must re-consider eligibility during each and every subsequent annual IEP.

## 11. IEP Section K: Least Restrictive Environment (LRE) Participation in general education and curriculum

Document activities in which the student will NOT have an opportunity to participate with nondisabled peers. Specify the least restrictive placement for the student using the list of options on the IEP form. The selected placement must be based upon the student's needs rather than the student's category of eligibility or any other factors. Provide justification for the option selected. Document any potentially harmful effects resulting from the placement. Provide an explanation if the setting is not at the student's home school, as close as possible to the student's home, based on the student's IEP



needs, or does not provide maximum appropriate access to nondisabled peers.

#### **12. IEP Section L: Parent (Or Guardian) Statement**

Original signature is required for initial placement only.

#### **13. IEP Section: District Consent to Claim Medicaid Reimbursement**

The parent's permission is required to submit reimbursement claims to the Arizona Health Care Cost Containment System (AHCCCS) for covered services, such as speech therapy, assistance with daily living skills, transportation and nursing. Granting consent is voluntary on the part of the parent. For students who require one-on-one assistance from a health aide with the Activities of Daily Living (ADL), at least one qualified provider (e.g. Occupational Therapist, School Psychologist or Nurse) must sign the DSC Health Related Services form. This form will only print if ADL services are documented in the IEP. Please see Chapter 16 for more information on this.

#### **14. IEP Section: Prior Written Notice**

The purpose of the Prior Written Notice is to summarize the previous sections of the IEP and to provide the parents with Prior Written Notice of any changes in a student's special education program or placement. The Prior Written Notice must include a description of the action being proposed and an explanation of the action. Specify any **additions, deletions or changes in the IEP relative to the last IEP the student had**. Indicate the items that represent the basis of the decisions leading to the action. It is important to document parent or student input within the "other" section. List other options considered for the student such as increase/decrease in service time, placement in a more restrictive environment, or dismissal from special education. List specific reason(s) why the team rejected these options. Address any concerns or other relevant information (e.g. health, medication, behavior, attendance, upcoming surgery).

### **CHANGE IN PLACEMENT**

#### **Initial Placement Into Special Education**

SVCS will educate students with disabilities in the most appropriate educational setting in which the student can make satisfactory progress. SVCS offers a continuum of services and programs from least restrictive to the most restrictive environment. SVCS will place students with disabilities in special education settings without delay from the date of consent unless determined otherwise by the IEP team.

An example of this would be when placement would occur during the last two weeks of the school year to be implemented at the start of the next school.

#### **Homebound Instructional Services**

Homebound instructional services will be made available for a special education student who, because of illness, disease, accident or other health conditions:

1. Is unable to attend school for a period of not less than three school months (60 consecutive schooldays).
2. Is capable of learning at school but is unable to attend classes for intermittent periods of time totaling three months (60 cumulative school days) during a school year.

The student's parents will be responsible for obtaining a completed **Homebound/Medical**

**Certificate** from a licensed medical doctor. After completing the form, the doctor forwards it to the The Dean of Students at 602-692-4914. Since homebound is a change of placement, an IEP meeting must be held in order to amend the IEP and initiate service. The team must conclude that instruction at home or in a hospital is the least restrictive environment in which the student can be educated. The home school team will determine the amount of service time the student will receive. When preparing for the IEP team meeting, the IEP case manager or teacher must contact SVCS representative to attend the meeting

### **Requirements For Homebound Services**

It is the goal of The Dean of Students to educate students in the least restrictive environment. Accordingly, teachers will work with students with the aim of returning students to their assigned schools as soon as students are medically able to return. It is the responsibility of the student's parent to provide a safe environment for the delivery of services, and a responsible adult must be present in the home during each instructional session. The assigned teacher will contact the parents to arrange a mutually agreed upon schedule for instruction. The parents and/or student will be responsible for notifying the teacher whenever the student will be unavailable for instruction. The parents will be responsible for notifying the school and the homebound teacher when a medical doctor has verified that the student may return to school. The IEP team may request medical authorization updates from the physician in order to better plan an appropriate program.

### **Change In Least Restrictive Setting To Private School**

Should a student's needs be greater than can be appropriately accommodated in a district program, even with extensive modifications to a student's program, the need for a private school placement may be considered. Such a change in placement must be approved by the Director of Special Education.

## **EXTENDED SCHOOL YEAR SERVICES**

Extended School Year (ESY) is an individualized program, based upon the current IEP goals and objectives, offered to special education children beyond the normal school year at no cost to parents. The IEP team will consider every disabled child's need for ESY services at each annual IEP review meeting. The team will determine eligibility on an individual basis using specific criteria. Related services will be provided when required to maintain identified skills. The least restrictive environment is considered for each ESY program, but may not necessarily include all of the options available during the regular school year. ESY can be provided in a variety of environments such as the home with the parent teaching and staff consulting, at school, and in the community. ESY is not compulsory; parents may choose to decline ESY services.

### **ESY Factors**

No single criterion can be used to determine eligibility.

1. Regression/recoupment: Many children regress to a lower level of functioning over vacation periods, but both non-disabled and special education children usually recover (recoup) skills to the level achieved previously in a short period of time. A regression/recoupment analysis considers the amount of regression a child experiences as a result of a break from school with the amount of time required to regain the prior level of skill, and whether the child loses crucial self-sufficiency objectives during the break, with little possibility of a reasonable recoupment period.
2. Data-based Observation of the Pupil: Data collected by school staff or other qualified observers

indicate a need for ESY services.

3. Least Restrictive Environment (LRE) considerations: Services are needed in order for the student to maintain placement in the Least Restrictive Environment.

4. Critical Learning Stage (emerging skills and breakthrough opportunities): The IEP team must consider whether the child is in a critical learning stage (e.g., a child has just shown appropriate toileting behavior at the end of the school year and needs continued assistance to maintain this skill) that has great potential for increasing his or her self-sufficiency. If such a skill is not completely acquired and mastered, it is likely that the current level of acquisition will be lost during the summer vacation.

5. Teacher and Parent Interviews and Recommendations: Data from teacher and parent interviews and recommendations indicate the need for ESY services.

6. Considerations of the Pupil's Previous History: The student's past history of regression or ESY services indicate a need for ESY services.

7. Parent Skills and Abilities: The parents are unable to maintain a child's level of functioning during a break in programming.

#### **Factors inappropriate for determining need for ESY services**

- The cost to the school district
- The child's need for socialization, enrichment, or supplemental instruction
- The child's readiness for next year, developing new skills, or preparing for mainstreaming
- Progress on IEP goals and objectives not met during the year
- Slow progress that is typical for the child
- Slow progress that is the result of medical problems, absenteeism, or transitional life situations (e.g., divorce or death of a family member)
- Convenience of the parent or school (e.g., summer recreation program, day care or respite care service)
- The need for additional instruction to maximize the child's educational opportunities
- The child's need for educational services beyond what is prescribed in the IEP goals and objectives

#### **Regression-recoupment guidelines**

To qualify for ESY, the child's period of recoupment following the beginning of review and re-teaching should significantly exceed the following guidelines:

#### **Length of break approximate recoupment time**

11-12 weeks (summer) 20-30 instructional days

2 weeks 3-4 instructional days

1 week 2 instructional days

#### **ESY data collection**

Each child's special education teacher will collect and record a broad range of detailed information in order to determine the child's eligibility for ESY services. That information may include:

- Data-based Observation of the Pupil: Data collected by school staff or other qualified observers.
- Child work samples, test results, report cards, homework, progress reports
- Parent observations and assessments of loss of skills in identified areas
- Progress reports of educators, therapists, and others working directly with the child before and after breaks in instruction
- Assessment of the IEP goals and objectives as they relate to regression and recoupment

Each child's special education teacher will establish a series of measurement timelines in order to provide a baseline to document regression and recoupment, and will develop a schedule for collecting

data about the child's progress. To be considered for regression-recoupment, goals and objectives must be part of the child's current IEP.

### **Determining ESY eligibility and services**

1. A decision regarding the need for ESY must be completed a minimum of 45 days prior to the end of the school year.
2. The teachers/service providers will collect data on all goals and be prepared to determine the need for ESY services at the annual review IEP meeting.
3. At the annual review meeting, the teachers/service providers will present the ESY documentation to the IEP team. The team will determine the need for ESY services using the ESY eligibility profile. If the child qualifies, the team will determine which IEP goals and objectives will be targeted for ESY services and will determine the frequency, duration, and least restrictive environment for delivery of service.
4. If there is insufficient data to determine the need for ESY, an IEP amendment must be completed to capture the ESY determination. An addendum is also required if after reviewing eligibility data, the IEP team concludes that a change in ESY eligibility should be considered.
5. ESY services will address the identified ESY needs but does not have to mirror the current IEP (e.g. student may not require related services during ESY).

## **DISCIPLINE, BEHAVIOR INTERVENTION PLANS & THREAT MANAGEMENT**

### **A. DISCIPLINE**

When a student violates the code of conduct, a discipline referral may be made by the discipline official at the school. The student's records should be reviewed to determine if the student is a student with a disability, including:

1. Eligible for special education
2. Is currently in the referral process for special education
3. Eligible for a Section 504 Accommodation Plan or
4. Is perceived to have a disability.

If the student has a disability, the discipline record should be reviewed to determine the number of out-of-school suspensions during the current school year. This will be taken into account when assigning any suspensions. Whenever a suspension is imposed, the student and parent(s) must be informed of the suspension by telephone, mail, or personal contact by the administrator and given a copy of SVCS Regulations and Procedural Safeguards. ALL suspensions, expulsions, and arrests should be reported to The Dean of Students. The student's teacher(s) should also be informed of the suspension.

#### **1. Short Term Suspension (up to 10 consecutive or cumulative days in a school year)**

a. SVCS can suspend a student with a disability for up to ten cumulative days in a given school year without providing IEP services. Beyond the ten days, SVCS must provide services to the student. The IEP team must conduct a manifestation determination hearing to determine whether or not the student's behavior was a manifestation of the disability at the tenth cumulative day of suspension.

b. Any time parents are required to take their children home for any portion of the school day (except for medical reasons or arrests), IT IS CONSIDERED A SUSPENSION UNDER THE LAW. It makes no difference if the child is sent home near the end of the day, that day will count as a full day of suspension.

- 2. Long Term Suspension** (a removal of greater than 10 consecutive to an alternative school)
- a. A school administrator may move to long-term suspend a student with a disability for a period of greater than 10 consecutive days due to:
    - i. A disciplinary infraction that is of such magnitude that the school community is best served by removing the student to an alternative school or
    - ii. A pattern of assaultive, violent or disruptive behaviors behaviors that have been intractable even with extensive behavioral support, parent meetings, and adjustments to the student's daily schedule.
  - b. The suspending administrator must notify the special education case manager or psychologist to convene a manifestation determination to determine whether or not the student's behavior was a manifestation of the disability within ten days.
  - c. The administrator should also contact the Dean of Students and complete the referral for long-term suspension. The Dean of Students will initiate a due process hearing to determine whether or not the student is guilty of the alleged behavior.
  - d. Following the manifestation determination and due process hearings, the school administrator should work with the Dean of Students to facilitate the student's move to the alternative setting.

### **3. Manifestation Determination Hearing**

- a. The school-based IEP team will convene within the appropriate timeframe and will review the students records with input from team members:
  - i. SVCS representative will facilitate the meeting.
  - ii. The administrator will describe the nature of the alleged infraction and the disciplinary action proposed.
  - iii. The school psychologist will describe the behavioral characteristics of the student's disability.
  - iv. All team members shall review all relevant information and participate in decision making.
- b. The IEP team will determine whether or not
  - i. The student's misconduct was related to the disability or was caused by the disability and
  - ii. The student's misconduct was a direct result of SVCS's failure to implement the IEP.
  - iii. If there is no consensus, the decision will be made by SVCS representative.If the parent disagrees with the determination decision, the parent may request a hearing from the state.
- c. If parent(s) do not attend on the date on which the decision is made, the team must proceed with decision making and provide the parents with copies of the manifestation determination paperwork, procedural safeguards notice, and prior written notice describing the outcome of the meeting.

### **DISCIPLINE if Misconduct IS NOT a Manifestation of the Student's Disability**

If the IEP Team determines that the child's behavior was not a manifestation of the disability, the student may be disciplined in the same manner as a non-disabled student and a long term hearing, or an abeyance contract may be an option. **However, both regular and special education services must be provided.** A functional behavior assessment and behavior plan needs to be developed to address the behavior. If one or both are in place, then the team needs to review them.

## **Review of Placement if Misconduct IS a Manifestation of the Student's Disability**

If the IEP Team determines that the child's behavior was a manifestation of the disability, the student cannot be subjected to long term removal. However, the IEP Team may recommend a change of placement if it concluded the current placement is inappropriate in light of the behavioral trends. A functional behavior assessment and behavior plan must be developed to address the behavior. If one or both are in place, then the team needs to review them.

### **4. Interim Alternative Education Setting (IAES)**

If a student violates the code of conduct by possessing drugs, dangerous weapons (including knife blades of more than but not less than 2.5"), or inflicting serious bodily injury (defined as bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or the impairment of the function of a bodily member, organ, or mental faculty), the school administrator may unilaterally remove the student with a disability to an Interim Alternative Education Setting (IAES).

- a. The IEP team must hold a manifestation determination hearing. However, the student is eligible for an IAES for up to 45 days regardless if the outcome of the manifestation determination.
- b. The IEP must be revised to reflect the IAES placement.
- c. Both general and special education services must continue.
- d. The school administrator should work with The Dean of Students to facilitate the student's removal to the IAES.

### **B. Functional Behavior Assessments and Behavior Intervention Plans (FBA/ BIP)**

Students who exhibit behavioral difficulties may need services in the IEP to support the student in the learning environment. The team will need to conduct a functional behavioral assessment to determine appropriate interventions. FBA and BIP are required for students who are displaying a pattern of behavior that is interfering with the student's learning or disrupting the learning environment for others. They are also required for students who are being referred for long-term suspension or are being removed to an Interim Alternative Educational Setting. FBA and BIP are recommended for students who are at-risk for being long-term suspended and can also be used with general education students.

#### **1. Functional Behavior Assessments (FBA)**

Simply put, a Functional Behavior Assessment is a means to determining the purpose, or function of a student's undesirable behavior. The FBA identifies the problem behaviors and answers questions such as, "Why is the student engaging in the behavior?" and "What benefit is the student receiving from engaging in the behavior". These questions can be answered by analyzing the student's behaviors and environment, and conducting systematic observations about when the behaviors tend to happen, following which antecedents and resulting in which consequences. This process leads to one or more hypotheses which can be tested to determine the cause or causes of the student's behavior.

#### **2. Behavior Intervention Plans (BIP)**

A Behavior Intervention Plan stems from the results of the Functional Behavior Assessment. The interventions selected are designed to extinguish the undesired behaviors while meeting the student's needs which have been identified in the FBA as the function of the behavior. The interventions in the

BIP may be aimed at manipulating the antecedents and/or consequences of the behavior, teaching replacement behaviors that serve the same function as the undesirable behaviors, implementing changes in curriculum and instructional strategies and modifying the student's physical environment. The completed BIP becomes part of the student's IEP program and is reviewed as often as needed.

### **3. Threat Management**

SVCS has adopted a threat management protocol that organizes the campus response to a student making a threat of harm against another individual. The school administrator will usually receive the initial report and will bring together the Threat Management Team (TMT) to review the event and determine next steps. The process may end there, or it may go forward to a records review, consideration of student's stabilizing and risk-factors, interviews of the student, witnesses and parents, and ultimately a decision about what level of risk the student may pose to the campus. The administrator may then require a supervision plan to be in place for the student. For more information, contact the Dean of Students.

## **RECORDS AND REPORTING**

Sun Valley Charter School uses special education records to help in the instruction, guidance, and educational progress of students; to provide information to parents and staff; to comply with federal and state regulatory requirements; to provide a basis for the evaluation and improvement of school programs; and to conduct educational research. Sun Valley Charter School complies with all federal laws and regulations pertaining to the privacy and confidentiality of special education records.

### **Confidentiality**

Sun Valley Charter School documents, including electronic, written, or printed documents containing student and personnel information and correspondence. Data may be confidential as a matter of state and federal law, including the Family Educational Records and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), and Individuals with Disabilities Education Act (IDEA).

### **Parent Rights Regarding Special Education Records**

Parents, or their authorized representatives, have the right to review and inspect any educational records directly related to the parent's child and maintained by Sun Valley Charter School. Such records may be inspected and reviewed within 45 days of the date SVCS receives a request for access. All parent requests to review inspect, or copy special education records will be made to the Dean of Students. If any educational record includes information on more than one student, the parents may inspect and review only the information relating to their child. School personnel will be available to explain and interpret the content of the records to the parents or their authorized representative. Upon request, The Dean of Students will provide the parents a copy of their child's records at no cost. Parents who believe that information in their child's educational records is inaccurate, misleading, or violates the privacy rights of the child, may request, in writing to the Director of Special Education, that SVCS amend the record. The Director will decide whether to comply with the request and will inform the parents within a reasonable time. If the Director decides to refuse to amend the record, the parents will be advised of their right to a due process hearing.

Parents may restrict access to their child's records by withholding consent to disclose records, except that the Dean of Students will permit disclosure without consent to school officials with legitimate

educational interests and to law enforcement agencies that request the records. Parents have the right to be informed before their child's records are destroyed. Parents also may file a complaint with the U.S. Department of Education concerning alleged failures by SVCS to comply with the requirements of FERPA.

### **Storage of Special Education Records**

Special education records will be maintained by the Director of Special Education. Each student's special education teacher or related services specialist will keep a copy of the student's current IEP, meeting notices, prior written notices, and progress reports at the school site.

### **Access to Special Education Records**

Access to special education records will be limited to parents, or their authorized representative, and school employees who have a legitimate educational interest in the records. A legitimate educational interest is the employee's need to:

1. Perform a task required as part of the employee's job description, as approved by the school board.
2. Perform a supervisory or instructional task directly related to the student's education.
3. Perform a service or benefit for the student or the student's family such as health care, counseling, student job placement, or student financial aid. The school sites will maintain, for public inspection, a current list of the names and positions of school employees who may have access to student records. The Dean of Students will keep a record of the name of each person obtaining access to records; the date access took place, and the purpose of the authorized use.

### **Disclosure of Special Education Records**

Director of Special Education may only disclose personally identifiable information from special education records. Records will be released to other public schools where the student enrolls upon the school's official written request or telephone contact of an authorized official confirming enrollment. Director of Special Education will not release records to any other person or agency without written parental approval unless the disclosure is consistent with federal and state statutes. FERPA provides that disclosure of records may take place without parental consent in the following situations:

1. School officials are allowed access to student education records for legitimate education purposes. School officials include teachers, substitute teachers, administrators, and other district employees who perform a special task, such as a secretary, clerk, etc.
2. State monitoring teams: State auditors.
3. In health or safety emergency.

### **Destruction of Special Education Records**

Director of Special Education will destroy special education records three years after the school year in which the student graduated from high school or was projected to graduate. Director of Special Education will maintain a permanent record of a student's name, address, and phone number without time limitation. Individual schools are responsible for destroying school copies and working files of special education students.

### **Email Confidentiality and Etiquette Policy**

It is the responsibility of all employees to protect against the unauthorized disclosure of confidential information. "This policy requires employees with access to student and employee information to refrain from sharing written, verbal or electronic information with others (both employees & non-employees) who do not require the information within the scope of their job or responsibility. This



includes maintaining confidentiality in providing the student's or employee's name and/or any details that might identify the student or employee and relate him/her to a particular situation." Please consult the SVCS regulations for a detailed description of sharing information only in a "need to know" context.

## **DISPUTE RESOLUTION**

### **SVCS Dispute Resolution Process -- Parents of Students with Disabilities**

- Effective communication is very important when questions or concerns arise regarding the special education programs for students with disabilities. The ideas below are recommended steps for parents to take when they have a concern regarding their child's special education program.

#### **Informal**

- If parents have questions about their child's program, the first step is to address those with the Exceptional Education classroom teacher. While the list is not inclusive, concerns may be related to the child's schedule, classroom materials, type and pacing of instruction, and communication between school and home.
- If concerns and questions are not resolved in a reasonable amount of time (about one week), parents should bring those to the attention of the school principal. Some questions, such as those related to school assignment, may be resolved the same day. In other cases, it may take longer to resolve a concern, but this process should be handled speedily. Usually, phone calls and e-mails will be acknowledged in 24 hours. Issues related to student safety will be addressed immediately. If a question is not acknowledged in 48 hours and/or if parents still have concerns after speaking with the teacher, or principal designee, they should contact the Director of Special Education (602-692-4914).
- Please keep in mind that it may be best to request an appointment with the teacher and school administrators ahead of time so that there will be ample time to express the concerns away from the busy routines of the day.

#### **Formal**

- Parents may request an IEP meeting to address issues related to the educational program at any time. If parents disagree with the evaluation results, they may also request a reevaluation, but no more than one time each year (300.303, IDEA Regulations). IEP requests and requests for re-evaluations must be submitted in writing to the special education teacher at your school. Once a request for an IEP meeting is received, it will be scheduled within two weeks. Evaluations will be conducted in 60 days, as required by IDEA.

#### **Procedural Safeguards**

If you are unable to resolve your concerns at SVCS level, please keep in mind that you may contact the Arizona Department of Education to assist you in this process. A copy of the Procedural Safeguards, with contacts and phone numbers, is available at The Dean of Students, 1817 N. 7th St. Phoenix, AZ or you

may obtain from the following website: <http://www.ade.az.gov/ESS/resources/>

## **ENGLISH LANGUAGE LEARNER**

### **English Language Learner (ELL) Program Withdrawal**

The IEP team determines the need for services including whether a student takes the test for reclassification of ELL status or to be exempted from the testing requirement.

Option 1: Withdraw by Disability Severity: students with a significant disability may be withdrawn from testing requirements if they cannot produce oral language or the handicapping condition is otherwise so severe that it does not permit the student to respond in a meaningful way.

Option 2: Withdraw by IEP Team Decision/English Proficiency Assessments: the student's disability involves severe language impairment or severe reading and/or writing impairment; **and** the IEP team confirmed the student received at least six years of primary language or English as a second language instruction (ELD); **and** the student's scores in the last three/six consecutive annual English proficiency assessments indicate no consistent pattern of improvement in any of the three subtests.

The "form to withdraw the child" (what is it called) should be obtained through the Language and Literacy department and completed and signed by all IEP team members including the parent.

\*\*appendix reference\*\*

### **Interpreter/Translation Services**

There is no requirement in IDEA that all IEP documents be translated. However, an interpreter will be secured for parents whose native language is other than English to ensure that parents are fully informed of all information relevant to the special education activities that require consent. When an interpreter is provided for the parent during an IEP meeting, written translation of the IEP is not required. Prior written notices and Procedural Safeguard Notices are provided to the parent in the native language unless waived by the parent. Each campus has a designated bilingual Spanish interpreter who receives a stipend to provide interpretation services with parents as needed. For languages other than Spanish, the case manager should attempt to use existing staff, community members or agency individuals, such as from Catholic Charities or International Refugee Committee. In the absence of available personnel, contact The Dean of Students for other options.

## **SECTION 504**

The following information is a summary of section 504: Discrimination: Section 504 and ADA as presented by Wrightslaw, 2008. Section 504 is part of the Rehabilitation Act of 1973 related to persons with disabilities. Section 504 is a civil rights act which protects the civil and constitutional rights of persons with disabilities. Section 504 and special education are two separate services. Section 504 of the Rehabilitation Act of 1973 protects persons from discrimination based upon their disability. A person is disabled under section 504 if he or she:

*"...has a mental or physical impairment which substantially limits one of more of a person's major life activities; "**Major life activities**" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the individual does not qualify under Section 504."*

If a school has a reason to believe that, because of a disability as defined under Section 504, a student needs accommodations or services in order to participate in the school program, the school must evaluate the student. This evaluation need not be a formal psychoeducational evaluation but may instead consist of a review of existing data, including a behavioral health and/or medical reports provided by the parent. If it is determined that a student is disabled under Section 504, the school must develop and implement the delivery of all needed services and/or accommodations.

In SVCS, the determination of what services and/or accommodations are needed must be made by a group of persons knowledgeable about the student. The parents must be included in the process

whenever possible. The group must review the nature of the disability and how it affects the student's education. The decision about Section 504 eligibility and services must be documented in the student's file and reviewed at least annually. An appropriate education for students eligible under Section 504 may consist of education in general classes with accommodations and programs designed to meet the unique needs of a particular student. 504 plans are usually developed at the school sites by the social worker or general education teacher. For questions or clarification regarding 504 plans, contact the Director of Special Education.